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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT MANCHESTER

HHJ ELIZABETH NICHOLLS 06FF0684222

[2024] EWCA Crim 1495

CASE NO 202303969/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 27 September 2024

Before:

LADY JUSTICE WHIPPLE

MR JUSTICE JAY

MR JUSTICE LAVENDER

REX

V

JACOB LEE

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MR P GILMOUR appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE WHIPPLE:

Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of a sexual offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. Further, we impose an order under section 45 of the Youth Justice and Criminal Evidence Act 1999. No matter relating to the complainant may be published that would identify them, including their name, address, any educational establishment or any workplace they attend and any picture of them. This order lasts until the complainant (who was born in January 2007) reaches the age of 18.
3. On 17 February 2023, the appellant (who was then aged 31) pleaded guilty to the offences of kidnapping and intentional strangulation before HHJ Nicholls in the Crown Court at Manchester. On 17 October 2023, the same judge sentenced the appellant to an extended sentence of 11 years comprising a custodial term of 7 years and an extended licence period of 4 years on count 1, with 3 years' imprisonment to be served concurrently on count 3. Having committed an offence during the 2-year operational period of a suspended sentence of 14 weeks' imprisonment imposed on 5 July 2022 by the magistrates for offences of failing to stop after an accident and failing to report an incident, the suspended sentence was activated in full to be served concurrently. Count 2

was a charge of sexual assault which was ordered to lie on the file. The appellant now appeals against sentence with the leave of the single judge.

The Facts

4. At approximately 7.20pm on 29 November 2022, the complainant (who was then aged 15) rang her parents to ask for a lift home. They were unable to collect her and she decided to walk home on her own. It was dark. At around 7.45pm her mother rang to check on her. The complainant said she was about 5 minutes from her home.

5. CCTV footage captured the complainant walking along the road at 7.46 pm. The footage also captured the appellant, who was dressed all in black, with his hood up, carrying a rucksack and walking at pace behind the complainant. At that stage he was about 20 seconds behind her. The appellant was carrying something in his hand which appeared to be a bottle or a can. The complainant heard the sound of something falling to the ground. She then turned around to see the appellant behind her. She carried on walking, but within seconds the appellant had positioned himself directly behind her which prompted her to start screaming. She screamed at him, “What are you doing?” The appellant grabbed the complainant from behind and started dragging her across the road into a fenced off grassy area just off the main pavement. He then pulled the complainant’s hoodie over her head, which had the effect of preventing her from seeing what was happening to her. In doing that he touched her naked torso and her bra. The appellant started pushing the complainant into the bushes. They were located metres from her home address. He was witnessed by a member of the public who tried to stop him by shouting, “What the fuck’s going on?” The appellant did not respond. Having heard the

complainant's screams the witness immediately ran home in order to raise the alarm.

6. The complainant tried to scream and fight back and started gouging at the appellant's eyes in an attempt to get him to stop but he continued, forcefully, pushing her into the bushes. He was able to get her onto the floor, so she was lying on the ground on her side initially. Both her hoodie and her jacket were now over her head. The appellant lay on top of her. The complainant was screaming and felt as though the appellant was going to try to suffocate her through her jacket. The appellant also grabbed her around her neck and squeezed her so hard that she was left with residual neck pain. As a result of his actions she could not breathe and she started to lose her voice. She described this as the appellant silencing her screams. After a few seconds and when she stopped screaming, the appellant stopped. He got off her and just walked away as if though nothing had happened. The complainant described a strong smell of alcohol coming from the appellant. She did not see him walk away but she saw he left a trail of things behind him including women's clothing and his telephone.

7. The complainant picked up her glasses, which must have been knocked off during the attack and ran straight to the nearby residential address of some family friends. She was crying and her clothing was dishevelled. She was able to explain that someone had just tried to kidnap her and pulled her into the bushes and tried to suffocate her. She appeared frightened and was struggling to speak because she was so upset. The police were called. When they arrived, they took an initial account from the complainant. They also took photographs of scratches to her back. They took evidential swabs from her hands and seized her clothing. They also seized items left behind at the scene by the appellant

including his telephone and keys which included a fob to access a gym. It was using that fob that the police were later able to identify the appellant through staff at the gym. They were also able to attribute the telephone to the appellant.

