Neutral Citation Number: [2013] EWCA Crim 323

Case No: (1)2012/02519;(2)2012/05883;(3)2012/03179

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM (1) BRADFORD CROWN COURT
(2) CHELMSFORD CROWN COURT
(3) PETERBOROUGH CROWN COURT SITTING AT HUNTINGDON
(1)His Honour Judge Durham Hall QC
(2) Mr Recorder Dodd QC
(3) Mr Recorder Clark
(1) T2011/7601; (2) T2012/7110; (3) T2011/7211

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2013

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE SIMON
and
MR JUSTICE IRWIN

- -

Between :

(1) Robert Perkins	**Appellant**
(2) Billy Bennett	
(3) Ronnie Hall	
- and -	
R	**Respondent**

- -
- -

(1) **Stephen Wood** for the **Applicant Perkins**
(2) **P Panayi** for the **Applicant Bennett**
(3) **Roy James (Solicitor Advocate)** for the **Applicant Hall**
Tom Little for the **Crown**

Hearing date: 12th February 2013

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Approved Judgment

LORD JUDGE LORD CHIEF JUSTICE OF ENGLAND AND WALES:

1. These cases, which were heard together, raised a number of different questions about victim personal statements and, in cases of homicide, family impact statements, both now well-established parts of criminal process. They are:

   a) An appeal against sentence by Robert Perkins who, following his guilty plea and variation of sentence made under s.155 of the Power of Criminal Courts (Sentencing) Act 2000, was made subject to a total sentence of 12 years imprisonment by His Honour Judge Durham Hall QC in the Crown Court at Bradford.

   b) An appeal against sentence by Billy Bennett who, following his guilty plea, was sentenced to a total of 9 years imprisonment by Mr Recorder Dodd QC at Chelmsford Crown Court on 17 September 2012.

   c) An appeal against conviction for aggravated burglary by Ronnie Hall at the Crown Court at Peterborough sitting at Huntingdon before Mr Recorder Clarke and a jury on 16 March 2012. On 27 April he was sentenced to 11 years imprisonment.

Victim Personal Statements/Family Impact Statements

2. Victim Personal Statements that is, statements by the victims of a crime or crimes, or in cases involving death, Family Impact Statements, by surviving members of the family of the deceased, were formally introduced into the criminal justice system of England and Wales in 2001. In this judgment they will be referred to as the statement or statements. They were included in the Practice Direction (Criminal Proceedings: Consolidation) [2002] 1 WLR 2872 and they are now found in Part III 28 of the Current Consolidated Criminal Practice Direction [2009] 1 WLR 1396. Their purpose is to allow victims a more structured opportunity to explain how they have been affected by the crime or crimes of which they were victims. They provide a practical way of ensuring that the sentencing court will, consider, in accordance with s.143 of the Criminal Justice Act 2003, "any harm which the offence caused", reflecting on the evidence of the victim about the specific and personal impact of the offence or offences, or in the cases of homicide, on the family of the deceased. The statements may, albeit incidentally to the purposes of the sentencing court, identify a need for additional or specific support or protection for the victims of crime, to be considered at the end of the sentencing process. At the same time, the process does not create or constitute an opportunity for the victim of crime to suggest or discuss the type or level of sentence to be imposed. The distinction is important, and is sometimes misunderstood. It is, however, well exemplified in *Nunn* [1996] 2 Cr. App. R(S) 136.

3. This was a sensitive case in which the defendant had caused the death of a close friend after driving dangerously, having consumed alcohol. After sentence in the

Crown Court, this court was supplied with statements from the mother and one of the sisters of the deceased who were seeking, indeed urging, clemency on the court, not merely because the sentence passed on Nunn was having a detrimental effect on him, but because it was adversely affecting their ability to come to terms with the loss and grief which they had suffered. As the mother made clear in her statement, her husband, the father of the deceased and his other sister, did not agree with them. In short, victims of precisely the same crime, with the same dreadful consequent emotional damage, took diametrically opposed views about the sentence.

4. The court observed:

> "… if the victim feels utterly merciful towards the criminal, and some do, the crime has still been committed and must be punished as it deserves. If the victim is obsessed with vengeance, which can in reality only be assuaged by a very long sentence, as also happens, the punishment cannot be made longer by the court than would otherwise be appropriate. Otherwise cases with identical features would be dealt with in widely differing ways, leading to improper and unfair disparity, … If carried to its logical conclusion, the process would end up by imposing unfair pressures on the victims of crime or the survivors of crime resulting in death, to play a part in the sentencing process which many of them would find painful and distasteful. It is very far removed from the court being kept properly informed of the anguish and suffering inflicted on the victims by the crime".

