

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
(CRIMINAL DIVISION)
[2024] EWCA Crim 104



No. 202303819 A1

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 18 January 2024

Before:

LORD JUSTICE POPPLEWELL

MR JUSTICE CHOUDHURY

HER HONOUR JUDGE ANGELA RAFFERTY KC

B E T W E E N :

REGINA

- v -

JAKE COOKE

Respondent

**REPORTING RESTRICTIONS APPLY:
SEXUAL OFFENCES (AMENDMENT) ACT 1992 APPLIES**

MISS J WALKER appeared on behalf of the Solicitor General.

MISS S REVEL appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE POPPLEWELL:

- 1 The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences, which were committed against two thirteen-year-old girls, to whom we shall refer as “S” and “G”. No matter relating to either of them shall during their lifetime be included in any publication if it is likely to lead members of the public to identify them as victims of the offences. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.
- 2 On 30 August 2023, the offender, then aged seventeen, was convicted following trial in the Crown Court at Bradford, before Mr Recorder Hawks and a jury, on two counts of child abduction contrary to s.2(1)(a) of the Child Abduction Act 1984 (Counts 1 and 2 – one count for each victim), on two counts of rape of S (Counts 4 and 6) and on one count of rape of G (Count 5). His co-defendant, Anis Ali, was convicted of the two counts of child abduction and one count of sexual assault.
- 3 On 6 October 2023, the offender was sentenced by the Recorder to five years’ detention pursuant to s.250 of the Sentencing Act 2020 on each of the rape counts, to run concurrently with each other, with no separate penalty imposed on the abduction counts. His Majesty’s Solicitor General seeks leave to refer the sentence as unduly lenient.

The facts of the offending

- 4 The offender initially had contact with the two thirteen-year-old girls, S and G, via social media. G told him she was aged thirteen when he asked her age. In February 2022, he met S in Leeds city centre. On 30 March 2022, the offender invited S to meet him and she agreed. He was at this time a little under sixteen and a half years old. He and Ali took a taxi from Keighley, where they lived, to Leeds, where the girls were living, a journey of some fifty minutes. In evidence, the girls agreed that they had got into the taxi willingly at first. This was at some stage in the early evening, after 7pm. The girls were driven around the immediate area. G said she wanted to talk to her friends. She saw this as her opportunity to get out. She was, however, persuaded to return to the taxi by S. When she got back in the mood changed. The offender told the taxi driver to lock the doors. The offender told the taxi driver to go to Bradford and Keighley. The girls said they did not want to be taken to these places and told the taxi driver so. However, the taxi driver felt that he could not stop and continued to drive them to Keighley.
- 5 At one stage police sirens were heard and the offender said, “Oh, shit, I’ve got ... a shotgun on me, a gun and a machete”. He said to duck down as he had a shotgun on him. This was said by reference to evading the police rather than as an intended threat to use those weapons, but it caused the girls fear. S saw the outline of a machete in the offender’s tracksuit bottoms and in evidence Ali said he saw what he thought was the handle of a machete. Neither girl said they had seen a gun. The Recorder said, when sentencing, that the offender had boasted about having a gun and that he was acting aggressively and in a volatile manner when in the taxi. At one stage the offender threatened to smash up the taxi.
- 6 On the way, the offender, Ali and the two girls inhaled nitrous oxide from balloons. They arrived at a house in Keighley. A drug deal took place between the offender and the occupier. Within the house, Ali sexually assaulted G by putting his hand down her pants and over her bottom, notwithstanding her telling him that she did not want him to. That was the subject matter of Count 3. He stopped when she pulled away from him.

