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BEFORE

LORD JUSTICE EVELEIGH AND MR. JUSTICE MILMO

GEOFFREY CUTBILL

January 11, 1982

Blackmail—Attempting to Extort Money from Prostitute by Pretending to be Policeman and Threatening Prosecution—Length of Sentence.

References: blackmail, *Principles of Sentencing*, p. 146, *Current Sentencing Practice*, B 6–6.

Twenty-one months' imprisonment for attempting to extort money from prostitutes by threatening to prosecute them, reduced to 12 months.

The appellant was convicted of two counts of blackmail. He had on two occasions picked up a prostitute and then demanded money, pretending to be a police officer and threatening to prosecute the women concerned. Sentenced to 21 months' imprisonment. *Held*, a prostitute is entitled to protection from society just as much as another law abiding citizen, but blackmail is an offence which varies enormously in its gravity and this case was patently in the lower strata. A sentence of 12 months could be substituted.

C. Leigh for the appellant.

MILMO J.: In this case the appellant appeals with leave of the single judge against sentences of 21 months' imprisonment concurrent that were passed upon him in respect of convictions on two charges of blackmail at the Chelmsford Crown Court.

It is a mean and despicable case. What the appellant did was pick up a prostitute in Southend, and posing as a client he got her into his car. Having done that, he told her that he was a police officer and produced as his warrant card a driving licence. He then, doubtless to give further verification to his claims to be a police officer, purported to summon assistance by radio. He then offered to make a deal with the prostitute, and asked her for her money. She said she did not have any money. That may or may not have been true, we just do not know, but the threat was that she would be prosecuted for an offence which carries a sentence of imprisonment. We know, or are told, that in at least one of the two cases, the prostitute concerned was one who had innumerable convictions for prostitution against her, and it was substantially a threat to have her imprisoned. The court does not know what impact the threat had upon her, but of course it does not follow that because she did not pay up the money she was not affected at all by the threat. On the other hand, it could be said that, being a person who is in constant jeopardy of prosecution and imprisonment, the impact cannot have been very severe.

The matter did not rest there. Some two or three days later the appellant adopted the same tactics upon another prostitute and again he failed to get anything from her, because she said that she did not have any money.

On any view this was a despicable attempt to extract money from a prostitute, and a prostitute is entitled to protection from society just as any other law abiding citizen

is entitled to protection. In so far as the grounds of appeal are based upon the fact that these two women were only prostitutes, the court rejects them. But the fact is that the force of the threat, and the amount that was demanded, takes a great deal of sting out of the offence. It is true that blackmail is an offence that varies enormously in its gravity, and this case quite patently is in the lower strata.

In all the circumstances, the court considers that the sentences can properly be reduced, and has decided to quash the 21 months' sentence and to substitute for them sentences of 12 months' imprisonment on each count concurrent. To that extent the appeal succeeds.

BEFORE

LORD JUSTICE WATKINS AND MR. JUSTICE MICHAEL DAVIES

DUNCAN FLETCHER MILLIGAN

January 13, 1982

Factual Basis for Sentence—Dispute as to Facts Following Guilty Plea—Whether Sentencer Should Order Trial of Case on Plea of Not Guilty or Hear Evidence Bearing on Issue in Dispute and Settle the Matter Himself.

References: evidence after conviction, *Principles of Sentencing*, p. 371, *Current Sentencing Practice*, L 2.2. Commentary: [1982] Crim. L.R. 317.

Where a sentencer is dealing with a plea of guilty and there is no agreement between the prosecution and the defence about the circumstances of the offence, it is the proper practice for the sentencer to hear witnesses as to what took place on the relevant occasion, rather than to have the matter tried by a jury on a plea of not guilty.

