

IN THE CROWN COURT IN NORTHERN IRELAND

ICOS NO: 10/158929

QUEEN

v

JOHN PAUL BRANNIGAN

HIS HONOUR JUDGE GEOFFREY MILLER QC

- [1] Before commencing my sentencing remarks I remind the media that nothing should be reported that serves either directly or indirectly to identify the complainant in this case. For the purposes of these sentencing remarks I shall refer to her simply as A.
- [2] On Wednesday 2<sup>nd</sup> May 2012 after a trial lasting upwards of three weeks the jury at Downpatrick Crown Court unanimously convicted the defendant of the single charge he faced on the bill of indictment, namely the rape of A in August 2009.
- [3] The background to the case established by the Crown and endorsed by the verdict of the jury is as follows:-
- [4] In August 2009 A had been living and working in Newcastle for approximately one year. Although she had grown up elsewhere she had extensive family connections in the Newcastle/Castlewellan area. On the evening of Friday 7<sup>th</sup> August, A, aged 18, had arranged to go out for the night with her cousin B. It is apparent that between them they consumed most of the contents of a 10 shot bottle of vodka before they headed out to Quinn's Public House at about 10.40pm. Whilst at this venue, which also hosts a disco, A consumed two or possibly three more vodka and coke after which she switched to water as she felt rather drunk.

- [5] A spent most of the time in the company of a good friend, C and also D and her sister E, whom she knew from work. When the premises were closing around 2.30am she had tagged along with D and E who were going to a party at a house. There was a taxi-bus outside and A got into it; by this stage A was feeling a bit better.
- [6] The taxi stopped outside a house where it was understood that the party was being held but it was in darkness and so everyone moved along in dribs and drabs to another house nearby. This turned out to be the home of H.
- [7] A had been in a casual/sexual relationship with H for a period of time, this having ended in or about February/March of 2009. Although he would have been to her house she had never been to his before this night. She only discovered it was his home when she arrived at the party. She was aware that H shared the house with K and that her second cousin F stayed there though he was not a tenant.
- [8] It is apparent that there were many people at the party, some of whom A knew but others, who included the defendant and his father, she did not. During her time there A was offered a glass of Rose wine by E of which A took one sip and then disposed of the drink because she did not like wine. She was also given a bottle of beer by H but this disappeared when she went to the toilet without her consuming more than a tiny portion. H subsequently gave her another bottle of beer, which she consumed. It was not disputed that this was the total amount she had to drink at the house party that night.
- [9] At some stage during the night A ended up in H's bedroom in the company of H, his cousin J and E, who was J's long-term girlfriend. There then followed the suggestion made by one of the boys that they play a Truth or Dare version of Spin the Bottle and this led to A receiving two dares. The first was to kiss someone in the room. She chose to kiss E. She said that she did this for a joke. Her reason for so doing was that she knew everyone expected her to kiss H and she knew she couldn't kiss J, given his relationship with E.
- [10] The second dare was of an altogether different quality, namely to perform oral sex upon H. She believed it was J who suggested this. Her evidence as to why she did this was perhaps disarmingly open - *"I wanted to end up there with H"..."I still liked him - I suppose from when I first saw him at the party - I wanted to spend the night with him"*. A stated that she made it a condition of agreeing to do this that J and E should leave the room, which they duly

did.

- [11] A described in some considerable detail precisely what she and H did and she made it clear that he did not ejaculate but that she gagged slightly and then lay down on the pillow and that was the last thing she remembered until coming round to find the defendant on top of her.
- [12] A's account of what happened after she came round was as follows: - she was aware that someone was on top of her and that she couldn't move. She had no energy; she couldn't even open her eyes. She thought that it was H and then the person said something about being on the Pill. When she heard his voice she knew it wasn't H. She tried her hardest to focus; it was so blurry; she screamed "*Who are you?*" "*I was just screaming for him to get out - I was just hysterical*".
- [13] She continued that people had come into the room; she remembered F, D and H. She saw the person who had been on top of her at the bottom of the bed. This was the defendant. A said that she had never seen him before in her life. He then left the room. She noticed that she still had her dress on but that her leggings and pants were off her.
- [14] A described F as being quite flustered and she recalled H sitting on the bed and going to touch her arm. She told him not to touch her and he replied that she was on his bed. Everyone left the room and she put on her leggings and pants, which were beside the bed and went to the en-suite bathroom where she cut her arms with H's razor. She described feeling sick..."*that there was something inside you and you can't get it out*".
- [15] She then went back into the bedroom and got into bed and slept. It is not clear how long she slept for though she denied that it was a peaceful sleep and given that the incident may well have occurred between 4.00am - 6.00am, the sleep may not have been a long one. She said that F and D came into the room and that she tried to explain to F that when she couldn't move she had thought that it was H who was on top of her. She said that when F saw her arms he got really angry with her. She had no clear notion of the sequence of these events and as to whether in fact they occurred before or after she had slept. She was aware that F and H had said something about leaving.
- [16] She had then got a taxi home and had gone to her own room where, still in her clothes she lay on her bed, remaining there until G came round about