5. These principles are encapsulated in the current Practice Direction. This reads:

> "III.28 When a police officer takes a statement from a victim, the victim will be told about the scheme and given the chance to make a Victim Personal Statement. The decision about whether or not to make a Victim Personal Statement is entirely a matter for the victim. A Victim Personal Statement may be made or updated at any time prior to the disposal of the case. It will not normally be appropriate for a Victim Personal Statement to be made after the disposal of the case; there may be rare occasions between sentence and appeal when an update to the Victim Personal Statement may be necessary, for example, when the victim was injured and the final prognosis was not available at the date of sentence. If the court is presented with a Victim Personal Statement, the following approach should be adopted:
>
> (a) The Victim Personal Statement and any evidence in support should be considered and taken into account by the court prior to passing sentence.

> (b) Evidence of the effects of an offence on the victim contained in the Victim Personal Statement or other statement, must be in proper form, that is a witness statement made under s.9 of the Criminal Justice Act 1967 or an expert's report; and served upon the defendant's solicitor or the defendant if he is not represented, prior to sentence. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencer must not make assumptions unsupported by evidence about the effects of an offence on the victim.
>
> (c) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
>
> (d) The court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim. …"

6. We shall return to a number of features of the Practice Direction, after we have noted three further current sources of information. In 2006 a pilot scheme known as the Victims' Advocate Pilot Scheme allowed the families of victims in homicide cases to make a Family Impact Statement in open court. The statement was directed to the effect of the crime on them. The pilot scheme was run at the Central Criminal Court and four other major courts. On 3 May 2006 an appropriate protocol was issued. Dealing with it broadly, the principles which are now contained in the current Practice Direction were applied. In particular, whether presented orally or in writing, the statement was formal evidence, and if the family member chose to give evidence orally, the process would be the same as if he or she were giving evidence in chief, and liable to be cross-examined on the defendant's behalf, and the defendant was to be notified in good time of the contents of any such evidence, so as to enable appropriate forensic decisions to be made.

7. The relevant Guide for Police Officers, Investigators and Criminal Practitioners is entirely consistent with the Practice Direction. It records:

> "The VPS is the victim's chance to:
>
> - Explain in their own words how the crime has affected them, either physically, emotionally, financially or in any other way

> - Express legitimate concerns, such as feeling vulnerable, fearful, intimidated or worried about the alleged offender being granted bail
> - Say if they intend to seek compensation …
> - Request referral to Victim Support or to other agencies who might help them.
>
> The VPS must not include the victim's offender about how the offender should be punished. That is for the magistrate or judge to decide."

The Guide continues by indicating that the victim can make a statement at the same time as they make their main witness statement, at a later date, or both, and importantly adds:

> "Remember, some victims may not want to make a VPS about how the crime has affected them. This is perfectly acceptable and you should not draw any conclusions if they don't."

8. The recent Report for the Commissioner for Victims and Witnesses in England and Wales (Robert & Manikis, Oxford, 2011) concluded that victims were generally favourable to the scheme. Although only a minority of victims submit a statement, of those who do, most appeared to benefit from the experience. Victims of serious crimes of violence were more likely to submit statements, and those who did appeared more satisfied with the sentencing process than those who did not.

9. Without suggesting any amendments or additions to the current Practice Direction, a number of its aspects need emphasis.

   a) The decision whether to make a statement must be made by the victims personally. They must be provided with information which makes it clear that they are entitled to make a statement, but, as the Guide to Police Officers and Investigators underlines, no pressure, either way, should be brought to bear on their decision. They are entitled to make statements, and they are equally entitled not to do so. They should be informed of their right, and allowed to exercise it as they wish: in particular the perception should not be allowed to emerge that if they chose not to do so the court may misunderstand or minimise the harm caused by the crime.

   b) When the decision whether or not to make a statement is being made, it should be clearly understood that the victim's opinion about the type and level of sentence should not be included. Again that is entirely consistent with the Guide to Police Officers and Investigators. If necessary, victims must be assisted to appreciate that the court is

required to pass the appropriate sentence, in accordance with decisions of this court, and definitive guidelines issued by the Sentencing Guidelines Council or the Sentencing Council, and make a judgment based on all the facts of the case, including both the aggravating and the mitigating features.

c) The statement constitutes evidence. That is the basis on which it is admitted. It must therefore be treated as evidence. It must be in a formal witness statement, served on the defendant's legal advisors in time for the defendant's instructions to be taken, and for any objection to the use of the statement, or part of it, if necessary, to be prepared. In *Perkins*, the statement was handed over far too late in the process, and indeed we are concerned that some of the submissions from counsel in these cases suggest that a somewhat haphazard and slovenly approach to the time when the statement is served may have developed, at any rate in some parts of the country.

d) Just because the statement is intended to inform the sentencing court of specific features of the consequences of the offence on the victim, responsibility for presenting admissible evidence remains with the prosecution.

e) It follows that the statement may be challenged, in cross-examination, and it may give rise to disclosure obligations, and indeed as the case of *Hall* underlines, may be used, after conviction, to deploy an argument that the credibility of the victim is open to question.

