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BEFORE

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

BARRY JEWSBURY

January 13, 1981

Manslaughter—Manslaughter by Reason of Diminished Responsibility—Husband Killing Wife While Affected by Depression Arising from Her Conduct—Responsibility Substantially but not Entirely Diminished—Appropriate Sentence.

References: diminished responsibility, *Principles of Sentencing*, p. 75.

Three years' imprisonment upheld for a man of previous good character who pleaded guilty to manslaughter of his wife by reason of diminished responsibility, having stabbed her to death while affected by depression caused by her relationships with other men.

The appellant, a man of exemplary character, pleaded guilty to manslaughter of his wife by reason of diminished responsibility. He had stabbed her to death while affected by depression arising out of her relationship with another man. Sentenced to three years' imprisonment. *Held*, the appellant's responsibility was substantially diminished, but some degree of responsibility remained, and the sentence precisely reflected the degree of responsibility that remained.

A. Carlisle for the appellant.

THE LORD CHIEF JUSTICE: On July 7, 1980 at the Crown Court at Mold before Phillips J., this appellant pleaded not guilty to the murder of his wife, but guilty to her manslaughter on the grounds of diminished responsibility. That plea was accepted and he was sentenced to three years' imprisonment, against which term he appeals by leave of the single judge. Mr. Carlisle on behalf of the appellant submits to this Court that a term of 18 months' imprisonment would, in the circumstances, be enough, and in the light of the length of term which he has already served, if that were the case he would be released immediately.

The facts of the case briefly were these. There is no doubt that the appellant, Barry Jewsbury, is a man of exemplary character. There is no doubt that he was devoted to his wife and to his family, three children all of school age. He was a pillar of the Congregational Church. He was averse to violence, there is no doubt about that, in all its forms, and he was inordinately proud of what he considered to be a stable and happy marriage, that is to say stable and happy up to the closing period of his wife's life.

The background to the case he described to the doctor is contained in the medical report of Dr. Lawson which is before the court. I think it is necessary that I should read it in order that the full facts may be apparent. It reads as follows in so far as it is relevant: "Jewsbury married his wife in 1967 and there are three children of the union. He is the type of man who has steadily improved his position over the years and I understand that he was employed as an Industrial Chemist prior to his arrest

with an income of approximately £7,000 a year. During the long conversations I have had with him I have no doubt at all that he was a devoted family man whose main interest was the well-being of his wife and children. I think it is also correct to say that he's the type of individual who paid great attention to the upbringing of his children and who guided them into suitably ethical and moral standards. Very close and hard questioning satisfies me that he has remained faithful to his wife over the whole period of marriage.

Regrettably the same cannot be said of Mrs. Jewsbury. I think it could be shown to the satisfaction of the court that Mrs. Jewsbury had had affairs with at least four men. The last liaison, and the one which contributed to her death, was an affair with a man Arthur Charlesworth whom she met about Easter 1979 as a fellow member of the Operatic Society to which she belonged. Jewsbury himself was unaware of his liaison until approximately the middle of January 1980. When he became aware of his wife's behaviour I think it acceptable to say that it came as a profound shock to him. Then the report goes on to deal with Christmas and New Year.

The report goes on: "However, on January 18, 1980, when he returned home from work his wife told him without a great deal of preamble that she was leaving him to live with Arthur Charlesworth. She left that night leaving behind a very distressed husband and three unhappy children and remained away until January 24, 1980 when she returned to the family home. During these six days Jewsbury undoubtedly became depressed. He was sleeping badly, his appetite had gone, he found it very difficult to carry out simple tasks, his thoughts were limited to his immediate domestic situation, he experienced strong feelings of guilt and unworthiness and gave a good history of the mood swings which one associates with a depressive illness.

He consulted his brother, to whom he seems very attached, and together with his wife and three children he spent the weekend of January 25/27 at his brother's home. The whole matter was discussed but no decision was reached. I can well imagine the situation and perhaps Mrs. Jewsbury enjoyed being the centre of the stage at this time. For his part, during the period which led up to his wife's death, Jewsbury had done everything possible to effect a reconciliation. He had seen Charlesworth, he had consulted his G.P. and he had persuaded his wife to go with him to see the Marriage Guidance Council. However, this depressive illness was intensified due to the fact that he found some empty contraceptive packets in his wife's handbag.

