

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

ROBERT BARI

Before: Morgan LCJ, Gillen LJ and Keegan J

MORGAN LCJ (giving the judgment of the court)

[1] This is an appeal against sentence in respect of one count of assault occasioning actual bodily harm and one count of common assault. On 28 January 2015, the appellant was arraigned and pleaded not guilty to both counts and to a third count of making a threat to kill. The trial took place on 23 and 24 February 2015. On 23 February 2015 the count in respect of making a threat to kill was left on the books. On 24 February 2015 the appellant was convicted of assault occasioning actual bodily harm (count 1) and common assault (count 2). He was sentenced to 3 years imprisonment (1 year 6 months custody and 1 year 6 months licence) on count 1 with a concurrent 6 months sentence on count 2. Mr Coiley appeared for the appellant and Mr Henry for the PPS. We are grateful to both counsel for their helpful oral and written submissions.

Background of the offence

[2] On 20 June 2014 Mr William Johnston, a Translink bus driver, was at work and driving down Beechland Drive in Lisburn when he witnessed the appellant chase his wife, Beta Bariova, across the road. Mrs Bariova was with three of her and the applicant's six children, and they tried to board the bus before the appellant could catch up with them.

[3] The appellant grabbed Mrs Bariova by her hair before she could board the bus and slammed her onto the ground. He was pulling her hair and punched her face about five or six times. The children witnessed this attack and were screaming. Mr Johnston was not supposed to leave the driver's cab while working, and so was

hoping someone else would intervene. He shouted at the appellant to stop and, when it became clear no-one else was going to assist, he left the driver's cab and pulled the appellant off his wife. Mr Johnston stated that the appellant then tried to choke his wife with his right hand. Mr Johnston hit the appellant twice on the side of his head in an attempt to defend Mrs Bariova. The appellant then struck Mr Johnston on the chin. Once Mrs Bariova and her children managed to get away, the appellant tried to bite Mr Johnston on the arm while he struggled to detain him.

[4] Mr Johnston was able to restrain the appellant on the ground until police arrived and arrested him. Mrs Bariova had fled to safety and was attended to by police. The triage officer, Dr Lee, reported that hair had been pulled out from the side of her head and that she felt tender over that area.

[5] The appellant was interviewed on 20 June 2014. At the start of the interview his solicitor read out a prepared statement on his behalf:

"I was in Lisburn today and I met my wife and three children at a bus stop. We talked about family matters but then there was an argument. We were both shouting at each other as we both became angry. I was very distressed as I saw my children. A man and some others then grabbed me, they pushed me to the ground. My wife was telling them to stop and that I was her husband. They told her to go away. I was held down until the police arrived. I told the police what happened but I was then taken to the police station. I wish to answer no comment to police questions otherwise."

He suggested at one point that his wife and one of the witnesses lived in the same hostel and had concocted the story. He was re-interviewed on 7 July 2014. The statements of the witnesses were put to him. He said their account was due to the colour of his skin and because he was a Catholic and they were all Protestants. The police pointed out that the applicant's wife shared his ethnicity.

Personal circumstances and pre-sentence report

[6] The appellant had an extensive criminal record. He had a number of convictions in the Slovak Republic, Austria and Germany, including robbery, theft, accomplice to criminal activity and blackmail. He told the writer of the pre-sentence report that he had served 11 years and 8 months in prison outside of the UK. In this jurisdiction he had a total of 6 previous convictions. On 24 March 2014, three months before this incident, he committed 4 assaults for which he was subsequently sentenced to 4 months' imprisonment suspended for 18 months. On the same occasion he was guilty of disorderly behaviour and had a conviction for riotous behaviour which he had committed on 7 July 2013.

[7] He is originally from the Czech Republic. He is prohibited from having contact with his wife. He downplayed his past history of alcohol abuse and concerns regarding the level of domestic abuse in his relationship. He sought to apportion the majority of blame on his wife's jealousy. He has 6 children and there has been a long history of Social Services involvement. The children are in the care of Social Services and live separately with foster families.

[8] The family were originally known to Social Services in a Child Protection capacity due to concerns about domestic abuse perpetrated by the applicant and his drug and alcohol abuse. Following a home visit in 2013 and subsequent issues regarding the safety of Social Workers and the applicant's wife, the police were called and the family was moved to a Women's Aid Hostel. Due to a number of incidents in which the applicant did not abide by Social Services directions, the children were made subject to Interim Care Orders in August 2014 and currently are in foster care with a long term view to permanent placements. The appellant's wife has weekly supervised contact and the appellant has no contact due to the level of concern regarding his risk. Social Services staff only met the appellant in the presence of a solicitor given previous displays of aggression and threats. Serious long term trauma has been caused to all the children.

