

Neutral Citation Number: [2008] EWCA Crim 1421
IN THE COURT OF APPEAL
CRIMINAL DIVISION

No: 2008/01335/A1

Royal Courts of Justice
Strand
London, WC2

Friday, 6th June 2008

B E F O R E:

LORD JUSTICE SCOTT BAKER
MR JUSTICE BURNETT
HIS HONOUR JUDGE ROBERTS QC
(sitting as a judge of the Court of Appeal, Criminal Division)

R E G I N A

-v-

ELIZABETH BEETON

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Miss K Thorne appeared on behalf of the **Appellant**

J U D G M E N T

1. MR JUSTICE BURNETT: This is an appeal against sentence brought with leave of the single judge.
2. On 23rd March 2007 at the Crown Court at Chichester, before His Honour Judge Thorpe, Mrs Beeton pleaded guilty to four counts of perverting the course of justice and on 20th April 2007 was sentenced to 4 years' imprisonment on each count to run concurrently. Two other counts were left on the file. It is submitted on her behalf that the overall sentence was manifestly excessive, having regard to the circumstances of the offences, having regard to Mrs Beeton's psychiatric and psychological make-up, her domestic circumstances, that is in particular her two young children, and of course her guilty pleas. Additionally, it is submitted that these sentences are not consonant with others imposed or upheld in this court for similar offences.
3. Each count involved the appellant making a false allegation of rape against a 17-year-old boy called Daniel Boiling, and the first count also related to a 24-year-old man called Gareth Horton.
4. The facts are remarkable. In January 2005 Mrs Beeton's husband called the police as a result of an allegation that she had made to him that she had been raped. She was interviewed by the police and that interview was summarised in a statement dated 31st January 2005. She described how in the summer of 2004 she had had sex with Daniel Boiling consensually in her flat. Then in September she said he came round to her flat again and raped her in her bedroom. Then, within a week, Boiling and another man, Gareth Horton, came to her flat again, forced their way in and Mr Boiling raped her, while Mr Horton watched, egging on Mr Boiling whilst he masturbated.
5. Mrs Beeton claimed that from then the same two men came round and raped her so many times that she had lost count. She said that they always said they would hurt her if she told anyone, and she recounted a particular incident on the day after Boxing Day when she suggested that the two men forced their way in and raped her, and also engaged in some violence.
6. Mrs Beeton's suggestion was that the reason the police had been called the day before was because at about 3.30 in the afternoon there was a knock at the door. She described opening it and Mr Boiling and Mr Horton pushing their way in. In the living room she said they pushed her to the floor and Mr Boiling raped her. She said that her son, Josh, who was then aged four or five, was upstairs playing, and walked into the lounge and said words to the effect of, "Get off my mummy." Then he went back to his bedroom. She said that she did not think that Mr Boiling had ejaculated.
7. Mrs Beeton's husband came home later and she explained that she had told him what had happened. He called the police, who went to the address.
8. Unsurprisingly, in the face of a series of very serious allegations of this sort, both Mr Boiling and Mr Horton were arrested and they were interviewed. As is inevitable in cases of alleged rape, various intimate samples were taken from them. It is right to observe that one of the samples taken was blood and that caused particular difficulties for Mr Boiling, who has a phobia of needles.

9. In their interviews, both men denied the offences and explained that they hardly knew Mrs Beeton at all, and had not seen her since the previous September. They did know her husband, but there had been disagreements and allegations made by him against them, they said, and thus they had not seen him since the autumn of 2004. They were both able to give alibis for 30th January 2005. Mr Boiling explained that he had never had sexual relations with Mrs Beeton. After being kept in custody overnight, they were released.
10. The intimate samples taken on that occasion, including those that had been taken from Mrs Beeton, were forensically examined. They produced no forensic evidence whatsoever to support her claim.
11. It does appear that from the outset the police had some suspicions about the genuineness of the complaint, because in a statement dated 31st January 2005 a police officer recorded the fact that he regarded Mrs Beeton's behaviour as suspicious.
12. The alibis to which we have referred were investigated and were confirmed. Although to begin with both Mr Boiling and Mr Horton were bailed, we understand that they were stood down in March, when the police had concluded that the allegations were unlikely to be correct.
13. That history concerns the subject matter of count 1, to which Mrs Beeton pleaded guilty.
14. On 16th June 2005 Mrs Beeton's husband called the police again as a result of another allegation of rape being made. Mrs Beeton was interviewed and made a statement on 21st June 2005. She claimed that at about 10 o'clock on 15th June she was at home with Josh, and was getting ready to go to her neighbour's house to see a friend called Jenny. She said that she had opened the door and found Mr Boiling standing there, that he jumped on her and raped her in the hallway. She described then going to her neighbour's home, but not telling her about what is said to have happened. Neither did she tell her husband about it when he arrived home at 11.30pm, but it emerged during the course of a long period of discussion and petting that they engaged in until about 5 o'clock in the morning. That is why he called the police.
15. Mr Boiling was again arrested and interviewed. He was able to give an alibi for the evening of 15th June 2005 because he was at home with his mother, his stepfather and brother, having dinner before going to bed at about 10 o'clock. He repeated that he had not seen the Beetons for about a year. Intimate samples had been taken from Mrs Beeton and nothing to associate Mr Boiling with her was detected.
16. Again, the alibi was investigated and in due course Mr Boiling was stood down. These facts supported the subject matter of the second offence.
17. However, that was not the end of it. On Sunday 17th July 2005, at about 7 o'clock in the morning, police were called to the Beetons' home address once more. Mrs Beeton told them that the night before she had smelt petrol coming from her front door. She explained that she went to investigate and found Daniel Boiling at her front door with a

