

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

v

STEPHEN DAVID JOHN McFARLANE

HART J

[1] The defendant is before the court to be sentenced in relation to his pleas of guilty to a number of offences relating to his partner Zara Butler. On the second day of his trial, and after Zara Butler had given almost all of her evidence in chief, the defendant asked to be re-arraigned and pleaded guilty to the various charges against him. In respect of the charge of attempted murder the defendant pleaded not guilty, but guilty to attempted grievous bodily harm with intent to cause grievous bodily harm. It was confirmed by Mr O'Donoghue QC, who appears on behalf of the defendant with Mr Farrell, that this was intended to be a plea of guilty to an attempt to commit the offence of causing grievous bodily harm with intent, contrary to Section 18 of the Offences Against the Person Act 1861. This plea was accepted by Mr Adair QC on behalf of the prosecution. The defendant also changed his plea to guilty of false imprisonment of Zara Butler. Both the first and second counts related to the events of 26 November 2007. He also changed his pleas to guilty in respect of two counts of assault of occasioning actual bodily harm of Zara Butler relating to the events of 25 October 2007.

[2] I have been provided with a statement of facts agreed by the prosecution and defence, and I also have the evidence of Miss Butler given before the defendant changed his plea. The defendant and Miss Butler had been in a relationship for some years and have a child. In her evidence she said that there had been an up and down relationship between them, and that whilst there were good times there were quite a lot of quite bad times. The relationship between them deteriorated to such an extent that they decided to

put their house on the market, but because there had been a reconciliation they decided to take the house off the market.

[3] However, somewhere around 15 October 2007 there was a further argument between them. It appears that the defendant came home from work and was abusive towards her, she remained at her friend's house and he went home. When she returned home later that night she was unable to gain access to the house, she returned to her friend and stayed the night. Her friend was Annette Butler, who is a first cousin of the defendant. Zara Butler alleged when she went home again the next morning the defendant shouted and was abusive to her and punched her, pulling her by the hair out of bed and spreading bleach over her head, face, clothes and her wardrobe. She felt that she had had enough and left the family home, but did not report the matter to the police. The defendant therefore faces no charges in respect of these allegations.

[4] On 18 October it appears that the defendant took an overdose and was admitted to hospital. She stayed with him overnight when he discharged himself from hospital because she was concerned about him, but she then returned to live with her parents.

[5] Between 15 and 25 October there had been some contact between them by way of telephone calls, and after work on 25 October she went to the matrimonial home to collect some clothes. She believed that the defendant would not be there at the time but in fact he returned when she was upstairs. Her evidence was that he went to her mobile phone, scrolled through her texts and accused her of having an affair. He then hit her repeatedly, punching her on the head and body. She tried to defend herself and fought back, attempting to retrieve her mobile phone, and she alleges that he kicked her. This is the basis of count 3.

[6] The second charge of assault, count 4, relates to events later the same day. Her father had collected her from the matrimonial home after the assault and then taken her to Annette Butler's house. As Annette was not in her house she went to the house of another friend nearby. Lisa Sharpe, whose house this was, apparently contacted Annette Butler who came to the house. When Zara, Lisa Sharpe and Annette Butler were in Lisa Sharpe's house the defendant burst in and proceeded to punch Zara Butler on the head and kick her in the stomach before Lisa Sharpe and Annette Butler were able to get him out of the house.

[7] Zara Butler says that as a result of these attacks she ended up with bruising all over, a slight cut to her right temple, and possibly a cut on her lip inflicted during the attack in her house. She made a statement to the police regarding this assault, but decided that she did not wish to pursue the matter at the time. However, she did take court proceedings to obtain a non

molestation order and there was an initial court hearing on 30 October and further hearings thereafter.

[8] On the morning of Saturday 26 November 2007 the defendant called at her parents' door at about 8.00am to ask her whether he could take her to work, and telling her that he had bought her a new car. The significance of the new car was that some time before he had bought her a small car and she had been taking driving lessons. He later sold that car without reference to her and that had been a source of contention between them. On 26 November the defendant told her that he purchased a car from a garage in Boucher Road having traded in his own car, which was an Audi, and he said that she would have to go with him and sign for the car. She did not agree to this, telling him that she did not want anything from him and she would have liked her old car back.