Then the report goes on to say that on January 31 his wife, who was still staying in the family home, went to see a friend of hers. Jewsbury left his house to go on an errand and saw his wife's moped at the friend's home. The report goes on: "He unwittingly overheard a conversation between his wife and Mrs. Tweat which proved to him without any doubt that his wife's apparent willingness to discuss their marriage was quite untrue and to quote his own words, 'It was like listening to an absolute stranger.'"

The doctor goes on to say, "I think these two incidents, namely the finding of the contraceptive packets and overhearing his wife's conversation with Mrs. Tweat, intensified his depression to a degree that his judgment was completely impaired.

When his wife returned to the family home that evening, he received from her an ultimatum to the effect that she was leaving and that she was taking the two girls with her. In spite of his efforts no reconciliation was forthcoming and, as his statement to the police shows, he went into his room, thought of killing himself, but in a confused state of mind he entered his wife's room and stabbed her. His behaviour after the killing is bizarre to a certain extent but again I think this is attributable to his mental state, and I do not think it can be said that he made any attempt to conceal the crime,

or that he was unco-operative with the police. That was a reference to the fact that the knife he had thrown away proved impossible to discover, and he had burnt a quantity of bed clothing and so on which had become blood stained after stabbing his wife with the knife and she had bled to a considerable degree.

Enough has been said to show that this man's responsibility was substantially impaired. But this sort of situation of the stable, reliable husband and the flighty wife is not a rare one. It is true that he was certainly naive and unsuspecting; it is true that he was trusting and very easily hurt. But some responsibility—not an inconsiderable degree of responsibility—must remain upon his shoulders for having killed his wife in this way, having taken a knife and stabbed her as she lay in bed, and the degree of that responsibility was what the learned judge had to assess, which is never an easy task.

We think that he approached it on the correct basis and we think that this was precisely the correct sentence. This was not one of those cases where the responsibility was to all intents and purposes limited, nor was it a responsibility which could properly be met by the sentence that Mr. Carlisle presses upon us we should substitute, namely one of 18 months' imprisonment. The sentence of three years was, in the judgment of this Court, correct and the appeal is dismissed.

BEFORE

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

MALCOLM MELLOR

January 13, 1981

Unlawful Sexual Intercourse—Unlawful Sexual Intercourse with Stepdaughter—Length of Sentence—Totality of Consecutive Sentences.

References: unlawful sexual intercourse, *Principles of Sentencing*, p. 121; totality, *Principles of Sentencing*, p. 56.

Sentences totalling four and a half years reduced to 27 months in the case of a man of 28 who pleaded guilty to two counts of unlawful sexual intercourse with his stepdaughter, and one of assault occasioning actual bodily harm.

The appellant, a man of 28, pleaded guilty to two counts of unlawful sexual intercourse with his 13 year old stepdaughter, and one of assault occasioning actual bodily harm. He was sentenced to consecutive terms of two years imprisonment on the counts for unlawful sexual intercourse, and a further six months consecutive for the assault. *Held*, in cases of quasi-incest such as this, a sentence near the maximum of two years could obviously be justified, but it was always necessary to look at the total sentence, and the total sentence of four and

a half years was much too long a sentence overall to deal with the criminality demonstrated by the charges. Sentence reduced to a total of 27 months' imprisonment.

C. Churuzcz for the appellant.

SKINNER J.: On November 30, 1979 the appellant, who is now 28 appeared before the late Judge Zigmond at the Manchester Crown Court on an indictment containing four counts. They all related to the same girl, his stepdaughter, who was born on June 3, 1966. The first count charged unlawful sexual intercourse with that girl when she was under 13. To that the appellant pleaded not guilty. The second and fourth counts charged unlawful sexual intercourse with her when she was over 13 and to those two counts he pleaded guilty.

The fourth count, it was alleged, took place on June 10, 1979, that is a week after her thirteenth birthday and the second count on October 2, 1979. Count 3, an intermediate count, charged an assault occasioning actual bodily harm on the same girl which took place on October 2, 1979, and to which also the appellant pleaded guilty. The last count had been added immediately before the arraignment of the appellant, when the nature of his plea had been known to the Court.

The judge sentenced him to two years' imprisonment on the counts alleging unlawful sexual intercourse and six months' imprisonment for the assault occasioning actual bodily harm, and ordered all these sentences to run consecutively, making a total sentence of four and a half years.

The appellant now appeals, after an extension of time and leave granted by the single judge, against the sentences.