10. Properly formulated statements provide real assistance for the sentencer. An example of how seriously they are taken by the court is that they are one of the few documents which are always specially flagged in the papers prepared for the judges of this court, considering an appeal against sentence or an application by the Attorney General to refer an unduly lenient sentence to the court.

11. Experience has shown that in the overwhelming majority of cases, after a statement has been prepared, it is put before the sentencing court in the usual way, and then summarised, or sometimes in whole or in part read aloud in open court by the prosecuting advocate. The judge will always have read the statement himself, and may sometimes choose not only to indicate that it has been taken into account, but to quote any relevant passages in court. Of course, in the selection of any passages for quotation or indeed summary, the advocate and indeed the judge must be very sensitive to the position of the victim, and on occasions the need to respect the victim's privacy. The application of these principles means that it will be very rare for the victim to read out his or her statement, but the process is sufficiently flexible for the judge to permit it in an appropriate case.

12. It will seldom be appropriate for a statement to be introduced at a sentencing appeal if it was not before the sentencing court. Obviously there will be occasion when an update to the statement is appropriate. If so the formalities must continue to be observed. In this court the purpose of the statement is unchanged. It keeps the court informed about the continuing impact and further developments relevant to the impact of the offence. It cannot be used for the purposes of arguing that the sentence was excessive or lenient. (See, for example, *Perks* [2001] Cr. App. R(S) 19 and *AG's Reference No. 59 of 2006* [2006] EWCA Crim. 2096.) Just because of the need for flexibility, there will be occasions when, as in the Crown Court, the court will permit the victim of the crime to give evidence in the form of reading a properly prepared and timeously served further statement. This step was permitted exceptionally in the appeal against sentence by *Bennett* because we were satisfied from our pre-reading of the statement that this was essential to our understanding of the impact of the crime on the victim.

13. In the context of appeals, just as the sentencing decision cannot be influenced by the views of the victim about the level and range of sentence, perhaps we should note that the views of the victim cannot provide a basis for this court to conclude that the appeal is or is not well founded. If, applying ordinary principles, the sentence appears to this court to be excessive or wrong in principle, it must be reduced, irrespective of the views of the victim.

14. The guidance given by this court to the victims of crime and their families in the context of appeals states that it "would be extremely rare for someone who has been the victim of an offence (or their family) to be asked to speak or give evidence to the court". That is an inevitable consequence of the jurisdiction exercised in this court, which in the context of appeals against sentence, does not constitute a re-hearing. There may, indeed, be practical difficulties, not least that the prosecution is often not represented on an appeal against sentence, and an appellant may waive his rights to attend. Nevertheless there will, as the guidance implies, be a small handful of cases where the court decides that it should allow a victim to read or give evidence along the lines of a properly drafted and served witness statement, as in *Bennett,* following a very serious crime.

15. With these considerations in mind we shall address these appeals.

Robert Perkins

16. This application for leave to appeal against sentence has been referred to the full court by the Registrar of Criminal Appeals. For technical reasons we grant leave. Robert Perkins is 66 years old, and the offences to which he pleaded guilty on 17 February 2012 in the Crown Court at Bradford were historic sexual offences committed against three young girls, twins with a younger sister, between 1986 and 1991. The unsatisfactory course of these proceedings of itself requires leave to be granted.

17. On 27 March 2012 before His Honour Judge Durham Hall QC, the appellant was sentenced, according to the transcript of the sentencing remarks, to a total of 17 years imprisonment. The sentences were not accurately recorded by the Crown Court, where the total sentence was noted at 16 years imprisonment. Counts 1-8 involved the first of the twins KD, counts 10-17 involved the second twin SD, and counts 18-25 involved the third sister, RD. In relation to counts 1-3 and 5-8 the total sentence was 5 years imprisonment. In relation to counts 10-11, 15 and 17, the total sentence was 7 years imprisonment, to run consecutively to the sentences imposed in relation to the offences against KD. In relation to counts 18-25 the total sentence was 5 years imprisonment, again to run consecutively to the sentences for the offences of which KD and SD were the victims. Counts 4-5, indecent assault on KD, and counts 9 and 12-14 indecent assaults on SD, and count 16, rape of SD, were ordered to remain on the file on the usual terms.