The appellant was indicted for an offence under Offences Against the Person Act 1861, s.18, and for unlawful wounding under section 20. He pleaded guilty to that offence, and his plea of not guilty to the charge under section 18 was accepted. The charges arose out of an incident in which the appellant, a student, had struck another student with a beer glass. There was a difference in the account of the incident proffered by the prosecution and that of the defendant, and the sentencer adjourned for the purpose of hearing evidence on the matter in dispute. He was subsequently persuaded that he was obliged to order the case to be tried by a jury, and adjourned the case again for that purpose. The case then came before another judge who heard witnesses himself, formed his own view of the circumstances and passed sentence on the basis of that view. The appellant was sentenced to six months' imprisonment. *Held*, the decision of the first judge that he was obliged to have the case tried by jury to establish the facts for the purposes of sentence was mistaken. It was the proper practice when dealing with a plea of guilty and desiring to know what has taken place in the

commission of the crime, to hear witnesses as to what took place on the relevant occasion. The judge who dealt with the case subsequently had adopted the correct procedure and there was no reason to interfere with the sentence he had imposed.

Case referred to: TAGGART (1979) 1 Cr. App. R. (S.) 144.

M. Fowler for the appellant.

WATKINS L.J.: Duncan Fletcher Milligan is now 22 years of age. He was, until recent times, a student at Warwick University. He was reading law. In the summer of last year, he was approaching his finals. His expectations—and the expectations of those best able to judge his abilities and application to his studies—rose to the extent of his obtaining a very respectable degree, perhaps in the honours class. The fact is, however, that although he sat his final examinations, he failed to get any kind of degree. It may be, of course, as sometimes happens, the expectations to which I have referred, were not realised merely because, for some reason or other, he was not best equipped to answer the questions asked of him satisfactorily, he, at that time, not being disturbed in his mind by any extraneous matter. However, the contrary would appear to be so having regard to what I am about to say.

In February 1981, the election for the presidency of the Students' Union was imminent. Whilst the Students' Union electioneering was taking place, the appellant, proffered himself as a candidate. On February 25, he made a speech to the Students' Union in pursuance of his candidacy. His speech was not received with universal acclamation and hostilities broke out. Rotten food and abuse were hurled at him. His girlfriend was not best pleased with him. By the end of the evening, the atmosphere between the appellant and a fellow student named Piercey who was to become the victim of an assault by him, and who had shown hostility to him, was frigid to say the least. By then, he had become dispirited, he was tired and no doubt disappointed about what had happened when he was endeavouring to impress his fellow students.

What happened to bring about the injury to Piercey, seems to have been that Piercey, or someone in his company, called out to the appellant. The appellant thereupon moved towards the group where Piercey was standing. They jostled with one another. What was said between them is not known to this Court. What, however, is all too clear is that things came to a head when the appellant flung the beer glass which he was holding in one of his hands at Piercey and struck him on the head with it. The glass broke and it cut Piercey's head. There was yet another lunge at Piercey by the appellant which cut his hand. The damage done was not very serious in comparative terms but Piercey had to be taken to hospital and stitches put in a wound upon his head, which was an inch in length, and attention given to the minor wound on his hand.

The following day, the appellant was interviewed. He made no attempt to avoid responsibility for what had taken place. He gave the police his best assistance about what had transpired the previous evening and told them about his recollection of the whole affair, including confessing to having struck Piercey with the glass. Cases of assault using glasses are ruled by the court to be very serious, and rightly so. Some are worse than others, having regard to the circumstances in which they take place and the lengths to which the assailant goes in the attack on his victim. It is said that this was not one of the most serious cases of an assault using a glass which comes before the court, but nevertheless it was a serious matter. The appellant must have struck

Piercey hard to have caused damage of the nature which has been described. He could not remember how this disgraceful incident arose and exactly what he did. He was charged with an offence under section 18 of the Offences Against the Person Act 1861 alternatively, with an offence under section 20 of that Act.