The relevant facts appear to be these. The appellant is a man who is now 28. He had only been convicted of minor offences of dishonesty while a youth, but has no previous convictions for any sexual offences or any offences of violence. Indeed since the age of 19 his only conviction has been a minor one of theft in 1978, for which he was fined £50. He had a reasonable work record until 1977 when as a result of two industrial accidents, he became disabled and is at present registered as a disabled person.

He was married in May 1976, after living with his wife for about four years before that. His wife had two children by a previous association, a boy and a girl, the girl being the subject of the present charges. The couple have had two children since.

So far as the counts of unlawful sexual intercourse are concerned, apart from the fact that intercourse took place, the accounts given by the girl and the appellant were in total disagreement. The girl spoke in her statement of many acts of intercourse, of which these were two, all resulting from threats of violence by the appellant, which put her in fear. The appellant admitted two acts only. He suggested that the girl had been precocious, that he had succumbed to temptation offered to him and he bitterly regretted doing so.

So far as count 3 is concerned, the assault count, that occurred on October 2, between the two acts of intercourse alleged. On that date the stepdaughter arrived home late for lunch. The appellant went out to look for her, but could not find her. She had apparently gone with a message for somebody else. When she arrived back, the appellant was in a bad temper. He took off his belt and struck her with it. That produced a bruise on her ribs, which was said to be the size of a 10p. piece. It is apparent from these facts that this was not the most serious of assaults, but consisted of going too far in chastisement.

The judge very properly sentenced on the basis of two acts of intercourse only and his remarks when he was considering the pleas showed a perfectly proper attitude towards sentencing. So far as the conflict between the appellant and the girl is concerned, he said he did not care whether or not the appellant had been tempted by the girl, as it was an impertinence to rely on temptation by a girl whom it was his duty to control, however difficult that might be.

This Court considers that the question of precocity has little relevance in a case involving a young girl of only 12 or 13, and none where the defendant is, as in this case, in *loco parentis* to the girl. Counsel submits also that the learned judge failed to take into account, or give sufficient weight, to the previous good character of the appellant, particularly so far as sexual matters and violence are concerned, his remorse and contrition and his plea of guilty which saved the girl from giving evidence, and he submits, that, looked at in totality, the sentences are excessive.

In cases of quasi-incest like this, prison sentences at very near the maximum of two years can obviously be justified. In cases of one isolated offence, it may be a lesser sentence would be more appropriate. But when a court is sentencing for more than one count, it is always necessary to look at the total sentence, and generally, when one is dealing with two similar offences like these, which are dealt with on the basis that they are the only two offences of that kind, the proper course to take is to make the sentences concurrent.

Four and a half years, in the view of this Court, is much too long a sentence overall to deal with the criminality demonstrated by these charges. Therefore so far as the sexual offences are concerned, this Court orders that the two sentences of two years should be served concurrently. So far as the assault is concerned, again this Court considers that the sentence imposed by the learned judge was on the facts too high. That will be reduced to one of three months, and will be served consecutively, as the learned judge ordered, making a total sentence of two years and three months. To that extent this appeal is allowed.

BEFORE

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

STEPHEN PEARSON

January 13, 1981

Removing Body from Grave—Whether Sentence of Imprisonment Appropriate—Length of Sentence.

Twelve months' imprisonment upheld on a man of 22 for removing a body from a grave.

The appellant, a man of 22, pleaded guilty to removing a body from a grave. Together with three other men he had excavated a grave in a cemetery which had not been used for burials for 30 years, and removed part of a body which had

been buried in 1914 or earlier. Sentenced to 12 months' imprisonment. *Held*, the offences were disgraceful and deplorable, and bound to cause revulsion to the public. It had to be marked by a term of imprisonment, and the sentence of 12 months could not be faulted.

M. Cracknell for the appellant.

NEILL J.: On October 9, 1980 the appellant, Stephen Pearson, who is now aged 22, pleaded guilty to a charge of removing a body from a grave contrary to common law. For that offence he was sentenced to a term of twelve months' imprisonment. He now appeals to this Court by leave of the single judge.

In Kingston-upon-Hull there is a cemetery called the Skulcoates cemetery. That cemetery, though still owned by the Ecclesiastical Commissioners, is no longer used and it would appear that there have not been any burials in it for some 30 years. Photographs which have been provided to this Court show that the area of the cemetery is now overgrown. Among the graves in that cemetery is the grave of family called Jarvis and in that grave are buried the mother, father and two children. The last burial in the grave took place in 1914.