4.00pm - 5.00pm that evening. She told G that she had gone to bed with H but had woken up with somebody else. It is apparent that over the next two days A said nothing further about what had occurred and in particular she made no complaint to anyone in authority. She accepted that she had attended an event known as the Leitrim Festival on Sunday 9<sup>th</sup> August and that she drank a considerable amount that day. At some point she fell and injured her arm. It was this that led her the following day to speak to her mother and which led to her visit, first to the Downe Hospital, and ultimately to the police in the early hours of Tuesday 11<sup>th</sup> August 2009.

- [17] The defendant's account given both to police when first interviewed some 10 days after the incident and then to the jury was that he had engaged in completely consensual intercourse with A. Indeed on his account of events she was not only fully compos mentis but she had effectively instigated all of the acts of intimacy which took place between them. I need not rehearse any of the details because as is apparent from their verdict the jury rejected his account in its entirety and accepted that given by A.
- [18] The jury verdict means that for the purposes of sentencing I must proceed on the basis that on entering the bedroom, the defendant found A in a comatose state and taking advantage of that condition he deliberately penetrated her without her knowledge and with the intent that she would not know he had done so. Had she not come round when she did he might have got away with it, which was clearly his intention.
- [19] I wish to make it clear that in approaching the issue of sentence I make no assumptions as to what caused A to black out as she describes. In particular I do not ascribe any cause or motivation for this occurrence to any action on the part of the defendant. There is simply no evidence on this subject. Nevertheless this in no way lessens the degree of opprobrium and level of blame that attaches to him for his actions in carrying out this act of rape. I consider that his behaviour in taking advantage as he did amounts to a very serious aggravating feature in this case and one I must factor into the sentencing process.
- [20] The complete account of events at the house party that night did not emerge during the trial. It is quite apparent that many people who were present that night including some who had been present in the bedroom at times relevant to these events, have chosen to keep away or to say nothing. This is a court of Law and I shall deal with the defendant accordingly but it may be that those

persons should examine their consciences as to their own conduct in this affair.

- [21] A not only had to endure the indignity and humiliation of the assault by the defendant but also the uncertainty as to what precisely occurred before she came round to find him on top of her. In addition she was, at trial, subject to detailed and probing cross-examination for a period of 6 ½ hours spread over one week. I expressly make no criticism of Mr O'Rourke QC who acted in an entirely professional manner throughout and put his client's case fully and in line with his instructions. Nevertheless the strain of having to give her evidence over such a protracted period obviously impacted upon A and this is factored into the detailed Victim Impact Report (VIR) I have received, filed on her behalf by Dr Boyle (Chartered Psychologist) – it is apparent from this report that she has been severely traumatised by the events of that night and that she has undergone a significant personality change, the effects of which will be long lasting and perhaps life changing.
- [22] The defendant maintained a denial of the allegations throughout his trial and he maintains that denial to this day. He claims that all sexual activity was consensual. By their verdict the jury rejected this account in its entirety and I must proceed to sentence on the basis that the defendant is unrepentant, devoid of remorse and lacking any basis for credit with regard to remission of sentence.
- [23] As the offence was committed after the coming into effect of the **Criminal Justice (NI) Order 2008** on 15<sup>th</sup> May of that year and because the charge is both a "*serious*" and "*specified sexual*" offence pursuant to **Schedules 1 & 2** of the Order, the Court is required to reach a determination as to whether the defendant is a dangerous offender within the meaning of **Article 15** of the said Order. In addressing this issue I must consider "*whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.*"
- [24] In undertaking this task the court "*shall*" take into account all such information as is available to it about the nature and circumstances of the offence and "*may*" take into account any pattern of behaviour of which the offence forms part and any information about the offender which is before it.
- [25] The Pre-Sentence Report (PSR) prepared by Mary McCaughey does not provide a definitive steer on the issues before the court beyond asserting that because he refuses to acknowledge his guilt "*it has been difficult to engage*

*with him in a full discussion about engagement with PBNI on any planned programme of work.”* He is assessed as presenting with a medium likelihood of re-offending and as not posing a significant risk of serious harm. These conclusions are based in particular on the absence of any previous offending coupled with the stable family and employment background and amount to matters of significance in reaching a determination on the question of “dangerousness”.