petrol can and a lighter, threatening to set her flat on fire. She said that he dropped those items and then pushed her to the floor and violently raped her, on this occasion she thought he ejaculated. He then left, taking the petrol can and lighter with him. She did not tell her husband immediately about what had occurred, and she explained that no one else had been with Mr Boiling on this occasion.

18. The matter was again investigated. Various swabs were taken from Mrs Beeton, which provided no support whatsoever for her allegations. Additionally, on this occasion forensic examination was performed at her home, to see whether there was any support for the suggestion that petrol had been spilt or other flammable liquids and none was detected.
19. Those are the facts that give rise to the subject matter of the third count.
20. On 14th August 2005 Mr Beeton called the police again, stating that his wife had been raped two days previously. The allegation Mrs Beeton later made to the police was that she had been watching television one evening. She was vague about when or at what time. She heard the front door open, which she had not locked. She says she got up and saw Daniel Boiling in the hallway, and once again he pushed her to the floor and raped her. It does not appear that on this occasion Mr Boiling was arrested.
21. The impact of these allegations, which were accepted as being false, was, as one would have expected, extremely distressing and profound. In a letter to the court dated 18th July 2006, Daniel Boiling said this:

"The experience of these false and malicious allegations of rape has had a profound and disturbing effect on me and my family. I was only 17 years old and it was the first time I had ever been in a police station. Being locked up in a police cell on my own without any outside contact was terrifying for me.

Each time I was arrested I have found it an extremely humiliating and degrading experience. The whole process of being arrested three times on three separate occasions, being booked in and taken into custody. I have had my clothes and shoes taken from me and sent away for investigation. I had intimate samples taken that has left me completely devastated. Going through all these procedures/processes has caused me to experience high levels of stress/anxiety, nightmares and I have also experienced numerous panic attacks. I was unable to work for a long period during this time and unable to leave the house. Since this has happened I have felt unable to contemplate having a close relationship with anybody.

I feel psychologically damaged and traumatised by everything that has happened to me. I wish that life could be how it was before any of this happened. The reality is it has changed my life and my mum's life forever and unfortunately there is no going back even though that is the one thing I wish for."

At the time he wrote that letter it appeared that he would have to give evidence at the

trial.

22. Mr Horton, on 20th April 2007, wrote a short note for the court. It said this:

"This case has been very traumatic for me and my family, obviously this has affected me in numerous ways. Firstly, I now have a mistrust of most women. I know in myself that this is unjustified but I can't seem to form lasting relationships because of the fear that this might happen again (accused of raping a female).

I also don't seem to like being on my own as I feel I need an alibi at all times.

Finally, is my mistrust of the legal system, as this has lasted over 2 years!

I just want this to finish so I can get on in my life."

23. The appellant was eventually arrested. In the course of what we are told were long interviews, she accepted that the allegations she had made were physically untrue. The reference to "physically untrue" was apparently a contrast with the concept of "mentally true". That is in some way a suggestion that the appellant believed that the rapes had occurred, even though she was accepting that her belief had no foundation in fact. Despite that, she did not plead guilty to these offences until the first day of her trial. The offence in each case requires an intention to pervert the course of justice, which by her pleas she admitted.
24. One thing that has never been adequately explained is why the appellant made these false allegations. The author of the pre-sentence report speculates that it may have been to cover-up an affair. The appellant admitted an affair to get back at her husband, who had apparently earlier strayed. Otherwise, we have mentioned that there was some history between Mr Boiling and Mr Horton and her husband. But the author of the pre-sentence report was reduced to speculation because, although the appellant accepted her culpability, she did not provide any explanation beyond a reference to her mental health concerns.
25. The way in which it has been put before us this afternoon is that the appellant, Mrs Beeton, suffered from a series of problems and difficulties resulting from personality disorder and marriage problems which made her behave in a way which she would not ordinarily have done.
26. Those acting for the appellant sought the assistance of a psychiatrist, Dr Hadi, an associate specialist in psychiatry, who prepared a report on 30th October 2006. He noted that her general practitioner had referred the appellant to psychiatric services in March 2006, long after the commission of these offences, because depression had developed. Dr Hadi in fact explicitly stated that there was no suggestion that depression had played a part in the offending. He noted also that the appellant had unfortunately suffered for some time from epilepsy, but that it was fully controlled by medication.