- 7 There was a reference in the evidence to the offender and Ali, and the girls, treating the house as a doss-house but a friend of the occupier arrived and persuaded the group to leave. The group went to a McDonalds and, after that, they went to a taxi office. At this point in the narrative, CCTV showed S wearing the offender's coat and G wearing Ali's coat. They got in a taxi, which was directed by the offender to drive to an isolated, boarded up and disused church. By now it was about 11.40pm.
- 8 At some stage, it seems probably in the taxi on the way there, S had received calls from her mother, who by now realised she was missing. The offender took hold of S's phone and turned off the location services.
- 9 At the disused church, the group of four were in the area where the altar had previously been and in the nave. G heard the offender remind them that he had a knife, saying he would use it and was on house arrest with a tag. The offender took hold of S's neck and kept gripping her. He and S went to a separate room. In that room he told S to get on her knees. He put his hand on the back of her head and orally raped her. That was the subject matter of Count 4. When that was over, she walked away.
- 10 The offender then took G down some steps. He told her to get on her knees. She refused and he pushed her to the floor. He grabbed her head and orally raped her. When he had stopped, she sat down on some steps and said she wanted to go back to S. He then told her to stay, grabbed her hair and orally raped her again. Those two rapes were the subject matter of Count 5. Tears were falling from her eyes.
- 11 S was crying and told Ali that she wanted to go home. However, the group stayed at the church for a few hours, before walking to the offender's house a short distance away. Before going inside, they sat in an abandoned car. In the car S was scared to refuse the cannabis which was offered to her because she remembered that the offender had said that he had a knife and a gun.
- 12 At the offender's house, the offender vaginally raped S in the living room. That was the subject matter of Count 6. At that time, his mother and stepfather were in their bedroom and G and Ali were in the offender's bedroom. The offender turned up the television so S's shouting could not be heard. S had not had sexual intercourse before. Her vagina was bleeding afterwards. No contraception was used.
- 13 The group fell asleep on the offender's bed. They were awoken by his mother shouting at him. It seemed that the mother had heard about two missing girls and was asking the offender whether the missing girls were with him. The victims left the offender's house and were quickly found by a passing police officer who was looking for them. The offender and Mr Ali were arrested at the house. In interview under caution, the offender denied the offences.

Victim impact

- 14 Victim Personal Statements were made on 25 August 2023 while the trial was taking place. This was some seventeen months after the incident. S said that the incident had scarred her for life. The night of the offences was the scariest time in her life. Rather than going out with her friends and enjoying days out, she now stayed at home most days and struggled with environments with a large number of people. She worried about relationships she might have in the future. Her education, sleeping routine, eating habits, hobbies and mindset had all changed. She now only attended school three times a week and sat in a classroom with only a teacher for two hours a day due to her anxiety. She slept no more than four

hours a night. She felt worthless. She had lost confidence and felt unhappy for a lot of the time.

15 In S's mother's statement, she described the impact of the offence on S and her family. S's mother had taken three months' leave from work due to lack of sleep and was herself suffering from anxiety. She had attended numerous meetings at S's school to work out a plan whereby S could attend while feeling safe, which entailed one-to-one tuition. The time since the offences, she said, had been the worst in her life.

16 According to G's Victim Personal Statement, she struggled with sleep. She relived events in night terrors which caused a huge amount of sadness and distress. She was anxious about leaving the house on her own and was still on edge that someone known to the offender could be out to harm her and her family. She felt depressed and that she was never going to be herself again. She did not want any physical contact with people, such as hugging. She could not concentrate at school, and missed a lot of school because she did not want the attention that she received there. She stopped socialising with her peers and became paranoid that people were talking about her, adding to her anxiety and causing constant mood swings. She felt she could not trust anyone. She did not know how to express her feelings and so most of the time it would come out as anger. This had caused her to self-harm herself, although the manner of that self-harm was not specified.

17 In G's mother's statement, she said she could not describe in words the utter terror on learning that G had been abducted. When G returned home, she did not want to talk about what had happened. G struggled with sleep and would often wake up having had a nightmare. Her schooling had suffered and she missed time from school. She was afraid to go out alone. She was afraid of her own shadow. G's mother also felt depressed and anxious.

Antecedents and reports

18 The offender had ten previous findings of guilt and four cautions. In April 2016, when aged ten, he was cautioned for possessing a knife in a public place and for two offences of assault occasioning actual bodily harm. His first findings of guilt were in September 2017, for possessing an imitation firearm with intent to cause fear of violence and attempted robbery, offences committed when he was aged eleven. On that occasion he was made subject to a referral order for twelve months. In October 2017, a month after the referral order, he committed an offence of battery, then aged twelve, for which he received a six month conditional discharge. In July 2018, he was sentenced to a youth rehabilitation order for affray and using threatening, abusive or insulting words or behaviour with intent to cause harassment, alarm or distress. Those offences had been committed when he was aged eleven.

