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(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

BRIAN ANTHONY EDWARDS

Before: Carswell LCJ, Nicholson LJ & McLaughlin J

NICHOLSON LJ

[1] The applicant Brian Anthony Edwards was convicted at Londonderry Crown Court on 25 February 2002 after a trial before Mr Justice Coghlin and a jury on an indictment charging him with the Attempted Murder of Julie McLaughlin on 17 January 2001.

[2] He was sentenced by the trial judge on 19 April 2002 to 20 years' imprisonment. He applied for leave to appeal against conviction and sentence. The single judge refused leave to appeal.

[3] The Crown case was that the applicant and Miss McLaughlin had been involved in a personal relationship which had persisted somewhat intermittently over a period of three years. Miss McLaughlin's evidence was that coming up to January 2001 the relationship started to go downhill. The applicant was jealous and possessive and objected to her going out with her friends. At an earlier stage of the relationship she had cohabited with him but had returned to live with her mother and he kept putting pressure on her to resume living with him. She refused to do so and told him that she wanted the relationship to finish but he refused to

accept that it was over. On 16 January he had sent her a text message which read: "Why are you not spending time with me, I am eating up inside." On 17 January she saw him in the afternoon at about 5.45pm when he visited her at the work place. She told him that she planned to stay in and have an early night but in fact intended to visit a girlfriend.

[4] She left her home at approximately 9.00pm and when she reached the end of her laneway she found the applicant who had parked his Renault 5 car there. She told him that she was paying a quick visit to see her friend and he offered to drive her there. He then drove her to an isolated point on the Groarty Road well into the countryside where he turned into a side road before stopping the car. He got out of the driver's side of the car and went round to the passenger side, opened the door and took out a knife with a four inch blade from his inside pocket. He said that he was going to kill her. He began to stab her neck. He dragged her out of the car and dropped her on the ground, standing over her and stabbing her and she showed to the jury where she was stabbed – her face, her neck, her chest, her arms and her hands. He then drove off leaving her lying on the roadside. By chance a man who lived in this remote area saw her sometime after 11.00pm and telephoned the police who came to the scene shortly after midnight. She was then taken to Altnagelvin Hospital by ambulance, arriving at 1.12am on 18 January.

[5] Apart from the laceration to her face which can be seen in photographs taken of her, there were multiple puncture stab wounds to her chest, stomach, back and hands. She suffered lacerations to her throat and neck, running from ear to ear, which were so deep on the right hand side that the bones of her spine and the spinal cord were exposed. She bled copiously from her wounds. She was left in a remote area on a very cold night and the surgeon, Mr McBride, said that if she had not been found her chances of survival were "zero". The Crown invited the jury to infer that the evidence of an intention to kill was overwhelming.

[6] A number of police officers at the scene spoke to her or overheard her speaking to their colleagues. She told them that she had been stabbed by the applicant. She herself had no recollection of speaking to the police officers. Constable Martin relayed what she said back to a constable at Strand Road Police Station who kept a log of what was said.

[7] Smears of blood around the driver's door handle and on the inner driver's door pocket matched the DNA profile from the sample of blood

taken from Miss McLaughlin at the hospital. It was put to her that this was her menstrual blood from the hands of the applicant after acts of intercourse in late December and early January. She said that she was unable to remember and that she had never had sex when she was having a period.

[8] When interviewed by the police the applicant denied driving the Renault car to Miss McLaughlin's place of work at 5.45pm on 17 January. He said that he travelled on foot. When he was confronted with a video tape which clearly showed him in the Renault car at a relevant time he admitted that he had lied but said that he was worried about the police discovering that he was driving while disqualified.

[9] The applicant at all times in interviews with the police and in evidence denied that he was the person who attacked Miss McLaughlin and reliance was placed on the absence of any significant evidence of blood or blood staining in the Renault car or upon any of his clothing. The medical evidence indicated that there would have been copious bleeding from wounds to the face, neck and hands. Mr Logan, the forensic scientist, emphasised the importance of the sequence and timing of the assault, stating that if the wounds had been inflicted as the victim was being dragged from the vehicle it might very well have been that no blood was deposited in the vehicle.

[10] The applicant also claimed in evidence that he had been in the Glenside video shop around 9.30pm to 9.35pm although he told the police at interview that he was there at 10.00pm. Helen Ferry, one of the owners of the shop said that she saw him crossing from the side of the road where the shop is located to the other side between 7.30pm and 8.00pm.

[11] The applicant suggested that Miss McLaughlin's motive for naming him as the attacker was that she was covering up for some other person of whom she was frightened and whom she wished to keep "sweet". As the trial judge pointed out, this meant that she would have made baseless allegations about the applicant about whose movements she would have known nothing at all and was prepared to allow the person who inflicted the injuries upon her to walk free.