[9] The report refers to the appellant rationalising his behaviour by saying it was a response to provocation by his wife. It is stated he struggled to verbalise any insight into the impact of his actions on his wife and children and he disputed that his wife would have felt frightened. He said his wife left the scene because she was not meant to have contact with him as opposed to any concern for the safety of her and her children. Given the appellant's failure to accept full responsibility for the index offences the report states it is difficult to complete an accurate offence analysis but risk factors connected to the offence were:

- Limited sense of personal responsibility
- Limited victim awareness
- A propensity for alcohol misuse and associated distorted thinking
- Fractured familial circumstances
- Propensity for aggression/violence
- Lack of constructive use of time
- Evidence of risk taking behaviour
- A lack of consequential thinking
- Prior offending and involvement in current offence
- Poor engagement with Social Services

[10] The report assessed him as a high likelihood of reoffending in light of the above factors. The present offence was a concerning offence where he exhibited such aggressive behaviour that members of the public intervened and the appellant's wife and children fled the scene in fear of their safety. His actions took place in the context of the victim being a high risk domestic case with a significant history of allegations of domestic abuse. This demonstrated the appellant's willingness to cause both physical and psychological harm to his wife without any regard for her or his children. Real concerns remain regarding the applicant's self-management and his willingness to employ aggression and violence. Given the nature of the offence and on-going concerns it would be pertinent that relevant agencies such as Social Services remain involved. However, in the absence of a confirmed pattern of serious violent offending, the applicant was assessed as not meeting the threshold for posing a significant risk of serious harm. This assessment would be subject to review given any further offending.

The sentencing remarks

[11] The learned trial judge referred to the following aggravating factors outlined by the prosecution:

- (i) the offences occurred in public;
- (ii) his children were subjected to the ordeal of observing the assault;
- (iii) this is a domestic violence offence;
- (iv) there was a deliberate violation of a court order which prohibited the applicant from seeing his children;

[12] He accepted that there was no additional degradation of the victim over and above the mechanics of the assault. After reviewing the relevant case law the learned trial judge noted that the injuries sustained by the victim in R v Leon Owens [2011] NICA 48 were considerably more substantial than the injuries sustained in the present case but that may have been by virtue of Mr Johnston's intervention rather than attributable to self-restraint of the appellant. He had convictions in Northern Ireland and in other jurisdictions for serious offences including robbery for which he served a 5 year sentence. The learned trial judge said, unlike Leon Owens, the applicant did not attract a discount for pleading guilty as he fought the case before a jury and the pre-sentence report indicated that he maintained his innocence.

The issues in the appeal

[13] The appellant submitted that the sentence imposed in respect of count 1 was manifestly excessive on the grounds that the learned trial judge failed to:

- (i) give adequate weight to the fact the injuries sustained were relatively minor and this placed the assault in the lower end of the spectrum of assaults occasioning actual bodily harm;

- (ii) give weight to the fact that although the matter was contested, the complainant was not called to give evidence and, therefore, he failed to give any mitigation of sentence to reflect the manner in which the trial was conducted; and
- (iii) allow any reduction in sentence to reflect the fact this prosecution commenced in the Magistrates' Court and was committed to the Crown Court when the District Judge declined jurisdiction to deal with the case. The PPS directed that the offences proceed summarily and if dealt with by a Magistrates Court, the maximum sentence would have been 12 months imprisonment in respect of count 1.

Consideration

[14] We agree that the physical injuries in this case were not at the top end of the scale for this type of offence but it is not in our view appropriate to describe the pulling out of hair at the side of the head as relatively minor. The learned trial judge was correct, however, to recognise that the domestic violence background in this case was the most significant factor relating to the circumstances of the offence. He described it as a particularly reprehensible example of domestic violence. That was undoubtedly correct but it is important to identify those factors which contributed to its significance in this case.

[15] First, this attack upon the injured party occurred in a context where the appellant's wife and children had felt compelled to leave home because of risks about their safety. They were plainly, therefore, exceptionally vulnerable and this attack has to be seen as the latest in a series of incidents which must inevitably have given rise to further concerns for the safety of the injured party. Despite the appellant's conviction the pre-sentence report shows that he has failed to demonstrate any insight into his personal responsibility for his actions and more worryingly seeks to place blame for the event on the injured party.

[16] In itself that context shows a high degree of culpability for his conduct but perhaps the most culpable aspect is the fact that he exposed his three children to this shocking assault in the public street upon their mother. Each of us sitting in this court has considerable experience of work in the Family Division and we are all too aware of the long-term impacts upon children of exposure to violence of this nature. In particular Orders of the court protecting children need to be observed and those who commit criminal offences in the course of breaching such Orders should expect the court to consider such a breach a serious aggravating factor.

[17] In addition to the aggravating factors in respect of the circumstances of the offence his record is also a personal aggravating factor. He has a record for serious offences such as robbery and a recent incident of multiple assault. In a case of this sort these are significant aggravating considerations. It was submitted that it was necessary for the trial judge to explain his sentence by setting out a starting point before taking into account aggravating and mitigating factors and arriving at an

outcome. We would not dissuade judges from carrying out that exercise in appropriate cases but it is important that the process for arriving at the right sentence in each case does not become a matter of mathematics rather than judgment. We do not consider that transparency of decision making required such an exercise in this case.

[18] We see no merit in the submission that the appellant should gain some advantage from the way in which the case was progressed. He has continued to seek to avoid his responsibility for his conduct. Instead of recognising the harm that he has caused to his wife he has sought to place the blame for his actions on her.

[19] The final issue concerns the undoubtedly correct decision of the District Judge to decline jurisdiction so that the case could go to the Crown Court. The fact that the case was commenced in the Magistrates' Court gives rise to no expectation that the sentencing regime will in some way be moderated if the District Judge considers it appropriate to decline jurisdiction.

Conclusion

[20] For the reasons given we consider that the learned trial judge was correct to regard this as a particularly reprehensible example of domestic violence. The sentence was entirely appropriate and the appeal is dismissed.