19 Thereafter, in May 2020, when aged fourteen, he committed common assault and battery, for which he received a caution. In October 2020, the month before his fifteenth birthday, he committed an offence of using threatening, abusive or insulting words or behaviour with intent to cause fear or provocation of violence. In November 2020, now aged fifteen, he committed criminal damage and battery. In March 2021, he assaulted an emergency worker. For these offences he received youth rehabilitation orders with supervision requirements, the first starting in March 2021 and the last one being imposed on 17 January 2022. The instant offences, committed on 30 to 31 March 2022, occurred during the currency of the youth rehabilitation order imposed on 17 January of that year.

20 A pre-sentence report was prepared on 29 September 2023. The author had been responsible for supervising the offender from May 2020, around the time he committed the

assault and battery aged fourteen, and from that time until his arrest for the instant matters. During that time he was willing to meet periodically for sessions but he typically presented as someone who romanticised the gangster culture. He began spending longer periods of time away from his parents and their supervision.

- 21 Severe domestic violence by his father towards his mother appears to have affected him as a young child. Due to his behaviour, he was placed in care for two short periods in September 2020 and March 2021. He had attended a school for children with socially, emotional and behaviour problems and demonstrated academic potential. But his work was negatively impacted by regular cannabis use, exacerbated by ADHD.
- 22 Whilst on remand at His Majesty's Young Offenders Institution at Feltham, significant levels of aggression persisted by and towards him until the previous few months. He had only recently opened up about his childhood and the impact it had had upon him.
- 23 In relation to the instant offences, the offender was either unwilling or unable to take responsibility for his actions, asserting that sexual activity took place with only one of the girls and that it was consensual. The author's assessment was that the offences clearly indicated a high risk of serious harm to others and a high risk of reoffending.
- 24 There were two reports from Dr Omar, a consultant clinical psychologist instructed by the defence. The first was in October 2022, prior to the trial. In that report he had concluded that the offender had symptoms of ADHD, which exhibited themselves in impulsiveness. Her view was that he would benefit from an intermediary at trial, which is what occurred. Dr Omar had not had sight of medical records for the purposes of making that assessment.
- 25 Dr Omar also saw the offender after conviction and prepared a further report, dated 30 September 2023. Again she had not had access to the medical records. In that report, she said that since the previous meeting he had attended education and had passed exams, having previously spent very little time in school. She observed marked improvements in the offender's demeanour and levels of concentration compared to the first occasion. The offender told her that he was now taking his medication for ADHD on a regular basis, which he considered was helping him to feel calmer and more focused. There were still times when he felt angry but he felt he was able to control it better. He reported and was able to talk about the physical abuse by his father as a child, which had not occurred during the previous assessment.
- 26 Dr Omar concluded in the second report that the offender's ADHD symptoms had improved and the medication had had a positive impact. Under a heading that referred to "Maturity levels", Dr Omar commented that his behaviour had improved. He had referred to plans for his future and for completing his education, and he was engaging with a psychologist in custody. There were a few symptoms of borderline personality disorder which were the kind of symptoms which overlapped with those which are present for ADHD, but Dr Omar did not diagnose borderline personality disorder. She did not express a view as to whether the offender was mature or immature for his age.

The sentencing hearing

- 27 A sentencing note was served by the Prosecution. It submitted that this was a case of planned abduction by both defendants, the purpose of which was to have sexual activity. In respect of Counts 4 and 5, the oral rapes, it was submitted that the combination of Category 2 features, being the abduction, a sustained incident, and particularly vulnerable victims, might elevate the case to Category 1. Culpability A factors of significant planning, the use of drugs to facilitate the offending and acting with another, were also relied upon. It was

submitted that the offender's antecedents aggravated the rape offences. In respect of Count 6, the vaginal rape of S, factors indicating Category 2 harm and culpability A were referred to and the aggravating features of previous convictions, the fact that the victim was a virgin and that no contraception had been used.