[9] She then took a taxi to her work in Glengormley, and at about 12.50pm the defendant called in his Audi car to the premises, waited outside but beeped the horn. She went out and got into the back seat of that car. He said that they had to go to pick up the new car and sign for it, whereupon she told him again that she did not want it. She described how she was panicking, and because she had to get back into her work she had the rear driver's side door half open. As she went to step out of the car, and she thought she said that she was going back to work, the defendant proceeded to speed off in the car. She described how she thought she had one foot out and he then drove quite fast and she automatically closed the door. Her evidence was that she did not wish to go, and that she shouted and screamed at him to let her out of the car.

[10] He then proceeded to drive up the Antrim Road to the Sandyknowes roundabout where he drove onto the M2 and then drove back in the direction of Belfast. Altogether it appears that he drove for about 3 miles from the time he left the estate agents, and, it would seem from the police drive-through over the route carried out by Constable Saunderson, that, depending of course on the volume of traffic and the traffic lights, the journey did not take very long, perhaps about 7 minutes or thereabouts if the defendant observed the speed limits. However this is an approximation and the actual journey time may have been somewhat shorter or longer. The act of the defendant in driving off with her in the rear seat and keeping her in the car against her will as the car drove along provides the basis for the false imprisonment charge.

[11] As the defendant drove down the M2 in the direction of Belfast he was driving at high speed. For reasons that are unclear because each alleged that the other had caused the car to leave the road, the car left the motorway and went down a steep bank which can be seen in exhibit 21 photograph 9. The car travelled some 138ft diagonally across the slope, and ended up on its side in the security fence at the bottom of the slope at which point it was 59ft

below the edge of the hard shoulder. Astonishingly, particularly given that in her panic at the defendant's driving away despite her protests she was not wearing a seatbelt, neither she nor the defendant appears to have suffered any serious or lasting physical injury because of the crash. Mr Adair QC for the prosecution accepted that as there is no charge in relation to the car leaving the motorway I have to ignore that when sentencing the defendant.

[12] In her evidence Miss Butler described how after the car came to rest the defendant made his way into the back of the car carrying a knife. There was a struggle in the course of which she was able to prevent him using the knife and he then put his arm round her neck and choked her and she lost consciousness. Her next recollection is the arrival of the police and paramedics at the scene. It is agreed that whilst the defendant throttled Miss Butler and she passed out, there is insufficient evidence to connect the presence of the knife in the car to the defendant's intention to injure Miss Butler.

[13] I have the benefit of a Victim Impact Report on Miss Butler by Dr Judith O'Neill, a consultant psychiatrist, which describes how she has responded to these events. Dr O'Neill describes symptoms of shock, disbelief, fear, emotional variability and tearfulness in the immediate aftermath of the crash. She then suffered from sleep disturbance, dreams of a disturbing nature, a degree of hyper vigilance regarding her safety, and feeling anxious in public places. Dr O'Neill considers these were symptoms of an adjustment disorder at that time. In her view the clinical picture has changed with the passage of time and Miss Butler now "presents with features more in keeping with a generalised anxiety disorder", although she continues to feel anxiety and fear, and social anxiety, and her sleep remains disturbed. She refers to Miss Butler feeling that she should give up work, partly because of difficulties with a reduction in enjoyment of her work and a reduction in concentration, and partly because she feels that she should spend more time with her daughter for fear that something should happen to her, concluding that "There has been a significant social and financial burden following these events". It appears that Miss Butler has sought assistance from a mental health worker in relation to her anxiety disorder, and Dr O'Neill concludes her report by expressing the hope that "following treatment, her symptoms would subside and she may be able to consider a return to work at some time in the future".

[14] I also have the benefit of a pre-sentence report on the defendant. This concludes "he demonstrates little understanding of the impact his actions have had upon Ms Butler", and that the defendant "is assessed as having the potential to cause serious harm if his risk taking behaviours are not addressed."

[15] I also have reports on the defendant by Mr Colin McClelland, a consultant educational psychologist, and Dr Bownes, a consultant psychiatrist. Mr McClelland concluded that the defendant is a young man

“of a very usable level of intelligence, where his IQ of 97 places him firmly in the middle of the population”, and he “is also literate, not at a very high level, but sufficient for his being able to deal with the majority of written material which he might require for running a small business, and perhaps interacting with the public.”

[16] Dr Bownes examined the defendant twice, and in his addendum report of 19 November 2008 sets out at some length the defendant’s current feelings. I do not propose to rehearse these in detail, and in my opinion they demonstrate that the defendant is concerned for his future and for his relationship with his daughter, to whom he is clearly greatly attached. It is significant that nowhere in either of Dr Bownes’ reports is there any indication by the defendant of regret or remorse for his actions, rather he concentrates on his own position. Whatever may be the reason for the breakdown of their relationship, and each makes allegations of infidelity and increasing indifference to the other before these events, I consider that the defendant is a selfish and self-centred individual who has no real insight into the implications of his conduct for others, despite the regret and remorse that Mr O’Donoghue QC tendered on his behalf.

