

Judgments

CA, CRIMINAL DIVISION

Neutral Citation Number: [2018] EWCA Crim 1972

3 May 2018

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2017/05138/A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 3rd May 2018

B e f o r e:

LADY JUSTICE SHARP DBE

MRS JUSTICE ANDREWS DBE

and

THE RECORDER OF LEEDS

(His Honour Judge Collier QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

REBECCA SHIRLEY PALMER

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(Official Shorthand Writers to the Court)

Mr W Rose appeared on behalf of the Appellant

Mr S Jones (Solicitor Advocate) appeared on behalf of the Crown

J U D G M E N T

(Approved)

LADY JUSTICE SHARP: I shall ask Mrs Justice Andrews to give the judgment of the court.

MRS JUSTICE ANDREWS:

1. On 17th March 2017 in the Crown Court at Swindon the appellant pleaded guilty to four counts of doing acts tending and intended to pervert the course of public justice, and five counts of sending malicious communications, contrary to section 1 of the Malicious Communications Act 1988. On 26th May 2017, also in the Crown Court at Swindon, she pleaded guilty to a separately indicted offence of doing an act tending and intended to pervert the course of public justice.

2. On 19th October 2017, in the Crown Court at Winchester, the appellant was convicted of four further counts of doing acts tending and intended to pervert the course of public justice. On 20th October she was sentenced by Her Honour Judge Evans to a total of five years' imprisonment. That sentence was made up of five years' imprisonment in respect of three of the counts on which she had been convicted after trial (which were dealt with by the judge as the lead offences); three years' imprisonment in respect of the other count on which she was convicted after trial; two years' imprisonment on one of the counts to which she had pleaded guilty and after being given full credit for that guilty plea; sixteen months' imprisonment on all the remaining counts of perverting the course of justice to which she had pleaded guilty; and six months' imprisonment in respect of all the counts of sending malicious communications. All of these sentences were ordered to run concurrently with one another. A community order imposed by the magistrates for an earlier offence of pursuing a course of conduct which amounted to harassment was revoked.

3. The appellant appeals against sentence by leave of the single judge.

4. The charges against the appellant all arose out of many false allegations which she had made against her former boyfriend (a serving soldier), including that he had raped her orally, vaginally and anally in his car. Towards the end of their relationship, he felt that she was not being honest with him. She started to send him abusive messages. Although she confessed to lying to him, apologised and asked for another chance, he told her that he wanted nothing more to do with her. This rejection unleashed what the single judge aptly described as a "storm" orchestrated by the appellant.

5. On 4th December 2015, the day after the couple had finally split up, the appellant telephoned the police on a number of different occasions during the day. She complained of fraud and blackmail by the complainant, whom she described as her "ex-partner". She told the police numerous lies, including that her former boyfriend had threatened to hit her the night before and that he had made previous attempts to stran-

gle her. She also alleged that he had stolen over £300 from her. At no point during any of these calls did she suggest that he had raped her.

6. The police went to her address at 9.23pm that day to take a statement. At this point the appellant alleged for the first time that the complainant had orally and vaginally raped her at around 8pm the previous evening, 3rd December 2015. In fact, the sexual intercourse had been consensual. Indeed, it had been instigated by the appellant. She gave a detailed account of the alleged rape. She said that when she returned home afterwards she was sore and bleeding. On examination at the Sexual Assault Referral Centre, no evidence of any marks or injuries were noted. It was in the course of this examination that the appellant added the allegation of anal rape to the other allegations.

7. The complainant was arrested at the barracks in the early hours of 5th December. His mobile telephone and his car were seized. He consented to providing intimate and non-intimate samples. Later that day the appellant provided a formal video interview, again giving a detailed account of the alleged rape. The police investigation continued. The complainant was interviewed by the police for 110 minutes, during which he explained that the sexual intercourse in his car had been fully consensual. He spent just under 19½ hours in custody before being bailed by the police with conditions not to contact the appellant. She was advised of his bail conditions.

8. Following his arrest and questioning by the police, the appellant then continued to make false allegations that the complainant had been making threats against her, stalking her and breaching his bail conditions in numerous ways that ultimately resulted in his being re-arrested and questioned. She invented fictitious people who were supposed to be "friends" and sent truly horrible messages from them to his mother and (genuine) friends, whose details were obtained from Facebook. She also sent emails purporting to come from these fictitious individuals to the police, as though they corroborated her lies. She mounted a campaign of harassment and vitriol against both the complainant and his mother who ultimately arranged to take out a civil injunction against her. She also posted messages on an Army Facebook group website, accusing the complainant of raping her and stealing money from her. She even managed to obtain a County Court judgment against him for money which he did not owe her, and he had to apply to set it aside. He was only 20 years old, and for a period of some two years she made his life on police bail what the sentencing judge described, accurately, as "a living hell".

9. Fortunately for the complainant, the details that the appellant gave in her false reports led to the discover that she was making it all up. During the course of January and February 2016, when the complainant was on police bail, the appellant made five specific reports to the police that she had seen him and that he was following her.

10. As a serving soldier, there were records of where he was situated from time to time. He also had a tracking device on his car. Those records made it clear that he simply could not have been where the appellant claimed he was or doing what the appellant claimed to the police he was doing. The tracking device proved it.