When the matter came to the Crown Court, on May 18, his Honour Judge Blyth presided over it. The appellant pleaded guilty to wounding Piercey, an offence under section 20, the prosecution was content to accept that plea. There was, however, between the prosecution and the defence no agreement upon the manner in which the attack had taken place. The version which was going to be proffered to the court by the prosecution was challenged by the defence. The judge, as is indicated on the back sheet of the brief to counsel to advise in this case, said that as there was such a difference between the accounts of the prosecution and the defence, that he would hear evidence, a little while later, from those who had witnessed the attack.

The case was then adjourned, the anticipation clearly being that it would be restored to the list in Coventry, and the judge would hear, on oath, such witnesses as he wished to so that he could gain a reliable version of what had occurred. Unfortunately, on June 12, when the case came before him again, he was persuaded against doing as he intended. He was referred, either then or prior to that day to TAGGART (1979) 1 Cr. App. R. (S.) 144. Having read that case, he came to the conclusion that he was obliged to have the matter tried by jury so that the facts could be established in that way. That was an unfortunate and mistaken decision. In our experience, it is proper practice when dealing with a plea of guilty, and when desiring to know what precisely has taken place in the commission of the crime, to hear witnesses as to what took place upon the relevant occasion. That should, as the judge initially intended it should, have happened in this case. If it had, this matter would have been disposed of in May or in June of last year.

Since his Honour Judge Blyth, contrary to customary and sensible practice which very rarely needs to be invoked dealt with the matter thus, the appellant entered the examination room to take his finals with the question of sentence still hanging over him. It was not, regrettably until October 13 that the case was restored to the list at Coventry Crown Court. It then came before another judge, namely, his Honour Judge Gosling. He promptly adopted the correct procedure and heard such witnesses as he wanted to so that they could inform him of what they saw happen. That gave him an excellent opportunity of making up his mind as to how the wounds of Piercey had come about. In sentencing the appellant, he made these observations. "Duncan Milligan, I am going to send you to prison. It does not give anybody any pleasure to do that with somebody like you, but let me first explain what it seems to me, so far as I can make it out, is the truth. I do not think Mr. Piercey called you over, but I am satisfied that somebody shouted your name, and I think you may well have believed that it was him. I accept that. I am satisfied that you then went over and gave him a push, and I am satisfied that there was then an argument and, in your favour, I think that Piercey may well have shown some belligerence in the way he addressed you, and I think he may have said: 'If you want it, start now.' That is your evidence. I am satisfied from what Miss Swan told me, that at the end, he made, with his hand to take you by the arm, something in the nature of a grab, but I am also satisfied that Barnes, with other young men were standing watching, and it is quite clear, you said it yourself, that you hit this man very hard with a glass. I am satisfied you raised your arm above your head, brought that glass down, wounded him and hit him a second time, not so hard, but I am satisfied that you did. In your favour, I take it that you had been, in your own mind, subjected to a lot of provocation that afternoon, starting

no doubt earlier on the Sunday which you associated with the activities of your ex-girlfriend, and that what happened after, with the behaviour at the students' hustings, what happened after that in the hall made you lose your temper. For that reason, and because I think it is only fair to bear in mind that you lose more than many others, I shall make it a short sentence, but the use of a glass is so dangerous and comparatively so prevalent that it has to be made clear to you and to others that it cannot be tolerated and justice has got to be even-handed between you and others who use glasses who do not have your advantages, and the sentence that I pass upon you is much less than is usually passed on others for the reasons I have given, but it is six months' imprisonment."

In the view of this Court, those observations were impeccably and fairly stated. Anyone who strikes a man with a glass in the manner in which this appellant struck Piercey, must expect to have passed upon him an immediate custodial sentence. The only question which concerns us having regard to the circumstances and bearing in mind that his Honour Judge Gosling clearly took account of the future prospects of the appellant. Was he, in the end, wrong in coming to the conclusion that a period as long as six months' imprisonment was necessary? It could be put in another way. Was he right in coming to the conclusion that so short a sentence as six months' imprisonment was appropriate?