- 28 In a sentencing note served on behalf of the offender, it was submitted that the offences of rape fell within Category 2B. In particular, in respect of culpability, it was submitted that the cannabis and nitrous oxide were not used to facilitate the offence, that the co-defendant was not involved in the rape offences, and so they were not acting together, and that there was not a significant degree of planning. In addition, defence counsel referred to the Sentencing Council Guideline on sentencing children and young people, and submitted that the sentence should be reduced by one-half from the appropriate adult sentence.
- 29 During counsel's submissions at the stage of mitigation, the Recorder said that he did not find that the use of drugs facilitated the offence or that the presence of Ali being "about in the area" made it offending in which he had taken part. Furthermore, he said that whilst there was a degree of planning, it could not properly be said to be significant planning.
- 30 In his sentencing remarks, the Recorder said he was satisfied that the purpose of the abduction, which was a planned abduction, was to have sex, or try to have sex, with the victims. The offender was in possession of a weapon, likely a machete, and boasted about having a gun, behaving in a volatile and aggressive manner. The girls were "plied with cannabis and nitrous oxide", although the Recorder repeated that he did not find that the drugs were used to facilitate the rape offences. He referred to the offender's evidence during trial as having taken place with an intermediary, and said that at the time of the offences he was abusing his medication, by which he is understood to have meant that he was simply not taking his medication at all. The Recorder went on to observe that since his remand in custody he was receiving and taking his medication on a regular basis and his condition had improved.
- 31 The Recorder said that he took the view that the offences of rape fell towards the top end of the range of Category B. The top end of that range is nine years. He said that individually they would attract sentences for an adult of eight years. He then increased that to an appropriate sentence for an adult of eleven years to reflect the multiple offending. He then took into account the offender's age and personal circumstances, by reference to the matters referred to in the reports, including his mental health difficulties. Taking those matters into account, he reduced the sentence to one of five years' detention.
- 32 In accordance with the guidance given in *Robinson* [2020] EWCA Crim 866, he correctly imposed the sentence which was appropriate for all the offending, reflecting it in the sentences on the rape charges and imposing no separate penalty in relation to the abduction offences.

Submissions

- 33 On behalf of the Solicitor General, Ms Walker submits that each single offence should have been placed in Category A because there was a significant degree of planning. Category 2A has a starting point of ten years and a range of nine to thirteen years for a single offence. She submitted that the multiple aggravating features of the multiple offending meant that a sentence for an adult of eleven years for all the offending was clearly well below that which was appropriate, whether or not the individual rapes started in Category 2A or 2B. Moreover, she submitted, a reduction of over 50 per cent to reflect the offender's youth and ADHD was itself clearly an excessive reduction, resulting in a sentence which was not merely lenient but unduly so.

- 34 On behalf of the offender, Ms Revel, in attractively presented submissions, argued that the combination of Category 2 factors in this case was not sufficient to elevate the offences into Category 1. The Recorder was well placed to assess the gravity of the offending, having presided over the trial and heard the evidence, including the evidence given by the offender for almost two days. The Recorder had seen CCTV coverage of parts of the events. The abduction of the girls, in Counts 1 and 2, was put on the basis that they went willingly and that the unlawfulness arose from their being removed from the custody of the parents. The Recorder was entitled to reach the conclusion that the degree of planning did not properly attract the epithet “significant” and to place the offending within Category 2B of the Guidelines.
- 35 Ms Revel emphasised that the references to having a knife and a gun in the car, when the police sirens were going off, involved an element of bravado and was not a threat of violence made directly towards S or G. She also submitted that the Recorder was well placed to assess the immaturity of the offender and his personal circumstances, not only from the reports but from his evidence at trial, and that a reduction of over 50 per cent for his youth, immaturity and mental health difficulties was an offender-focused sentencing exercise, which is what is required by the Guideline. She recognised that an appropriate sentence for an adult of eleven years involved a sentence which could properly be called lenient but she submitted that the sentence overall was not unduly lenient.

Conclusions

- 36 The Recorder was right to treat the abduction offences as aggravating the rapes and to pass a sentence on the rape counts reflecting the totality of the offending. We accept Ms Walker’s submission that the degree of planning was significant. We recognise, of course, that the Recorder had the benefit of presiding over the trial. However, it seems to us that it is an inevitable and inescapable conclusion from the Recorder’s findings that the degree of planning was significant. That follows from the original purpose of the planned abduction of the girls, being one to have sex or to try to have sex with them. The girls had said they did not want to go to Keighley and Bradford when they were in the taxi and the offender had asked for the doors to be locked. He had turned off the location services on S’s phone to isolate the girls. They had then been taken to the isolated and remote disused church. That shows a degree of planning which cannot be characterised as anything less than “significant”.
- 37 That would therefore mean that the rapes would individually start in Category A, which has a starting point of ten years and a range of nine to thirteen years for an adult.
- 38 We should make clear, however, that even if, as Ms Revel submitted, the rape offences individually would start in Category 2B, that would not make any difference to our ultimate conclusions. As has often been said, the Guidelines are guidelines, not tramlines, and in order to arrive at an appropriate sentence for an adult, and then to take account of the particular circumstances of this young offender, it is necessary to take into account all of the aggravating and mitigating features of all of the offending. That is not a mechanical exercise.
- 39 However, we think it would be helpful to start in Category 2A and to look at the features which put it in that category. There are a number of Category 2 factors, but in order to avoid double counting we find it convenient to start with severe psychological harm. Ms Revel submitted that the impact reflected in the Victim Impact Statements could be characterised as “serious” but not “severe” psychological harm. We disagree. It is clear that the psychological harm was, after seventeen months, severe and was likely to continue.