- [26] I have considered all the matters highlighted above with regard to the circumstances surrounding the offence and I have listened carefully to the submissions of counsel for both Crown and Defence. In doing so I have given weight to the guidance given by the **Court of Appeal [E & W] in R v Lang [2005] EWCA Crim. 2864** as to what is involved in the assessment of significant risk. I have also placed to the forefront of my thinking that a sentence for public protection is concerned with “**future**” risk and “**future**” protection of the public. It is my conclusion on the facts of this case and on the basis of the information available including the absence of any previous convictions that I cannot be satisfied that this defendant does pose such a risk and that he is, therefore, not a dangerous offender within the meaning of the 2008 Order.
- [27] My decision on this matter means that I must sentence the defendant pursuant to **Article 8** of the Order to a determinate term of imprisonment.
- [28] The approach to be taken by the Courts in this jurisdiction to the question of sentencing in cases of Rape has been clarified and refined in recent years. In **Attorney General's Reference Number 2 of 2004 (Daniel John O'Connell) (AG Ref 1 of 2004) [2004] NICA 15** the Court of Appeal endorsed the levels set out by the Sentencing Advisory Panel in England & Wales; these being **5 years** with no aggravating or mitigating features and **8 years** where a number of enumerated features are present, in both cases after a contested hearing. In **Attorney General's Reference (No. 3 of 2006) (Martin John Gilbert) [2006] NICA 36**, the then Lord Chief Justice, Sir Brian Kerr (as he then was), highlighted the three dimensional approach taken by the Sentencing Panel with consideration being given to the following factors:
- Degree of harm to the victim;
  - The level of culpability of the offender; and
  - (c) The level of risk posed by him to Society.

[29] The sentencing court is enjoined to consider all three dimensions and to focus on the presence or absence of the following specific aggravating features as referred to by the Panel and endorsed in **Gilbert**:

- (a) The use of gratuitous violence;
- (b) The use of a weapon to frighten or injure the victim;
- (c) Planning the offence;
- (d) Significant physical or mental consequences for the victim;
- (e) Further degradation of the victim (including forced oral sex);
- (f) The victim's home having been broken into;
- (g) The presence of children when the offence was committed;
- (h) Covert use of a drug to overcome the victim's resistance or to obliterate his or her memory of the offence;
- (i) Any history of sexual assaults or violence by the offender against the victim.

[30] It has been argued that none of these aggravating factors are present in this case. I disagree. It is readily apparent from the demeanour and words of A during the trial and from the conclusions in the VIR that she suffered significant psychological turmoil from these events. Furthermore although the defendant did not break into the bedroom where A was lying and although there is no evidence as to what his intentions were prior to entering the bedroom, it is absolutely clear that once there he decided to have intercourse with her knowing that she was powerless to resist. I choose my words with care because I wish to re-emphasise that I make no finding that this defendant used drugs covertly or otherwise to overcome A's resistance. That said and for the reasons I have already given I consider that I am both duty bound and entitled to find that his actions on the facts as determined by the jury, amount to an aggravating feature in this case.

[31] The Sentencing Guidelines recognise three principal categories of mitigating factors. These are a plea of guilty, although the reduction of sentence that a timely plea will warrant is to be adjusted if the plea was not prompt; the victim's behaviour; and the offender's good character (although absence of a criminal record should not necessarily be equated with good character).

[32] On the facts of this case the only relevant mitigating factor is the defendant's previous good character. He is now 26 years of age and comes before the court with no convictions. He had a good school record and attained a degree in Quantity Surveying from the University of Ulster in 2008, since when he has worked for several firms both here and in Scotland. I have had the benefit

of the helpful and detailed PSR, together with several references from various employers and persons from the local community and finally I have borne in mind the submissions made on his behalf by Mr O'Rourke QC. In the light of all these matters I consider that the appropriate sentence is one of **7 Years**.

- [33] I am required by law to divide this sentence into a custodial element followed by a period on licence, which must be at least 50% of the total sentence. You shall, therefore, serve a period of 3 ½ years in custody and shall then be released to serve the remaining 3 ½ years on licence.
- [34] I recommend that the Minister of Justice should consider imposing the following requirement – that you should, during the period of licence, attend and actively participate in the PBNI Community Sex Offender Group work Programme based at Alderwood House, Hydebank Wood or such other venue as is directed by your supervising officer and you should comply with the instructions given by or under the authority of, the person in charge.
- [35] In addition you will be subject to the Sexual Offences Notifications Requirements for an indefinite period.
- [36] By virtue of your conviction the Independent Safeguarding Authority will include you on the “Barred List” relating to children
- [37] Having considered the submissions of Mr O'Rourke QC with which Miss McColgan QC took no issue I do not consider that a Sexual Offences Prevention Order is appropriate in the present case. The licence terms together with the Sexual Offences Notifications Requirements provide adequate protection and render the order sought to be unnecessary.