In our judgment, the latter question is the more pertinent of the two. The judge was we think merciful in his conclusion. It is, of course, a tragedy for the appellant, that his chosen career is now closed to him. However, it is his own fault and we do not think there is any good reason to interfere with a sentence as short as six months' imprisonment for an offence of this kind, carried out in the circumstances of the occasion. For those reasons, this appeal is dismissed.

BEFORE

THE LORD CHIEF JUSTICE, MR. JUSTICE SKINNER AND MR. JUSTICE LEONARD

BARTHOLD JOHN SUERMONDT

January 14, 1982

Cocaine—Importation of Cocaine in Substantial Quantities—Length of Sentence.

References: class A drugs, *Principles of Sentencing,* p. 188, *Current Sentencing Practice,* B11–2.

Ten years' imprisonment upheld for importing a total of about 10 kilogrammes of cocaine in three consignments.

The appellant pleaded guilty to conspiring to import 4 kilogrammes of cocaine in two separate consignments, and being concerned in the importation of a further consignment of 5.9 kilogrammes of cocaine. He had been concerned

in the purchase of cocaine in Peru, and its importation with a view to sale in the United Kingdom. The total estimated street value of the three consignments was about £1,400,000. Sentenced to 10 years' imprisonment. *Held,* this was a case where the overwhelming consideration was one of deterrence, which outweighed personal considerations. The sentence was perfectly proper.

A. Newman for the appellant.

SKINNER J.: On June 29, 1981 at the Central Criminal Court before Judge Lipfriend this appellant pleaded guilty to two counts relating to the importation of drugs.

The first count was one of conspiracy to import a Class "A" controlled drug, namely 4 kilogrammes of cocaine, and the second one was being knowlingly concerned in the fraudulent evasion of the prohibition on importation of a further consignment of 5.9 kilogrammes of cocaine.

Two co-accused of the appellant pleaded not guilty. There was a trial and on July 15 this appellant appeared before the judge again for sentence. On that occasion the judge adjourned the matter for scientific evidence of the effects of cocaine to be produced. That was available on July 21 when he passed a sentence of 10 years' imprisonment on each count, the sentences to run concurrently, and recommended the appellant for deportation. The appellant now appeals, by leave of the single judge.

There were four co-accused on the indictment. There was a man named White who pleaded guilty to the same charges as the appellant. He was sentenced to seven years' imprisonment on each count, the sentences to run concurrently. There was one woman who was the appellant's fiancée. She pleaded guilty to count two and was sentenced to 18 months' imprisonment suspended for two years and a supervision order. It was conceded by the Crown throughout that she was very much on the periphery of the conspiracy. Two other accused were, according to Mr. Newman rather surprisingly acquitted.

The appellant is a man of 32. He is the son, apparently, of a Dutch naval officer. He was educated in the United Kingdom and Australia and after an education until he was 20 or 21 he qualified in 1970 as a deep sea diver. Over the next six or so years he earned large sums of money as a deep sea diver until about September of 1976 when, in a diving accident, he injured his shoulder. Since then it has been impossible for him to return to diving. He became depressed as a result of that and in that state of depression began using cocaine.

In January of 1979 in Western Australia at a court in Perth he was fined $600 (Australian) for the illegal importation of heroin into Australia. It appears from the transcript that that charge concerned a small quantity of heroin which he imported to assist a girl friend who was an addict, and the scale of the fine indicates that that is probably correct.

By 1979 he had been engaged in various forms of business and in late 1979 he visited Peru for the first time on business, apparently in order to buy carpets. While there he discovered that good quality cocaine was available at a low price, the low price being somewhere between $15,000 and $20,000 per kilo. As a result, he organised the events which led to the current offences. What he did was to buy cocaine in Peru. He then enlisted White, who was experienced in the drug trade, as a carrier. He provided White with a suitcase with a false bottom and false top and other