IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ATTORNEY GENERAL'S REFERENCE (NO 1 OF 1990)

HUTTON LCJ

This is a reference by the Attorney General to the Court of Appeal, under section 36 of the Criminal Justice Act 1988, of a sentence which he considers to be unduly lenient.

The reference arises in this way. At Belfast Crown Court on 12 November 1990 the offender pleaded guilty to one count of wounding with intent, contrary to section 18 of the offences Against the Person Act 1861. A second count in the indictment of the less serious offence of unlawful wounding, contrary to section 20 of the 1861 Act, was not proceeded with.

The offender, aged 23, was sentenced to a term of imprisonment of 4 years' suspended for a period of 3 years' for the offence of wounding with intent, and the submission of the Attorney General to this court is that it was unduly lenient for the Crown Court judge to suspend the sentence of imprisonment instead of imposing an immediate custodial sentence.

The facts giving rise to the case appear from the statements of the victim of the wounding and her friends, and these facts were not disputed by counsel on behalf of the offender. The victim was a young lady, Miss Angela Trainor, aged 20, who worked in the Civil Service. On the evening of Saturday, 17 March 1990, she was with a group of friends, both male and female, in the Eglantine Inn on the Malone Road in Belfast.

At about 11 pm Miss Trainor and her friends were joined by the offender who was known to Mr Mark Gilliland, one of Miss Trainor's group. He was very drunk and in an argumentative mood. He sat down in the seat of another young lady, Miss Angela McAtamney, who had gone to the lavatory. This was pointed out to the offender and he assured the group that he would let the young lady have her seat on her return. When she did return Miss Trainor asked the offender to let Miss McAtamney sit down.

When this request was made the offender became argumentative and verbally aggressive towards Miss Trainor and, using foul language, told her to mind her own business.

Miss Trainor asked Mr Gilliland to pacify him and the offender then began to be verbally abusive towards Mr Gilliland. In order to avoid an awkward situation Miss McAtamney moved away for a short time, and when she came back Miss Trainor again asked the offender to let Miss McAtamney sit down, and offered him another seat. The offender then began verbally to threaten and abuse Miss Trainor in a most unpleasant and vulgar manner threatening that he would "knock her head off" and using even more vulgar abuse.

The offender then stood up and made a grab at Miss Trainor whereupon Mr Philip Clarke, who was Miss Trainor's boyfriend and was sitting between her and the offender, stood up and grabbed the offender in order to protect Miss Trainor.

The offender then became violent towards Mr Clarke and tried to bite him, and several of those watching this outrageous conduct by the offender described him as "acting like an animal".

Miss Trainor shouted at the offender to leave Mr Clarke alone whereupon he smashed a pint glass, which was in his right hand, into Miss Trainor's face and, having done this, he swung the broken glass across Miss Trainor's face.

By reason of these assaults Miss Trainor sustained a laceration and scarring which can only be described as appalling. There was a very large laceration extending from her right forehead to her right upper lid into her lower lid and down across her right cheek to below the level of her mouth. At the upper end of this laceration there was an area of full thickness skin loss about the size of a ten-penny piece on her right forehead. The laceration was so extensive that she had to be taken to the operating theatre and the area was sutured under a general anaesthetic and forty-four stitches had to be inserted.

The court has seen photographs of Miss Trainor's face taken shortly after the sutures had been inserted, and the position and length of the continuous laceration from her forehead, down her cheek to below her mouth, are, as we have stated, appalling. Most unfortunately, and for some reason which we cannot understand, the judge in the Crown Court did not see these photographs.

The medical report in relation to Miss Trainor's laceration states that she will require extensive surgery by a plastic surgeon to improve her cosmetic appearance, but we would fear that her face will always bear distinct traces of the wound inflicted upon her by the offender.

The background of the offender and his conduct on this Saturday, St Patrick's Day, were as follows. He was a young man who attained his twenty-third birthday on the day after the assault. He lived with his parents in Lisburn. He attended Lisnagarvey High School and left that school at the age of sixteen having obtained 3 O'Level

passes in his GCSE examinations. He then became employed in the factory of Barbour Threads in Lisburn and he was working in that employment in March 1990.