[12] The grounds of the application for leave to appeal against conviction were:

(1) That the learned Judge erred in law in that he admitted portions of evidence under the exception to the hearsay rules as res gestae, namely the evidence of what Miss McLaughlin said to police officers as she was lying on the roadside after the attack.

(2) That the learned Judge erred in admitting the police log of radio transmissions.

(3) That the learned Judge erred in failing to direct the jury adequately on the proper inferences to be drawn from the absence of significant blood staining as given in the evidence of Dr Carson.

(4) That the learned Judge erred in failing to direct the jury adequately with regard to the proper inferences to be drawn from the evidence of Hester Ferry and David Moore in that he failed to direct the jury adequately as to the circumstances in which each purported to see the defendant at particular times.

[13] The ground of application for leave to appeal against sentence was that the sentence of twenty years was manifestly excessive and wrong in principle.

[14] The court had the benefit of a detailed skeleton argument on behalf of the applicant and a response to same on behalf of the Crown. In addition succinct oral submissions were made by Mr Philip Mooney QC on behalf of the applicant. We did not call on the Crown to reply. We stated that the application was refused and that we would give our reasons later. We do so now.

[15] The first ground was that the judge should have excluded the evidence of the police officers who gave evidence of what the victim said at the roadside. She told Constable Martin, when asked who had done this, "Brian Edwards" and later referred to him as her "ex boyfriend". Constable Martin said that he relayed this information by radio to a log-keeper at Strand Road Police Station. Constable Alexander confirmed that she told Constable Martin that it was "Brian Edwards". Constables Young and Burton said that they heard her say that it was "definitely Brian Edwards who did this to me". An application to exclude this evidence was rejected by the judge.

[16] It was submitted that the evidence was hearsay and not subject to any exception which rendered it admissible as part of the "res gestae". The possibility of concoction was the relevant test for exclusion. The statement must be so clearly made in circumstances of spontaneity or involvement that the possibility of concoction can be disregarded. The evidence of the victim presented through the mouths of police officers was likely to have had a disproportionate effect on the minds of the jury. The attacker may have said to her: "Don't mention me, mention Edwards". The savagery of the attack would put one in fear.

[17] This court is satisfied that the judge was alert to all the relevant criteria in deciding to admit the evidence. As he pointed out, the "res gestae" principle has been developed in recent cases. He referred to the two leading cases in this field of Ratten v The Queen [1972] AC 378 and R v Andrews [1987] AC 281 and addressed the five propositions laid down by Lord Ackner in R v Andrews which are set out in Archbold, 2003 ed, para 11-34. As he correctly concluded, time is no longer the vital element, though it remains a factor, and the primary question is whether the possibility of concoction or distortion can be disregarded.

[18] He also referred to the observation of the Law Commission, in recently recommending that the rule should be retained, that "the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded". He also cited the passage in the 7th edition of Murphy on Evidence at p 236 quoting the American Federal rule of evidence "of a statement relating to a startling event or condition, made while the declarant was under the stress of excitement caused by the event or condition". Murphy added: "This may allow for extended periods of time, for example, where the declarant suffers shock and cannot speak for sometime after the event".

[19] The Judge then proceeded to apply the relevant principles to the case in a manner with which this court is in entire agreement. He considered that there were three important factors: firstly, "the wounds sustained by the victim were clearly devastating and in all respects it would appear that whoever was her assailant basically left her to die". Secondly, "… the declarant's degree of involvement in the event. In this case that involvement was made and central, as being the victim of the attack". Thirdly "the likely passage of time between the attack and the statements".

[20] The judge then stated: "I can, in fact, be satisfied that there was no practical opportunity for concoction and fabrication". We respectfully agree. There was no need for a Voir Dire in the case. But in some cases it may be appropriate to hold a Voir Dire before the judge makes his preliminary ruling.

[21] The second ground was that the police log which contained references to purported utterances by the victim was furnished to the jury and that similar arguments applied to this piece of evidence.

[22] The police officers were not in the same position as Miss McLaughlin and there is an element of double hearsay in the police log but it is apparent from the passage at pp 94-97 that Mr Mooney had cross-examined out of the police log and Mr Mooney's objection to its admission at the trial was couched in this way at p 94:

> "I accept that it is for the Crown a correct way of dealing with the matter, but the witness has said what is on the document is not a verbatim report and consequently its use is limited … I would object to this document going in front of the jury because there is the danger that … faced with something in print [the jury would] take that as being a more accurate reflection of what was said than in fact it is …"

Ms Orr pointed out that Constable Martin had been cross-examined as to what in fact was said and that the members of the jury had heard the transcript [of the log], read out to them. Mr Mooney accepted that there was no damage to the accused other than the giving of the document to the jury and accepted that with appropriate warnings there was no disadvantage to the accused.