8. The complainant gave her video interview the following day. The appellant was arrested. Officers attended at his home address and knocked but received no answer. They were able to gain entry to the property using the keys that had been left at the scene. The appellant's girlfriend was present and promptly offered her assistance to the investigation. She said she had been communicating with the appellant during the day of the offences shortly before 4.00pm and assumed that his telephone was then either turned off or had lost power. He did not come home until midnight that evening and was in a dishevelled state wearing only a pair of leggings. It was not established where the rest of his clothing was, nor where he had removed those clothes to get himself into the leggings. The appellant then removed the leggings. He was intoxicated and argumentative. He had mud on his hands and scratch marks to his hands. He looked to his girlfriend as if he had been in a thorny bush. Later, the appellant was interviewed and answered "no comment" to questions put.

Sentence

9. The sentencing judge had a number of documents before her. She had a pre-sentence report and an addendum pre-sentence report. The author of those reports concluded that the appellant posed a high risk of serious harm to females, those known to him and strangers. The risks were present when he was experiencing a mental health crisis compounded by substance abuse. The appellant was heavily under the influence of

substances at the time of the index offending.

10. The judge had the appellant's antecedents to consider. The appellant had four convictions for seven offences on his record. Most were linked to driving offences. His most recent conviction had been for failing to stop after an accident, and for that he was sentenced to the suspended sentence order of 14 weeks' imprisonment suspended for 2 years with requirements to be fulfilled. He was in breach of that suspended sentence order by the index offence. He also had a previous conviction for section 20 wounding, which had been committed on 29 March 2015. That had involved the appellant standing over the then complainant, who had fallen asleep on his sofa, attacking her with a pair of scissors, causing defensive wounds and multiple abrasions to her chin, neck, shoulder and right hand. The complainant of the section 20 offence said that he was at the time like a man "possessed". That complainant had managed to grab the scissors off him and at that point he let her go.

11. The judge also had the benefit of victim impact statements from the complainant and her mother. Eight months on the complainant was still scared to go out and rarely went out alone. She was anxious and unable to relax in public. She was having nightmares about being grabbed from behind. To start with, those nightmares occurred very frequently but by this stage they were happening every couple of weeks. The complainant had struggled to concentrate during her GCSEs, which she had sat in the May and June following this attack, some months later. She said her experience at the hands of the appellant had been a "nightmare". Her mother said that her daughter was a changed person - no longer happy and carefree. Her mother related that her parents' outlook had changed as a result

of the attack and they now worried constantly about their children. The lives of the whole family had changed.

12. On behalf of the defence, the judge had the benefit of a psychiatric report from Dr Asif Mir, consultant psychiatrist. Dr Mir said that the appellant was currently suffering from an episode of mixed anxiety and depression. He had traits of emotionally unstable personality disorder. Dr Mir did not think that these problems had caused him to offend. He thought that cocaine had more to do with the incident. The appellant had no recollection of what he had done. He wanted help to come off alcohol and drugs. Dr Mir also recited the appellant's narrative of what had occurred that night and noted that the appellant was remorseful.

13. The appellant wrote a letter to the judge in which he said that he was sorry for the pain and suffering he had caused. He said the offence was out of character and he wanted to change. He could not remember anything but he recognised that the complainant had gone through a dreadful ordeal. The appellant's mother also wrote to the judge asking for leniency. She said the appellant had suffered a significant head injury when he was 17 and had many subsequent problems. She said that the appellant had mental health difficulties and had been the victim of emotional and physical abuse from a young age. He had a successful career in the scaffolding industry and she thought he was capable of rehabilitation and interrogation back into the community. His sister also wrote in support of her brother.

14. In approaching sentence, the judge took the offence of kidnap as the lead offence, with

the sentence on that reflecting the strangulation also. She said that there was no real explanation for the appellant's offending. It could not be attributed to the appellant's mental health. She noted that there were no Sentencing Guidelines for these offences but she had regard to a number of authorities and in particular to *Attorney-General's Reference Nos 92 and 93 of 2004 (R v Gibney)* [2014] EWCA Crim 2713. She noted the mercifully short duration of the incident but the circumstances were that the complainant was dragged across the road to a secluded spot a short distance from her home. She was restrained by the appellant's size and power and her own clothing. No weapon was used but the violence was considerable and indeed life threatening, in that she was strangled until she was silent. No threats were made but she was undoubtedly terrified by her ordeal and would continue to be traumatised by it. The judge concluded that, if this had been a trial, the sentence would have been one of 9 years. The appellant was entitled to a 20 per cent credit for his plea and that brought the sentence down to 84 months or 7 years. She went on to find the appellant dangerous and imposed an extended sentence. The custodial element of sentence was the 7 years she had identified and the extension period was of 4 years, so that the total extended sentence was one of 11 years. She imposed a 3-year term of imprisonment for the strangulation to be served concurrently and activated the suspended sentence to run concurrently. A restraining order until further notice was put in place.

Grounds of Appeal

15. By grounds of appeal drafted by Mr Gilmour, who represented the appellant at sentence and on appeal, challenge is made to the custodial element of the extended sentence. No other aspect of sentence is challenged. Put simply, Mr Gilmour says that the starting

point of 9 years taken by the judge was too high, with the result that the custodial term of 7 years was manifestly excessive. We are grateful to Mr Gilmour, who has, with commendable succinctness, advanced his arguments before us today.

Discussion

16. In addition to the documents which were before the judge at sentence, we have had the benefit of a prison report, a report from the appellant's recovery coordinator in prison and a therapy service report. They all indicate that the appellant is addressing his substance abuse as well as joining in talking therapy to address childhood and mental health issues while he is in prison. This is very much to the appellant's credit.
17. There are no guidelines for sentencing offences of kidnapping. Undoubtedly, this case presents a difficult sentencing exercise for the Court.
18. In *Attorney-General's Reference Nos 102 to 103 of 2014 (R v Perkins)* [2014] EWCA Crim 2922, the Court (Macur LJ) recognised that cases of kidnapping are very "fact specific" (paragraph 29). In cases involving hostage-taking and demands for ransom figures close to the 16-year starting point are appropriate. But other cases where such behaviour is absent still attract double figures regardless of the degree of violence meted out.
19. The case of *Gibney* to which the judge referred was decided a few days before *Perkins*. In *Gibney*, the Court (Treacy LJ) again emphasised the need for a close analysis of the facts and circumstances (see paragraph 18) and listed the factors relevant to sentences in

a kidnapping case:

“19. It seems to us that relevant factors in assessing the gravity of cases of this type will include the length of detention; the circumstances of detention, including location and any method of restraint; the extent of any violence used; the involvement of weapons; whether demands were made of others; whether threats were made to others; the effect on the victim and others; the extent of planning; the number of offenders involved; the use of torture or humiliation; whether what was done arose from or was in furtherance of previous criminal behaviour, and any particular vulnerability of the victim whether by reason of age or otherwise.”

Not all of those factors are present in this case but some are undoubtedly in play.

20. The circumstances of this offending are chilling. A teenage girl was bundled off the street by an unknown assailant who approached her from behind. She was dragged into a dark secluded area, where she was thrown to the ground and assaulted with force. She was restrained by the weight of the appellant on top of her and by her hoodie and coat being put over her head, so she could not see and struggled to breathe. There was extensive violence used on her in the form of restraint and strangulation to the point that she was silenced. This was a truly terrifying experience and the appellant would have thought she was going to die. The strangulation was the subject of a separate count on the indictment (count 3) which in its own right merited a sentence of 3 years' imprisonment, but that sentence was ordered to be served concurrently with this offending reflected in the lead sentence for kidnapping. The effect on the complainant has been profound and long lasting, as it has been on all her family. Although the incident did not last long and, in a physical sense, was fleeting, its consequences are deeply felt and enduring. The complainant was only 15, she was alone, it was dark, she was very vulnerable.

21. This was offending of an extremely serious nature. The *Gibney* factors which are present, are present to a substantial degree. In addition to the factors we have identified by reference to that case, there were other aggravating features which needed to be taken into account. There was the fact of the appellant's previous convictions including the very serious section 20 offence in 2015 which had some similarity with this offending: it too was a brutal attack on a defenceless and vulnerable woman. There was the fact that this offence was committed in breach of the conditions of a suspended sentence order which was activated to be served concurrently with this sentence. Balanced against these factors, the mitigation in this case carried relatively little weight.

22. This is not a case of the type identified in *Perkins* where 16 years is the appropriate starting point. There was no hostage situation or ransom demanded. But this case does have many features which might put it in the other *Perkins* category where a double figure is warranted. What ultimately brings it to a lower single figure starting point is the fact that the attack was short lived and, in the end, opportunistic.

23. Despite Mr Gilmour's able submissions, we are not persuaded that the judge's notional 9-year sentence after trial was manifestly excessive. We dismiss this appeal.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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