- 40 We then address the further aggravating features, some of which are Category 2 factors, others of which are not. In our view, the main aggravating features were as follows.
- (1) The Guideline is for a single rape against a single victim. The offender was being sentenced for four rapes against two victims. The rapes against S were separate in time, location and nature. This of itself required a very substantial uplift measured in years.
 - (2) The girls were particularly vulnerable victims, aged thirteen.
 - (3) The vaginal rape of S took her virginity and was without contraception;
 - (4) The abduction of the girls was a serious aggravating factor. It was prolonged, for a period of about twelve hours or more, lasting late into the night and overnight. During it their parents became aware that they were missing and were understandably worried and set about getting the police to look for them. The abduction, therefore, caused distress to the families as well as the girls. The abduction was not confined to willing behaviour by the girls. They said in the taxi that they did not want to be taken to Keighley or Bradford. The doors were locked. The offender deliberately isolated the girls by preventing the use of S's phone and taking them to a remote and unfamiliar location. The abduction offences alone would justify an increase measured in years rather than months, even after allowing for totality and without any double counting for the significant planning aspect which, in our view, puts the rapes individually in Category 2A.
 - (5) There was the threat of violence. The Recorder said, when sentencing, that the offender boasted about having a gun and was acting aggressively and in a volatile manner when in the taxi. What happened when the sirens were going off may well have been, as Ms Revel said, bravado, but it nevertheless had the impact on the girls that they were in fear of violence. Moreover, at the church there was a specific threat of violence, with the offender reminding them that he had a knife and saying that he would use it immediately before gripping S and taking her to the location at which the oral rape of her took place.
 - (6) There was giving the girls cannabis and nitrous oxide. Whilst this might not have been to facilitate the rape offences, it was clearly an aggravating feature.
 - (7) There were the offender's previous convictions and cautions; and
 - (8) The offences were committed during the currency of an existing Youth Rehabilitation Order.
- 41 The only real mitigation, apart from the offender's youth, was his ADHD. This had been identified by Dr Omar as leading to impulsive behaviour. However, there is no reason to treat that as having played a significant part in the offending in a way which reduces his culpability given the degree of planning. This was not essentially impulsive behaviour but abduction with a view to sexual activity which took place some hours later. Although the offender's ADHD is something which might make his time in custody more onerous than for someone without that condition, it appears to be capable of being managed successfully by medication. It therefore affords only limited mitigation.

- 42 In our view, the appropriate sentence for an adult, after a trial, would have been one of at least fifteen years. The offender was aged a little under sixteen and a half at the time of the offences. Although youth is not automatically to be equated with maturity, there is nothing in his troubled background which suggests to us that he was either more or less mature than other children of his age generally. The Recorder referred to having seen the offender during the trial but did not suggest that that led him to conclude that he was immature for his age. The Recorder relied on the reports, and none of the reports suggest that he was immature for his age. Ms Revel fairly makes the point that Dr Omar's second report, by which stage he was seventeen, shows a greater level of maturity but there is nothing in her first report which suggests a lack of maturity for a sixteen and a half year old.
- 43 Accordingly, a deduction of about 40 per cent for the offender's age at the time of the offence would have been appropriate in application of the Guideline. That would result in a sentence of nine years' custody.
- 44 It follows that, in our view, a sentence of five years was unduly lenient. Accordingly, we grant leave. We increase the period of custody on each of Counts 4, 5 and 6 to one of nine years' detention to run concurrently with each other. The other elements of the sentence remain unaffected.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge.