

IN THE CROWN COURT IN NORTHERN IRELAND

CRAIGAVON CROWN COURT  
(SITTING AT BELFAST)

THE QUEEN

-v-

C

**HART J**

[1] The defendant has pleaded guilty to two charges of rape and one of assault occasioning actual bodily harm, contrary to Section 47 of the Offences Against the Person Act 1861, committed on 12 April 2008 against a victim to whom I shall simply refer as A in order to protect her identity.

[2] The defendant, who was born on 29 March 1993, is now 16 and as he is under the age of 17 and should not be named I shall simply refer to him as C.

[3] A was a visitor to Belfast on 12 April 2008 when she decided to hike around Colin Glen Forest Park, where she arrived around 1.00 pm. After she had been walking along one of the paths for some time she passed the defendant who asked her where the path was going. She stopped and gave him directions, and in the course of conversation he started to talk about having lived in America. His early remarks were of a bizarre nature because he said that he had not been in America for 20-30 years and had been living in Dublin for 20 years, although he was plainly only a teenager because he was only just 15 at the time and is of small, slight, stature. A became concerned, and after a period of unsuccessfully trying to dissuade the defendant from accompanying her, encouraged him to leave by saying that she wished to make a private call on her mobile. The defendant then disappeared and after A had made a number of unsuccessful attempts to phone she resumed her walk.

[4] When she came to a point in the forest park where she had to climb down a steep bank to cross the river she realised that the defendant had re-

appeared. There were some further exchanges in the course of which he asked could he follow her, she was disturbed by his behaviour and attempted to shake him off but without success.

[5] The defendant then spoke aggressively to her and said that he had a knife, though no knife was ever produced. He grabbed her, said he wanted to have sex with her and, despite her struggles, dragged her to a point where they could not be seen. He pushed her to the ground, and when she tried to shout for help put his hand over her mouth. As she struggled on the ground he put his hand round her throat and threatened to smash her head in, lifting a rock at one stage. At some point he punched her on the head. He also bent two of the fingers of her left hand backwards, which she found very painful.

[6] He pulled her clothing down and (i) subjected her to oral sex; (ii) rubbed his penis between her breasts; (iii) forced her to perform oral sex on him; (iv) raped her vaginally; (v) raped her anally; and (vi) in the course of these sexual attacks made racist remarks about her.

[7] Throughout this encounter the defendant made bizarre and contradictory remarks about his age, saying he was 19, and then that he was 12. He also made boastful but improbable assertions about his sexual experience, such as having raped girls about 3 or 4 times a day in these woods, and having visited brothels a lot in Dublin.

[8] The defendant then left and A eventually was able to make her way out of the forest park through a travellers' site onto a main road where she rang a friend who then contacted the police.

[9] A was examined by Dr Beirne who found multiple fresh bruises and abrasions on the head, neck, back, buttocks, limbs and hands. In addition A complained of headaches, neck pain, throat pain, pain in her right shoulder and in her left hand, especially in her fourth finger.

[10] Dr Beirne also described the condition of A's clothing before it was removed for forensic examination, observing that her boots, trousers, underpants and left sock were covered in dried mud and dirt, and her bra was torn in two at the front. Exhibit 25 contains a number of photographs which show various abrasions on A's body, in particular marks on her neck, her trousers show extensive areas of dried mud, and her left foot is also covered in dried mud.

[11] These injuries, the torn bra and the mud on her clothing strongly corroborated A's account of non-consensual intercourse and being subjected to force, thereby rendering even more implausible the defendant's assertions during interview that the sexual activity to which he admitted was entirely consensual. A further indication of the untruthfulness of his assertions was

that he denied placing his penis between her breasts but DNA matching his was found in that area.

[12] The defendant attended at Grosvenor Road PSNI station on 18 April 2008 accompanied by his father and his solicitor. He said during interview that he had been in Dublin when his father rang him and told him that the police were looking for him because he was alleged to have raped someone. Mr McCollum QC (who appears with Miss Smith for the prosecution) accepts that was so and so the defendant came back to Northern Ireland voluntarily and is entitled to credit for doing so.

[13] During interview he said that he had come up from his home in Dublin that morning with a friend, and on the journey had been smoking cannabis, and he smoked more cannabis once they arrived in Belfast. He then went walking in the Colin Glen when, as he put it, he was stoned. He encountered A and spoke to her and claimed that she gave the impression that she liked him, so he then asked her, and she agreed, to have sex with him.

[14] He accepted that on one previous occasion he watched adult pornography showing men and women having sex, but was emphatic that this was the first time that he had sex, and during interview he had difficulty in explaining even the most basic sexual matters.

[15] The defendant denied throughout interview that the intercourse was non-consensual, and denied inflicting any violence on A. At arraignment he pleaded not guilty, and it was not until the morning of his trial on 9 March 2009 that he changed his pleas on each of the charges to guilty.

[16] I have been provided with information about the effect of these events upon A in the form of a report from Dr Jennifer Wild, a research clinical psychologist. In her report dated 15 April 2009 she concludes that following this attack A has developed Post Traumatic Stress Disorder; agoraphobia and major depression, although she is of the opinion that following cognitive therapy A will feel less depressed, and less anxious in crowded places. It is evident from the description of the effect of the attack upon A that she has been significantly affected in her social life and her work, for example she has lost interest in hiking on her own.

[17] I have also been provided with a victim impact statement from A in the form of a witness statement compiled after the defendant pleaded guilty. She describes how her work was affected, and ultimately she had to give up her work completely. Her social life has also been affected, and the effect upon her can perhaps be summed up in the following extracts from her statement.

“Prior to the attack I was an energetic, happy person who was always socialising, as it was a large and important part of my job which I loved, but afterwards I found myself not wanting to go out, and any social situations would cause me to have panic attacks.”

“The attack has changed my outlook on life as a whole. I liked to think I was a trusting person before the attack and now I am wary of everybody, but especially of teenage boys. The fact that a 15 year old boy could do this to me has shaken my faith in humanity.”

[18] A also describes how she is still on anti-depressant tablets and she has been receiving the cognitive therapy referred to above since November 2008. She also describes how she still has constant pain in her shoulder where she was pinned down during the attack. This was a very serious attack upon this lady and I accept that these events have had a significant effect upon her, and that whilst her condition may improve, she may well continue to suffer considerable physical and psychological consequences for some considerable time. This is a substantial aggravating factor of the case.

[19] I have also been provided with a number of reports upon the defendant. A report from Dr Denise McCartan, a chartered clinical psychologist, dated 20 February 2009 describes how the defendant had visited the USA on four occasions for approximately three months, with the last visit being in 2000, presumably when he was aged seven or thereabouts. His parents are separated, one living in Dublin and one in Belfast, and the defendant described how he moved backwards and forwards between them. She found that his full scale IQ was between 75 and 86 which placed him in the bottom 9% of the population and towards the extremely low range of general intellectual ability. It appears that the defendant has not attended school regularly for several years, and in Dr McCartan’s opinion his general intellectual functioning was low and he had an extremely poor vocabulary. Her opinion was that he has a façade of social skills which do not reflect his limited and general intellect.

[20] I have also been provided with a report on the defendant dated 20 April 2009 from Dr Helen Harbinson, a consultant psychiatrist. She records that the defendant pleaded guilty because he knew he was going to be found guilty and “he did not want to make a liar out of his victim or anyone else”. She says that “He shows insight into his offence behaviour, and remorse for it.” She also refers to his lack of education and lack of intellect, and it is encouraging that he is attending educational classes in the Juvenile Justice Centre where he is being taught to read.

[21] I have been provided with a pre-sentence report upon the defendant. This describes how he was completely beyond parental control during the six months before these offences, associating with older men, misusing illicit drugs and being exposed to pornography. Although he has a clear record, whilst on remand he behaved in a violent and challenging way towards other inmates and the staff in the Juvenile Justice Centre, although there has been a marked improvement in his behaviour since he pleaded guilty, and he has been accepted for referral by the Young Peoples Centre. The author of the report expresses the belief that the defendant "is sincere in his expressed motivation to take responsibility for his offending behaviour ". The report expresses the opinion that the defendant presents as high risk of causing harm and re-offending, and that a custody probation order with conditions attached would enable him to continue rehabilitative work in the community after he is released from custody.

[22] In the Attorney-General's Reference (No. 3 of 2006) [2007] NIJB 246 the Court of Appeal in Northern Ireland considered the appropriate sentencing range for offences of rape, and recommended that sentencers in this jurisdiction should apply the starting points recommended by the Sentencing Advisory Panel in England and Wales in the 2002 guidelines. This provides a starting point of five years' custody where there are no aggravating or mitigating factors, and eight years where a number of enumerated features are present. One of these is that there was a second rape and therefore the appropriate starting point in this case is eight years' detention because there were two rapes, one vaginal and one anal.