He was a young man who was well thought of by his employers and by all who knew him and a number of excellent references were handed into the Crown Court judge. For all practical purposes, he had an entirely clear record, his only conviction being for jay-walking in Lisburn, when he was fined £30 in 1986 at Lisburn Magistrates' Court, and he had never shown any tendency towards violence. It appears that, regrettably, he was in the habit of consuming a large quantity of alcohol at the weekends after playing football and then he might consume between 8-15 pints in a night.

From his statement to the police it appears that on the day in which he attacked Miss Trainor he had been drinking from about 4.00 pm onwards. His counsel informed the Crown Court that he had drunk some 7 pints of beer after the football match in which he had been playing. He then went to a friend's house where he began to drink strong lager and when he arrived in the Eglantine Inn about 9.00 pm he was already very drunk. In the Eglantine Inn he continued drinking, and when he was arrested there by the police after the attack on Miss Trainor he was so drunk that he was not fit to be interviewed until the following evening. In the written statement which he made to the police at 6.40 pm on 18 March he said:

"I was very drunk by the time I got to the bar. I remember ordering more drink but I don't remember how much. Later in the evening I went to where Mark was sitting with some friends. I only knew 2 of these people to see. Then I vaguely remember an argument over a seat. But with whom I can't remember. The next thing a scuffle broke out and I remember being dragged away by bouncers".

In passing sentence on the offender the judge referred to the appalling nature of the offence and stated that in all likelihood he had disfigured the young woman for life. The judge then stated that what he had done was clearly out of character and referred to his clear record in the past and to the excellent references which had been handed in on his behalf from a number of people in the Lisburn area. The judge then continued:

"Now it's my duty in a case like this as I see it, to impose a prison sentence. A prison sentence order is inevitable in this kind of case and the appropriate one is 4 years but I also have further powers that I can exercise under the Treatment of Offenders legislation and I think it is appropriate in light of your record and good character to give you a chance to rehabilitate yourself and I would do that, give you that chance by enabling you to stay in your job by suspending that sentence of 4 years for a period of 3 years".

We consider it to be abundantly clear that the judge was right to impose a sentence of imprisonment. The primary question for this court is whether the judge acted

with undue leniency in suspending the sentence so that the offender did not go to prison.

In Attorney General's Reference (No 1 of 1989) this court respectfully agreed with the approach stated by Lord Lane CJ in Attorney General's Reference (No 4 of 1989) in England:

"A sentence was unduly lenient, their Lordships would hold, where it fell outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection, regard had of course to be had to reported cases and in particular to the guidance given by the Court of Appeal from time to time in the so-called 'guideline' cases.

However, it is always to be remembered that sentencing was an art rather than a science; that the trial judge was particularly well placed to assess the weight to be given to various competing considerations; and that leniency was not in itself a vice. That mercy should season justice was a proposition as soundly based in law as it was in literature".

We are satisfied that to suspend the sentence of imprisonment in this case fell outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. We consider that the need for retribution and deterrence, that is retribution on the offender and deterrence of another young men who, after drinking, might commit acts of violence in public houses, particularly against young women, requires that this appellant should go to prison. The courts have repeatedly stated that drunkenness is no excuse for violent behaviour and this court emphasises this again.

The attack on this young woman was so savage and vicious, the injury which she received was so grave, and the importance of making it clear that the courts will not tolerate this sort of behaviour is such that this offender must be punished by going to prison, notwithstanding the excellent character and record which he had hitherto borne.

A number of cases in the Court of Appeal in England make it clear that young men who strike others in the face with beer glasses or bottles in public houses or elsewhere must receive an immediate custodial sentence. Such an attack is a particularly vicious, dangerous and disfiguring form of violence, and we consider that there is no good reason why the same approach should not be taken by the courts in Northern Ireland. That the condign punishment should be an immediate term of imprisonment is consistently shown by a number of recent authorities in England.

In R v Harwood [1979] 1 CAR(S) 354 the appellant, a youth of 18 with a modest record of non-violent offences, became involved in a dispute with 2 other youths,

which ended with the appellant striking the victim in the face with a broken milk bottle. He pleaded guilty to wounding with intent and was sentenced to 3 years' imprisonment. His appeal against this sentence was dismissed by the Court of Appeal and Lord Lane CJ stated:

"Nowadays one cannot really recognise anything less than 3 years as being right for deliberate glassing. One has to look therefore to see in this case if there is anything which justifies us in departing from the normal course in this regard. We can find nothing. True the applicant is only 18 years of age. True, he has a very modest criminal record with no offences of serious violence in the past. There again that does not help him very much.