On the evening of June 11, 1980 a passer by noticed that that grave had been disturbed and it subsequently became apparent that the upright headstone of the grave had been moved. The police were called and it was then discovered that the grave had been excavated to a depth of some five feet.

The police made inquiries and several weeks later, in July, a young man called French was interviewed. As a result of further inquiries the appellant Pearson was seen by the police at the end of July; he was arrested on July 29, 1980. After some prevarication he made a statement admitting this offence.

It emerged from what he told the police and from the other evidence that what had happened was this. On the evening of June 3, 1980, that is some eight days before the grave was discovered by the passer by, Pearson, French and two other young men had been drinking together. Pearson in his statement described how the matter began: "I don't know how we got onto it but me and Chris"—that is French—"started daring each other to go and get a human skull. We decided to go and dig up a grave." As a result the four of them, Pearson, French and two others, collected spades and went off to this cemetery in Hull and started digging. They came across this particular grave and continued digging in the grave for a period of three hours. They dug up part of one of the bodies and went off with it in a plastic bag. It was, as I have said, some weeks later, that Pearson made a statement admitting his part in the matter.

It has been submitted to this Court by Mr. Cracknell in, if I may say so, a very able and persuasive address, that although a prison term was the right sentence, nevertheless a shorter term than the twelve months which was imposed would be appropriate in the circumstances of this case. He drew attention to the fact that French, who had retained the skull for a period, and who had been convicted of another offence of burglary, was given a sentence of Borstal training. He also drew our attention to the fact that at court Pearson stated through counsel that he was ashamed of himself and ashamed for the disgrace he had brought upon his parents. He drew our attention to the letters which were before the learned judge at the trial and which we have seen, indicating the work record of Pearson and what other people thought of him.

This Court has given careful attention to these matters and to all the other matters which Mr. Cracknell has urged upon us. But the Court takes the view that this was a

disgraceful and deplorable offence which was bound to cause revulsion to the public. It is one that had to be marked by a term of imprisonment and we see no reason to fault the decision of the trial judge that a sentence of 12 months was appropriate.

For these reasons the Court has come to the conclusion that this appeal must be dismissed.

BEFORE

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

JOHN JOSEPH PATRICK DOWLING

January 13, 1981

Burglary—Burglary of Dwelling-houses by Young Professional Burglar—Length of Sentence.

References: burglary, *Principles of Sentencing*, p. 147.

Five years' imprisonment upheld on a man of 22 with a substantial record for burglary, convicted of five counts of burglary of dwelling-houses.

The appellant, aged 22, was convicted of five offences of burglary. All the offences involved burglaries of dwelling-houses in daylight, and the theft of substantial amounts of property. He was sentenced to five years' imprisonment. *Held*, burglaries of dwelling-houses as a general rule call for substantial custodial sentences, and very substantial sentences when committed on the present scale. The appellant was a young professional burglar, and the sentence was necessary for the protection of society.

A. Gee for the appellant.

SKINNER J.: On April 1, 1980 the appellant, who is now 23 years of age (he was 22 at the time) was found guilty at Manchester Crown Court of five counts of burglary of dwelling-houses and was sentenced by Judge Jalland to concurrent sentences of five years' imprisonment on each count. His co-accused, a young man named Walker who was aged 18, had pleaded guilty to nine counts of burglary and one assault, and had asked for a number of other offences to be taken into consideration, and he was sentenced to four years' imprisonment in all.

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

The appellant had a poor home background. He was taken into care when he was eight, and has largely lived in institutions since. Since the age of 16 he has acquired a substantial criminal record. In June 1974, for burglary, he was sentenced to three months detention. In June 1975 he was sent to Borstal for burglary and theft and for attempted burglary and allowing himself to be carried for which he had previously been given a conditional discharge. He absconded from Borstal and in December

1975, for four counts of burglary with five similar cases taken into consideration, he was returned to Borstal. At the age of 19, in September 1977, he was sentenced to his first sentence of imprisonment, that was one of six months for two cases of burglary. At the age of 20, in September 1978, for wounding and attempted burglary, he was sentenced to 18 months' imprisonment. It appears that he was released from that sentence on May 17, 1979. Before that, as a result of his association with a young woman, though he is unmarried, he was already the father of two children. After his release, so far as this Court knows, he did no work and, although he was a young prisoner and therefore subject to supervision, his last contact with his supervising probation officer was in July 1979. After three months of liberty, on August 29, 1979, this series of offences began.