[23] That case provides a instructive comparison with the circumstances of the present case because the offender in that case was also only 15 when he committed a series of offences in the course of which he committed aggravated burglary of the victim's house, raped her three times, assaulted her by inflicting grievous bodily harm and also indecently assaulted her. The attack in that case involved the use of a screwdriver and hammer, and the victim was struck a blow of great force on the head and suffered significant injuries as a result. A significant feature of the present case is that this defendant, as in that case, was young but the Lord Chief Justice stated that:

"... one may observe that this court has not given significant discount on the basis that the offender was young - see, for instance, R v Murdock [2003] NICA 21 and R v Molloy. It appears to us that the youth of the offender will have a variable effect on the sentence according to the nature of the crime and the awareness of the individual defendant of the nature of the offending behaviour."

[24] At [26] the court re-emphasised that in order to benefit from the maximum discount appropriate to any specific charge a defendant must have admitted his guilt at the earliest opportunity, and the attitude of the offender during the interview is relevant, with the greatest discount being reserved for those cases where a defendant admits his guilt at the outset, that is during interview.

[25] As I have already stated the defendant did not admit his guilt during interview, but maintained the derisory case that this educated, twenty-nine year old lady had effectively invited, and then accepted, the offer of sex from a teenager she had only just met whilst walking through the woods, with consensual intercourse then taking place in very muddy and uncomfortable circumstances. The DNA evidence and the torn bra established beyond argument that this was a wholly unsustainable and untrue proposition for the defendant to maintain, but he nevertheless maintained it until the morning of the trial. Mr McCartney QC (who appears for the defendant with Mr Boyd) explained that although the defendant's father (who accompanied him from Dublin to go to the police) had expected the defendant to make a clean breast of matters during interview, the defendant chose to take the advice of another member of his family and claimed that intercourse was consensual.

[26] The importance which the courts attach to an early plea of guilty is even greater in the case of sexual crimes where a plea of guilty well before a trial date is fixed relieves the victim of the invariably unpleasant, and frequently frightening, prospect of having to come to court to confront their attacker and then recount the indignities to which they had been subjected in the knowledge that their honesty is being challenged, as indeed A herself makes clear in her statement. Therefore, whilst the defendant is entitled to credit for returning to this jurisdiction and for his plea, albeit at the last minute, that credit for his plea is reduced by the late stage at which it was entered, as well as the strong evidence against him in the form of the DNA and other evidence to which I have referred.

[27] There are a number of aggravating features of the case.

- (i) A was raped twice.
- (ii) She was subjected to further sexual indignities.
- (iii) She was subjected to violence over and above that which was necessary to perpetrate the rapes.
- (iv) The defendant was under the influence of cannabis at the time.
- (v) The effect upon A has been considerable.

[28] There are a number of mitigating features of the case.

- (i) The defendant voluntarily returned to Northern Ireland and made himself available to the police for questioning.

- (ii) Although his plea was entered at a very late stage he nevertheless pleaded guilty, thereby ensuring that his victim did not have to give evidence.
- (iii) He is a young man and has a clear record.

[29] As the sentence must inevitably exceed 12 months' detention I am obliged to consider whether a custody probation order would be appropriate in this case. All of the evidence shows that this young man has been absent from school for a significant period of his childhood, and he was smoking cannabis. I am satisfied that he would benefit from a period of probation upon his release in order to try to prevent him from committing further offences in the future and thereby also protect the public.

[30] I have already referred to the case of the Attorney-General's Reference No. 3 of 2006 which serves as a useful comparator. The injuries inflicted on the victim in that case and the associated offences such as burglary and false imprisonment made that case a more serious one than the present case, and the Court of Appeal considered that the proper sentence on a plea of not guilty in that case would have been at least 15 years. I consider that had this defendant been convicted on these charges having pleaded not guilty the appropriate sentence would have been twelve years' detention. Having regard to the mitigating features of the case, and provided that the defendant consents, on counts one and two I will impose custody probation orders of eight years' detention followed by two years' probation subject to the following conditions.

- (1) He reside at accommodation approved by his Probation officer.
- (2) He attends as instructed by his Probation officer 10 sessions of work to address his substance abuse and that this work to commence within ten weeks of sentencing and be completed within twelve months of the Order being made.
- (3) He completes an individual programme of work to address his sexual offending as directed by his Probation officer.

Had the defendant not consented the sentence on those counts would have been one of ten years' detention. On count three I sentence the defendant to two years' detention. The sentences will all be concurrent. The pre-sentence report refers to the possibility of a sexual offences prevention order but I do not consider that in the circumstances of the present case such an order would add anything to the sentence and I do not make one.