1986/23

23rd September, 1986.

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COURT OF APPEAL

Her Majesty's Attorney General -v- B

Appeal against Sentence

Judgment of the Court

President: J D A Fennell Esq., O B E, Q C.

PRESIDENT: On the 3rd July this year, this applicant appeared before the Superior Number of the Royal Court and was sentenced to a period of four years' imprisonment for an offence of grave and criminal assault committed upon a young woman called A, late at night on the 27th April, 1986, in Ralegh Avenue, St Helier. He now seeks leave to appeal against that sentence.

The facts are within a short compass. The appellant was the victim's boyfriend but she broke off that relationship in December, 1985. The applicant seemed unable to accept that fact. He ~~made overtures to her at Christmas, 1985, but they were rejected~~ and two days later, he went to her house where he again repeated his overtures to her. We are told that there was an altercation in the bedroom and it is accepted, on behalf of B, that he assaulted his former girlfriend on that occasion but no criminal complaint was made of it. However, the police had to be summoned, he was ejected and convicted shortly afterwards for obstructing the police and violently resisting officers in the execution of their duty, following his ejection.

The applicant seemed again unable to accept that his girlfriend wanted nothing further to do with him and two weeks later, he again scaled a drainpipe, at 2 o'clock in the morning, and knocked on her window. A seems to have dealt with the matter very skilfully for, having talked to the applicant for an hour at the front door, she told him that she was not interested in renewing their friendship and the applicant left without incident.

The offence itself which gave rise to this prosecution was committed on Sunday, 27th April, 1986. What happened was this. After a happy day out with her new boyfriend, A made her way home with him at about 11 o'clock at night. As she reached the steps leading up to her front door, she felt a heavy blow and fell to the ground. What had happened was that the applicant, who

had been waiting in a car parked nearby, to renew his appeals and overtures to his former girlfriend, lost control of himself, as we are told, when he saw A in the company of her new boyfriend, seized a hammer which happened to be in the car, ran 75 yards towards A and struck her with a vicious blow to the head. There was later a struggle between the applicant and W, A's boyfriend, and the applicant was overcome and W managed to seize possession of the hammer.

A little time later, the applicant gave himself up at the Police Station and, when he was interviewed at 11.17, he admitted that, on that evening, having brooded over his rejection, his feelings got the better of him, he took a hammer from his car and attacked A, having seen her with her new boyfriend. As a result of this attack, A was admitted to hospital with a fractured skull. Happily, medical opinion is that her injuries have not caused any significant intercranial damage but there is, nonetheless, a risk of seizures.

There have been four points taken on behalf of the applicant in front of us here today. First of all, it is said that there was no premeditation and B's intention was merely to speak to his former girlfriend. Secondly, that there was provocation. Thirdly, that the facts were inaccurately opened by the learned Attorney General and, fourthly, that each of the sentences in comparable cases, on the Island and on the mainland, indicate that the sentence was manifestly excessive.

The applicant is a man of thirty-three years of age; unfortunately, he has a number of previous convictions involving violence. He was convicted in 1969 of assault occasioning actual bodily harm; in 1978, he was convicted of maliciously wounding a young woman called C and there is the further matter of the incident after Christmas of last year when he was involved in the altercation with the police following his ejection from the house of A.

We have considered very carefully the points raised by the applicant's advocate. We accept that there was no premeditation in the sense that we believe that the hammer in the car was coincidentally there. Nonetheless, in the course of the interview with the police, the applicant said, "I had been thinking about hurting her all day," and it was only to be expected that, if he saw the girl in the company of anybody else, he would, once again,

be unable to control his feelings and that trouble lay ahead. In those circumstances, it was possibly only to be expected that he would seize what lay close at hand and take it with him.

So far as the suggestion that there was provocation here, I think it was more happily put by Mr Collins, in the course of argument, that the sight of the applicant's former girlfriend, in the company of a new boyfriend, was the trigger point of the incident. There was clearly no blame attached and could be no blame attached to what this unfortunate young girl did.

Thirdly, it is said that the facts that were opened to the Royal Court were inaccurate. That may be true in relation to the earlier incident at Christmas but, in my recitation of the facts, I have accepted the account that was given by the applicant.

We have similarly looked at the cases and we are bound to say that there appear to be material distinctions between the authorities that were quoted to us and this case; the reality of this case is that it was a vicious and a cowardly attack carried out late at night by a jilted boyfriend with a deadly weapon. It must have been clear to him and clear to him over a substantial period of time that his overtures to this young woman were not going to be well received and, in the upshot, as a result of his reluctance, indeed, his refusal, to accept that, she suffered, in this vicious attack upon her, a fractured skull. The only happy feature is that it looks as though there may be no permanent damage although the neurologist who was consulted said that there is a slight risk of seizures, by which we understand it that there may be a ten per cent chance or thereabouts of epilepsy. That is a very formidable burden and difficulty for that woman to have to bear and indicates how severe the attack was.

In our judgment, there is no merit in this appeal and, accordingly, we refuse this application for leave to appeal but, having treated it as the appeal, we dismiss both the application and the appeal.