They were all audacious attacks in daylight on dwelling-houses. They all involve valuable property, mostly in the form of jewellery. They were part of an indictment containing 10 counts. The appellant was indicted on seven of those and the jury found him guilty of five. Count 4 was the offence which took place on August 29, 1979 and concerned property to the value of over £2,400, taken while the owners of the house were on holiday. The second offence in count 6 occurred on September 12, and property valued at £2,700 was taken when the owners of the house were out shopping. The third offence was in count 7, which took place on September 13 and property to the value of £460 was taken while the elderly owner was still in the house. The fourth offence was in count 8, where property to the value of £970 was taken on September 13 while the owner of the house was actually in the garden. Count 9 concerned property to the value of £330 taken on September 8 while the owner was out at work. In all over a period of only about three weeks property to the value of nearly £7,000 was taken.

When interviewed by the police after his arrest on September 20, and that followed the arrest of his co-accused, the appellant admitted the offences and, according to the officers, took some pride in the fact that it was he, and not his co-accused, who could spot the valuable pieces of jewellery and knew what to take when they were in the house.

However, before the jury, the appellant pleaded not guilty and the learned judge had the advantage of seeing him and hearing him give evidence. The view which the learned judge formed was expressed in the following way: "I am glad that as far as you are concerned you chose to plead not guilty, because by pleading not guilty you have given me personally the opportunity of considering this case over a period of four court days. I have spent four days listening to the evidence in this case. That has given me the opportunity of realising just how serious these burglaries were and also just how serious your part was in all this. Because, having seen you, having heard the evidence, there can be no other explanation for what happened than that you were undoubtedly the ringleader in all this. You took that eighteen-year-old out on these crimes; you were the expert in jewellery, you were the person who organised the car, you were the person who hired Metcalfe to drive the car for you. You were the clever one—the one who had the excuses.

I formed a very unfavourable view of you. I think you are an arrogant young man, and I think you are extremely dangerous as a criminal in this area as far as householders are concerned. You are a professional burglar on a grand scale and the public needs protecting from young criminals like you." It is clear that the learned judge's view, that he is a professional burglar, was amply justified on the facts of this case.

Burglary of dwelling-houses of course is always a serious matter. As a general rule such burglaries call for substantial custodial sentences. When committed on the

present scale, they call for a very substantial sentence. The only matter for concern, and the only matter which Mr. Gee has sought to raise before this Court, is whether five years is too long, having regard to the appellant's age, the previous sentences to which he had been subjected and, Mr. Gee suggests, in the light of his recent marriage. He apparently made a second lady pregnant during the short period he was at liberty. He is now married to this lady and the child of this marriage was born in May 1980. Mr. Gee has urged upon us that this is a matter which provides him with an incentive to keep out of trouble in the future. Certainly the birth of his two children in the past did not provide him with an incentive. Certainly the association with his present wife did not provide any incentive, because it must have been about the time that the burglaries were being committed that his child was conceived.

We think that the result aimed at by the learned judge, that is the protection of society in the Manchester area from a young professional burglar, could only be achieved by the sentence which the judge passed. Though the appellant has had a little time at liberty since he was 16, this Court feels that at the present time he is a real danger to society. Before his next release he should realise that if he does again resort to burglary on a grand scale as he did on this occasion, the sentence will be even longer than the present.

In the judgment of this Court the sentence imposed by the learned judge was a proper one in the circumstances and this appeal is dismissed.

BEFORE

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

ALAN KWELLER

January 13, 1981

Obscene Articles—Evading Prohibition on Importation of Obscene Articles—Appellant Posting on Obscene Articles Received from Abroad—Whether Immediate Sentence of Imprisonment Justified—Length of Sentence.

References: obscene publications, *Principles of Sentencing*, p. 181.

The appellant pleaded guilty to three counts of dealing with obscene goods with intent to evade the prohibition on the importation of obscene goods, and one of harbouring obscene goods. He had acted as an agent for persons in Copenhagen, receiving and despatching pornographic material on their behalf, for several months. Sentenced to three consecutive terms of six months' imprisonment, and three months concurrent. *Held*, as the case involved substantial quantities of hard pornography, it could only be dealt with by an immediate sentence of imprisonment, but the sentences for the offences of dealing should