We have come to the conclusion that when one looks at this case with care it is a perfectly straightforward case of its kind and in so far as the sentence of three years is legally possible, we see no reason why we should interfere with it".

In R v Lewis [1980] 2 CAR(S) 62 a man aged 34 with no previous convictions for violence, had been living with a woman for seven years and had had two children by her. She formed an association with another man and told the appellant to leave and refused to let him have their baby, whereupon he stabbed her several times in the face with a broken bottle. He was sentenced to 6 years imprisonment for wounding with intent and on appeal the sentence was reduced to 4 years. Eveleigh LJ stated:

"This was a terrible attack; one has only to see a photograph of the injuries inflicted to know that. It was one that deserved an immediate sentence of imprisonment; and the only question for this Court is whether in all the circumstances the sentence that was imposed should be reduced".

In R v James [1981] 3 CAR(S) 233 a youth of 18 attacked a shopkeeper with 2 broken milk bottles and cut him in the face very badly. He was convicted by a jury and sentenced to five years imprisonment. His appeal against this sentence was dismissed and Lawton LJ stated at 234:

"This was about as bad a case of what has come to be known as 'glassing' as it is possible to imagine. It was vicious conduct of a kind which the courts must do their best to stop. The only way that society can show that it will not tolerate this kind of conduct is by the courts passing severe sentences. Anything less than severe sentences may give the public the impression that the courts are willing to accept this kind of conduct. Heilbron J has pointed out to us (and she is right) that this is the kind of conduct in which older people do not indulge; but it is rife amongst youths and youngsters. The fact that the offenders are young is not a reason why they should not be punished severely when they behave in this vicious way.

The argument which has been put forward on behalf of the applicant -and put forward with skill by Mr Jaffa - is this. At the time the applicant was only 18 years of age. For some months before these offences his family life had been disturbed. As far as we can see from the social inquiry report, that was almost certainly his own fault. It is also said that a sentence of 5 years on a young man of 18 is a very severe sentence indeed. It is. But for the reasons I have already stated sentences of this kind are appropriate for this kind of vicious behaviour".

In R v Jones [1984] 6 CAR(S) 55 in the carpark outside a public house a man struck another man in the face with a broken beer glass. He was charged with wounding with intent, but was found not guilty by the jury and convicted of the lesser offence of unlawful wounding and was sentenced to 2 years imprisonment. His appeal against this sentence was dismissed and Beldam J (as he then was) stated at 57:

"It has to be said that the use of a glass in circumstances such as this is a most dangerous and dreadful thing to do. It is unhappily a frequent occurrence. When the court is considering the sentence for an offence such as this, it has to have in mind not only the personal circumstances of the offender and the effect which the sentence will have on him, but it must also look more widely and see what the effect of a lenient sentence might have upon others minded to do the same. It cannot be stressed too strongly that if persons deliberately choose to arm themselves with what is capable of becoming a most lethal weapon, then a sentence of the kind which the learned judge imposed is the only one which they can expect".

In R v McLoughlin [1985] 7 CAR(S) 67 in a public house a man thrust an unbroken glass into the face of another man who suffered minor scarring. The attacker was charged with wounding with intent but the Crown accepted a plea of guilty to the lesser offence under section 20 of unlawful wounding. He was sentenced to 3 years' imprisonment which, on appeal, was reduced from 3 years to 2 years. MacPherson J stated at 68:

"For a section 18 offence, of course, a long period of imprisonment is appropriate, but here where there was a plea of guilty and this was a section 20 offence, the Court finds that the sentence of 3 years was somewhat too long. No alternative to immediate imprisonment was possible, but in all the circumstances of the case, in our judgment, it would be right to reduce this sentence to one of 2 years".

In R v Ronaldson [1990] 12 CAR(S) 91 a man approached a woman at a night club who was a member of a party; she did not wish to speak to him and a male member of the party told him to go away. The first man later approached the other man with a beer glass in his hand and struck him in the face with the glass or threw the glass at him. The victim suffered 6 lacerations to the face which required 17 stitches. The attacker was sentenced to 5 years' imprisonment for wounding with intent. His appeal against the sentence was dismissed by the Court of Appeal, Potts J stating at 93:

"This was a severe sentence, but we are satisfied that it was appropriate".