[23] The judge ruled that the document should go before the jury but stressed that he would make it clear that there was a risk of giving disproportionate weight to a document and that he would refer to the evidence of the log-keeper that it was a précis and did not purport to be a verbatim account. In his summing-up he dealt with the log at p 14 stating:

> "You'll have to bear in mind when looking at the log that the log is simply a piece of paper and the

> important matter is what was the evidence [of the police officers at the scene]. Constable Martin wasn't sure at what stage he relayed the information back, the constable who completed the log agreed that it was really a synopsis of what he heard, rather than a verbatim account. So you'll have to make your minds up about what was said at the scene at the time."

Accordingly we hold that the ruling cannot be criticised.

[24] The third ground related to the absence of significant blood staining in the vehicle and the persistent nature of blood staining as given in the evidence of Dr Carson.

[25] In his summing-up the judge said at p 18:

> "… the accused relies upon the absence of any significant evidence of blood or blood staining in the Renault motor car or upon any of his clothing. Given the number, extent and severity of the lacerations sustained by Julie McLaughlin, you may think that this is a factor of some importance." He then very fairly summarised the evidence of Dr Molloy, Mr McBride, the surgeon, Mr Logan and Dr Carson: see pp 18-20 of the summing-up. He did say at p 23:
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> "While it's entirely a matter for you, … you may think that … she was dragged from the car shortly after the attack commenced but it's really very much a matter for you."

He was requisitioned on this matter by Mr Mooney (see p 33) and brought the jury back, telling them that this was one of those points at which he may have indicated a view, that they were quite free to accept that or reject it (see pp 39, 40). We consider that this is an illustration of the fairness of the summing-up and reject this ground.

[26] The fourth ground related to the evidence of Hester Ferry and David Moore. We have studied the passages in the summing-up in which

the judge dealt with their evidence and we consider that he directed the jury adequately as to the circumstances in which each purported to see the applicant. Accordingly we reject this ground.

[27] In relation to the sentence of twenty years imprisonment, it was submitted that the offence should be treated as an attempted murder arising out of a domestic conflict. Reference was made to the cases set out at B2-13A04 to 27, Current Sentencing Practice (by Professor Thomas) dealing with attempted murder arising out of domestic conflict. It was argued that a trend of sentencing levels was shown which indicated that the sentence in this case was manifestly excessive or wrong in principle. Reliance was also placed on a passage in Thomas's Principles of Sentencing (2nd edition) published in 1979. At p 92 he wrote:

> "… it may be that the upper limit of the scale for attempted murder would be in the region of fourteen years, and that a sentence of this level would be reserved for a deliberate attempt at murder with no provocation."

We do not believe that this reflects the judicial approach in 2003.

[28] We find more up-to-date assistance and relevance in the Practice Statement as to Life Sentences (for murder) issued by Woolf LCJ on 27 August 2002. He referred to the normal starting point for the tariff (or minimum term) of 12 years (the equivalent of a sentence of 24 years imprisonment) for cases involving the killing of an adult victim, arising from a quarrel or loss of temper and the higher starting point of 15/16 years (the equivalent of a sentence of 30 to 32 years imprisonment) where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases would be characterised by a feature which made the crime especially serious, such as: … (f) the victim was a child or was otherwise vulnerable … (g) extensive and/or multiple injuries were inflected on the victim before death … Aggravating factors relating to the offence would include the fact that the killing was planned and arming oneself with a weapon in advance. Mitigating factors would include an intention to cause grievous bodily harm, rather than to kill, spontaneity and lack of premeditation, clear evidence of remorse or contrition; a timely plea of guilty.

[29] We are satisfied that if Miss McLaughlin had died, the higher starting point would be appropriate. There are a number of aggravating features and there were few mitigating factors. All were dealt with in the sentencing remarks of the judge.

[30] The Judge referred to the infliction of 25 to 30 wounds to her face, neck, limbs and body. He stated that:

> "The lacerations to her neck were so deep that at one point it was possible to observe the pulsation of her spinal cord. … It was only as a result of a combination of fortunate circumstances, including the very low temperature that night, the concern of a local resident and the exceptional skills of those who treated her … that Julie McLaughlin survived … this incident did not take place or occur in the course of a highly charged confrontation, nor was it fuelled by excessive quantities of alcohol … you waited outside her house to see if she would come out. You were wearing black leather gloves, you had obviously bought a knife and she described you as being very very calm as you drove to the Groarty Road, all of which in my view strongly suggests that this was preconceived."

He also referred to the fact that the applicant did not appear to have shown any genuine remorse or regret for the injuries that he inflicted, the scars of which the victim would bear for the rest of her life.

[31] We consider that the judge took all relevant matters into account in sentencing the applicant and that the sentence of 20 years imprisonment adequately reflected the elements of punishment and deterrence. Accordingly the ground that the sentence was manifestly excessive and wrong in principle is rejected.