11. A thorough investigation by the police ultimately revealed the truth. On 7th March 2016 the police informed the appellant that no further action would be taken regarding the allegation of rape. She was arrested on suspicion of perverting the course of justice. Searches were conducted of her property and her telephone and electronic equipment were seized. It was agreed that she would return to the police station on 18th March, where she could be formally questioned. In those police interviews the appellant continued to insist that she had been raped by the complainant on 3rd December. She said that it had caused her trauma, which had led to her calling herself from unknown numbers using a spare mobile telephone and a landline and creating scenarios in her head that she believed to be real. She said that the only reason that she had reported the rape was because her manager had told her to. She denied wanting revenge. She continued to pretend through the interview that the various individuals whose identities she had made up

were real people. She elaborated on lies about their identities, although towards the end of the interview she eventually admitted that she had created their identities. She admitted sending some of the abusive messages to the complainant, his mother and his friends, but said that she was simply being honest.

12. In sentencing the appellant, the judge referred to the Victim Impact Statements and said that it was no exaggeration to say that the lives of the complainant and his mother had been shattered for the past two years by the appellant. The appellant had been found out as a result of her WhatsApp conversations, her inconsistent accounts and the tracker on the complainant's vehicle which showed that the complainant could not have been where she said he was. The police were also able to prove that he did not make the calls of which the appellant complained, and that most of them had been made by her from other numbers. Even after that happened, she continued her campaign. She posted to Instagram the most appalling messages, saying terrible things about the complainant: these included hoping that he would be raped in prison and that his mother would die a slow, painful death. She also posted on social media a disgusting website message accusing him of being a paedophile and a rapist. The complainant and his mother had had to take out an injunction against her at the cost of £50,000. The appellant had even lied to Swindon Crown Court by creating a forged medical certificate that she presented in 2017 to excuse her attendance at a plea and case preparation hearing. She had also been warned in the past for wasting police time, having made an allegation in 2016 against a security guard that he had assaulted her.

13. It seemed to the judge that the appellant had learned little from the proceedings so far. She presented herself well physically and she was initially plausible until she told too many lies. She demonstrated in the WhatsApp messages that she knew that she was lying and that was why on occasions she apologised for lying, but she always lied for a reason. The judge had seen messages that the appellant had sent to others in the case, including to one of her colleagues who she felt had crossed her by speaking to the police, telling her to "watch her back". There was also a comment which another co-worker had attributed to the appellant that she "made sure that she could never remain friends with an ex".

14. The appellant was 26 years old at the date of sentence. She had convictions for battery, two of which were committed against her mother, and she had a conviction for criminal damage, where she had cut off part of the mane of a horse belonging to a rival. She had received harassment warnings in relation to various other parties prior to the false allegation of rape, but the judge decided to put them to one side because she disputed them. However, the appellant had harassed a former employer, for which she had received a community order.

15. The judge rightly stated that false complaints of rape not only cause the person wrongfully accused enormous distress, but undermine the criminal justice system. They impact upon the minds of jurors trying genuine cases and they may create doubt where otherwise there would be none. Genuine victims come to court often very distressed and they should expect justice. People like the appellant undermined that. False complaints and allegations also wasted essential police resources which were very scarce, and the appellant's false allegations had taken up vital police resources in Wiltshire.

16. The judge made reference to two reports that she had received from a consultant psychiatrist, Dr Oliver White, and a clinical psychologist, Dr Mark Desautels. The appellant had suffered a serious head injury at the age of 10, having been kicked in the head by a horse, which resulted in some frontal lobe damage. She was diagnosed with an emotionally unstable personality disorder and possible dysexecutive syndrome, which can lead someone to suffer from confabulation. The judge rightly identified that there were aspects of these reports that she was driven to reject, because it was plain that the appellant had not told the medical professionals the truth. Indeed, the psychologist had said in terms that there may be considerable distortion by the appellant. Even taking that into account, the judge accepted that the appellant had psychological difficulties which undoubtedly impacted upon her judgment and decision making, that she had limited social skills and difficulties with anger management, amongst other difficulties, and that all of these must be taken into account in assessing her level of culpability for these many offences. The judge specifically said that she had, as a result, reduced the total sentence to be imposed upon the appellant to reflect that effect upon

her culpability, but nevertheless, her course of conduct over a long period of time in doing so many acts tending and intended to pervert the course of public justice had to receive significant punishment. She had considered the issue of totality and made due reduction for the mitigation of her mental health in making the sentences concurrent.

17. On behalf of the appellant, Mr Jones rightly conceded that these were very serious offences which go to the heart of the criminal justice system. He focused on the two medical reports, and in particular on the psychiatric report of Dr White, and submitted that the culpability of the appellant was much more severely reduced than the learned judge had given her credit for, and that overall the sentence of five years' imprisonment was manifestly excessive. He pointed to passages in the psychiatric and psychological reports that showed that she was given to impulsivity, that she would do unexpected things and that she had no consideration for the consequences. He also pointed to the fact that she had the potential to suffer from confabulation and that she had flawed thinking. Whilst he said the increasing number of allegations will have a significant impact on her overall offending, it did not increase her culpability.

18. In our judgment, the judge was right to approach the medical evidence with the degree of caution that she did for the reasons that she identified, and that for offending of this seriousness there was nothing wrong with the length of sentence that was passed. Indeed, if it had not been for the discount given for her mental health difficulties, the appellant might well have expected a custodial sentence significantly in excess of the five years' imprisonment that was passed on her.

Despite those difficulties, it was very clear that there was a degree of pre-planning involved in her offending and that she knew that she was lying. The lying was deliberately intended to cause maximum distress to her victims and even after her lies had been exposed, she was prepared repeatedly to lie again. In terms of culpability, her mental health difficulties afforded very limited mitigation for offending of this nature, length and seriousness.

19. For these reasons this appeal against sentence is dismissed.