27. Dr Hadi's conclusion, having seen the appellant three times, was that she suffered from a mixed personality disorder, which contained features of three identifiable personality disorders, none of which was predominant.
28. One of the features of the appellant's personality disorder which we note is that she was apt to act impulsively without thought of the consequences. But the personality disorder does not really throw any light on why the appellant committed these offences. The psychiatric evidence does show that she is emotionally unstable in various ways, and otherwise from time to time is likely to be disturbed. Dr Hadi considered that further expert input was required because she found impairment of memory and was concerned that the appellant might suffer from a learning disability.
29. In consequence of that, Dr Nathaniel-James, a neuropsychologist, was instructed and produced a report. He subjected the appellant to a well-known battery of tests. He concluded that she may have cognitive impairment, but unfortunately was driven to conclude that the tests had no validity because the appellant performed badly on a number of tests which those with severe dementia or serious brain damage can perform with ease. He was unable to determine why she had performed badly, but concluded that she must either have consciously or unconsciously exaggerated her difficulties.
30. In his sentencing remarks, the judge made reference to the conscious or unconscious exaggeration of any cognitive difficulty from which the appellant suffered. Whilst Dr Nathaniel-James had raised the possibility of the appellant being a malingerer (that much was implicit in his finding), the judge concluded that she probably was and also that she was a manipulative woman. That was a conclusion open to him on the totality of the evidence and in particular the history of the appellant's education background, employment, and her ability to deal with quite detailed but peripheral matters when talking to the probation officer for the purposes of the pre-sentence report.
31. We have the benefit of a report that was not available to the judge, namely a report from Dr Rachel Terry, clinical psychologist. She performed further psychometric testing and her conclusion is that the appellant does suffer from some intellectual impairment which places her in the bottom six per cent of the population.
32. None of this material in our judgment illuminates why the appellant committed these crimes. Neither does it really go to excuse her culpability. It does have some impact in showing that prison will be an especially difficult place for her. It does, when coupled with the submissions we have heard this afternoon, provide some explanation for why she might have behaved so far out of character.
33. In his sentencing remarks, the judge gave full credit for guilty pleas and previous good character. He noted, as an aggravating feature, the fact that the offences comprised a course of conduct over many months. He referred to the damage done to the victims. Although not mentioned in the sentencing remarks, he was fully aware from the pre-sentence report of the domestic circumstances of the appellant, and in particular her two young children.

34. So far as we can judge, one decision of this court had been drawn to the attention of the learned judge, namely that of R v Fletcher [2005] EWCA Crim 3284, where a woman who had made an allegation in circumstances which might be taken broadly to reflect the first of the incidents with which we are concerned was sentenced. On guilty pleas she received a sentence of 2 years, which the Court of Appeal considered to be relatively high, but with which the court did not interfere.
35. The other cases to which our attention has been drawn are helpfully collected together in paragraph 31 of Miss Thorne's advice. She drew our attention to the cases of R v Kyriakou (1990-91) 12 Cr App R (S) 603; R v Gregson (1993) 14 Cr App R (S) 85; R v Merritt [2005] EWCA Crim 2313; R v Nazifi [2006] EWCA Crim 1743; and R v Goodwin (1989) 11 Cr App R (S) 194. Each of those concerned guilty pleas. Fletcher is the longest sentence identified in those cases and the shortest was four months.
36. These cases make it plain that the consequence of a false allegation of rape will almost inevitably be a custodial sentence. The essential question for this court, on which we have been addressed with skill, is whether the two aggravating features — namely, first, the fact that the primary allegation was made against two men and, secondly, the persistent course of conduct evidenced by multiple accusations against Mr Boiling — justifies 4 years in these circumstances.
37. Miss Thorne submits that taking account of those cases, the sentence imposed by the judge was simply too high, even though she accepts those two distinguishing features and, in our judgment, is bound to accept that the circumstances of this case are more serious than those of Fletcher.
38. There is an additional factor which we consider to be of some importance, which has not been highlighted in the decisions drawn to our attention. It is well known that the conviction rate for rape compared with the number of allegations made is low, when contrasted with many other offences. For obvious reasons, a jury is often confronted with very difficult decisions on credibility. It is extremely easy to make an allegation of rape when there is no foundation for it whatsoever. It is also inevitable that an allegation of rape will be taken extremely seriously by police forces. The cases to which we have been referred, and which I have sought to summarise, show that this phenomenon is not a particularly rare one. There is no doubt that it has entered the public consciousness and it is likely to have the perverse impact of increasing the likelihood of guilty men going free.
39. There is no doubt that the offences to which Mrs Beeton pleaded guilty were very serious indeed. It may be, as was submitted, that Mr Boiling was not detained for long, but the impact on him of what to our eye was a sustained vendetta by a manipulative woman has obviously been very profound indeed. An important feature, as Miss Thorne accepted, is the age of the victim Mr Boiling.
40. Having said that and having regard to the authorities to which our attention has been drawn, we consider that the sentence of 4 years on a guilty plea for which full credit was given is too long. Taking account of all the factors to which we have referred, our conclusion is that that sentence should be quashed and substituted with one of 3 years.

41. LORD JUSTICE SCOTT BAKER: Thank you, Miss Thorne.

42. MISS THORNE: Thank you very much.

<http://www.bailii.org/ew/cases/EWCA/Crim/2008/1421.html>