[17] This is a highly unusual case. The defendant, albeit for a very short period, deprived Miss Butler of her liberty. After the crash he attacked her and it is accepted that he throttled her and she passed out. The defendant’s action in driving away with her in the rear of the car against her will in these circumstances was highly reprehensible, instilling as it clearly must have done a sense of panic in her as the car drove along prior to leaving the motorway. The sentences in relation to the events of that day must therefore contain a significant component reflecting the false imprisonment. Actions like these require an immediate custodial sentence for anyone who behaves in this fashion. As the events of that day were part of a continuing series of actions I propose to make the sentences for the offences of 26 November 2007 concurrent with each other.

[18] There can be very wide differences in the appropriate sentence in cases of false imprisonment or kidnapping as Lord Lane CJ recognised in R v Spence and Thomas (1983) 5 Cr. App. R. (S.) 413, where he said

“At the top of the scale of course, come the carefully planned abductions where the victim is used as a hostage or where ransom money is demanded. Such

offences will seldom be met with less than eight years' imprisonment or thereabouts. Where violence or firearms are used, or where there are other exacerbating features such as detention of the victim over a long period of time, then the proper sentence will be very much longer than that. At the other end of the scale are those offences which can scarcely be classed as kidnapping at all. They very often arise as a sequel to family tiffs or lovers' disputes, and they seldom require anything more than eighteen months' imprisonment, and sometimes a great deal less."

[19] In R v Winslow [2005] 2 Cr. App. R. (S.) 51 Potter LJ reaffirmed the applicability of R v Spence and Thomas, and added

"We would observe that there is often in the middle the situation where a kidnapping occurs in a domestic environment in the sense of its being the product of rivalry over custody of children or distress at the break up of a relationship."

I consider that the circumstances of this case fall within the category referred to by Potter LJ of a case which was the product of distress at the break up of a relationship. The range of sentences for kidnapping cases can be seen from the decisions found in section B3-4 of *Butterworth's Sentencing Practice*, where sentences in the region of four years are common.

[20] So far as the events of the 25 October are concerned I regard the fact that there were two separate assaults on that day as an aggravating feature of those charges. Again neither assault appears to have left permanent physical injuries, but both were violent and prolonged assaults. In particular Miss Butler suffered the added humiliation of being assaulted by her partner in the presence of her friends and on those charges alone a custodial sentence is inevitable. It must be clearly emphasised by the courts that those who engage in violence towards their spouses or partners must expect to lose their liberty in circumstances such as this. Although these assaults were completely separate attacks they were close together and I therefore propose to treat them as a single transaction and to impose sentences which are concurrent, but I will make them consecutive to the sentences on counts 1 and 2 because otherwise the defendant would not receive appropriate punishment for his actions on that day.

[21] I have received a number of character references on behalf of the defendant. The defendant has a minor record and I do not regard his record as an aggravating factor of the case. Nevertheless he was not of completely good character as he had a caution for assault on his record and therefore his

character does not amount to significant mitigation. The only other mitigating factor is that he pleaded guilty, thereby at least saving Miss Butler the added ordeal of giving further evidence on the second day and being subjected to cross-examination. By recognising his guilt at that stage he saved a good deal of court time and time of the witnesses who would otherwise have to sit through a trial. Therefore he is entitled to some credit for his plea, albeit at a very late stage.

[22] Taking all of the relevant factors into account, and bearing in mind that where there are consecutive sentences I must ensure that the total sentence reflects the defendant's overall criminality, and before I consider the question of a custody probation order, I consider that the appropriate sentences on count 1 and on count 2 are three and a half years' imprisonment, the sentences to run concurrently with each other. On counts 3 and 4 I sentence the accused to six months' imprisonment concurrent with each other, but consecutive to the sentences on count 1 and 2, making an effective total of four years' imprisonment.

[23] I consider that the defendant would benefit from a period of probation upon his release in order to try to prevent him from behaving in a violent and possessive way in the future in any other relationship he may enter into, and, subject to his consent, I will therefore impose a custody probation order of three year's imprisonment followed by one year's probation. The probation period will be subject to the condition recommended in the pre-sentence report that he participate in the PBNI Men Overcoming Domestic Violence Programme. Had the defendant not consented to the custody probation order the sentence would have been one of four years' imprisonment.