It is clear from these decisions that, in England, the offence of wounding with intent by striking or slashing the victim in the face with a glass or bottle is regarded as a very serious offence which requires an immediate sentence of imprisonment to make it clear that the courts will not tolerate such vicious conduct, and the normal range of sentence is between 3 to 5 years' immediate imprisonment.

Taking account of the offender's previous good record and character, to his plea of guilty to the charge of wounding with intent and to the matters relied on by Mr Cinnamond QC on his behalf, we consider that the proper sentence to impose upon him is three years imprisonment with no suspension. Therefore we quash the order of the Crown Court judge and substitute the sentence of 3 years' imprisonment without suspension.

This sentence is intended to warn young men that if they wound another person in a public house or elsewhere with a glass or bottle they will be severely punished, especially if the victim is a woman, and whether or not the violence is committed under the influence of drink and whether or not they have a clear record.

This judgment gives the court the opportunity to make some observations in respect of crimes of violence. It appears that not all the public and the Press in Northern Ireland are aware that this court has laid down that crimes of violence are to be met with severe punishment and that it has upheld lengthy sentences of imprisonment for such offences.

Two of the offences (in addition to terrorist offences) which cause particular concern to the public and the courts are robberies, where elderly and often isolated persons suffer violence at the hands of robbers who break into their homes, and crimes where women or children are raped or suffer other sexual offences. That concern has been clearly shown in a number of recent decisions of this court.

In December 1988 R v Wenlock this court dismissed an appeal against a sentence of twelve years imprisonment for robbery where a couple were robbed in their home in the country and were tied up, and in dismissing the appeal against the sentence of 12 years' imprisonment this court said:

"It is the duty of the courts to seek to protect people who live in isolated places and we make it clear to those who commit such offences that if they are caught and convicted they will receive heavy punishment".

In a subsequent case R v Ferguson in this court in 1989 we said:

"The starting point for sentencing in the case of robbery of householders where violence is used should be 10 years. This will increase depending on the degree of violence used, the age or ages of the occupiers, any previous history for offences of violence, and in the appropriate case a sentence of 15 years would not be excessive".

As regards rape and other sexual offences this court has also stated that there must be severe sentences. In 1989 in R v McDonald, Taggart and Farquhar we stated that the starting point for sentences for rape in Northern Ireland should be 2 years higher than the starting point laid down by the courts in England. In imposing sentences of 14 years' imprisonment and 10 years' imprisonment for the offences of rape and other sexual offences committed against 2 little girls the court said:

"Those who sexually assault or abuse children must receive severe and deterrent sentences".

In another case R v Gallagher where a woman was raped by a group of men who broke into her home, a sentence of 12 years' imprisonment was imposed for the rape, and in 1990 in dismissing an appeal against that sentence this court said:

"The sentence of 12 years upheld by the court is a clear warning that if a youth or man breaks into the home of a woman and rapes her, whether he be drunk or sober or under the influence of drugs or glue or not and whatever be his age, he will be punished with the utmost severity, and if violence is used against the woman or if a gang of men are involved or if the woman is subjected to further perversions, the punishment will be all the more severe".

There will, of course, be cases where, because of their exceptional circumstances, a judge will feel it proper to take a course different from the normal approach and to impose a less severe sentence. These cases will not often occur. But when they do occur, they should be seen by the public for what they are, namely, exceptional cases.

We find it disappointing that this recognition is not always afforded by some members of the public and some of the Press. The criticism of judges for "lenient sentences" in sex cases that is sometimes expressed shows a lack of awareness of what is the general approach of the courts and what is the exception. These criticisms are often ill-founded and do no service to the community or the administration of justice.

It should be remembered that the Attorney General now has the power to bring any sentence passed in the Crown Court in respect of an indictable offence before the Court of Appeal if he considers that it is unduly lenient and, as has happened in this particular case where a young woman was slashed with a beer glass, the sentence

will be quashed and a sterner sentence imposed if the Court of Appeal considers that justice requires such a course to be taken.