18. A sexual offences prevention order was made, for life, pursuant to s.104 of the 2003 Sexual Offences Act. The order prohibited the appellant from approaching, seeking to approach or communicating by whatever means, directly or indirectly any of the three victims. It is agreed by counsel for the Crown and the appellant that this order was neither appropriate nor necessary. We agree. Accordingly it will be quashed. Notification orders and orders under the Safeguarding of Vulnerable Groups Act 2006 were also made.

19. On 27 April 2012 Judge Durham Hall reopened the sentence in accordance with s.155 of the Power of Criminal Courts (Sentencing) Act 2000. He varied the sentence in respect of the offences against KD and ordered that the sentences on counts 1-8 should run concurrently rather than consecutively. On the basis that the original total sentence for the offences involving this child was 4 years imprisonment, rather than the 5 years shown on the sentencing transcript, the overall total was 16 years imprisonment, this produced a total sentence of 12 years imprisonment. It is this total sentence which is now the subject of the appeal.

20. The facts of this case are sadly familiar. These were historic sexual offences against three female siblings, which dated back to 1986 to 1991. The girls were aged between 9 and 13 when they were seriously abused by the appellant. He was a family friend of the children's parents, and he babysat for them when the parents were out. He groomed them by giving them sweets and money, and allowing them to plait his long hair, and he would tickle them and touch them, apparently innocently, before he began to touch them indecently. The charges involving KD alleged touching of her breasts and digital penetration of her vagina. With SD there was digital penetration of the vagina, and a specific count of rape, when she was 12 years old, involving the insertion of the tip of his penis into her vagina, causing her pain and to bleed afterwards. With RD the offences involved touching her vagina with his fingers and rubbing his penis against her vagina, and one occasion when he inserted his penis into her mouth. This incident caused RD to be physically sick. It is an aggravating feature of these offences that the abuse on one child was often perpetrated in the presence of the others. The children were silenced by threats to kill them if they told their parents.

21. In fact we know that one of the children wrote letters at the time. Just a few words from one of them is sufficient to convey some idea of what the child, as she still was, was suffering. "I don't know what to do. I just want it to STOP or for someone to make it stop. If anyone reads this can you please do something about this". The children were all too young to do anything themselves, and, because of the threats, they were all too frightened to tell anyone else.

22. There is no doubting the seriousness of these offences. As a result of his threats, no complaint was made by any of the girls to their parents. They came to light some 20 years or so later, in 2009, when KD happened to see the appellant and reported what had happened to the police.

23. The appellant was arrested. He made admissions of the offences involving KD and RD, and went on to admit the offences committed against SD. Thereafter she was interviewed by the police and gave her own account of what had happened to her. The appellant expressed remorse for his offending, telling the writer of the Pre-sentence Report, "it was wrong what I did, it was an evil act I did". He pleaded guilty.

24. The appellant was not a man of good character, but his last prison sentence was imposed as long ago as 1978. Now 66 years old, he is in poor health. He suffers Type II diabetes and hyper-tension. In 2008 he suffered a heart attack. His mobility is affected by arthritis. In the Pre-sentence Report he was said to represent a "low" risk of re-offending, and the Crown accepted that he had not offended for many years.

25. Passing sentence on 27 March 2012, the judge reflected that the offences represented a campaign of "degrading abuse" of children who were groomed by the appellant, and assaulted for his own self gratification. He was a trusted member of the family, treated as an uncle. The judge was aware and attached importance to the appellant's frankness when interviewed, and credit was to be given to him for revealing the full extent of his offending as well as sparing the victims the ordeal of giving evidence. The judge also recognised what he described as a "degree of infirmity".

26. The judge carefully reflected on the victim impact statements of RD and KD. Significantly, in the context of the issues which arise in these appeals, SD did not wish to provide a victim impact statement because she found the whole process far too emotional and disturbing. The two statements which are available explain why. In essence, both victims describe the dreadful impact of the years of abuse on their entire life. It is unnecessary to set out the details, but one example of the kind of impact which might otherwise be overlooked is the description by one of the victims that, because of what happened to them all, the three sisters drifted apart, each of them trying to deal with what had happened in her own way. The other feature of the statements is how, even after the offences came to light, they have been kept hidden from other members of the family. The judge was entitled to describe the damage done to the children as festering over the years, causing life long damage to them.

27. After concluding his remarks the judge expressed himself concerned that the sentencing regime which applied to sentences imposed for offences committed under what he described as 'the old regime' were different to those which would obtain to crimes committed more recently.

28. At the variation hearing on 27 April the judge explained that he was concerned that he had imposed a sentence that might leave the impression that he had not given the appellant full or sufficient credit for his plea. He had made an insufficient allowance for the totality principle. He was not however reducing the sentence to reflect the differences in the regime's governing release from imprisonment. The total sentence should be 12 years imprisonment.

29. The submission is that this sentence was manifestly excessive. It failed to allow sufficiently for the appellant's immediate admissions and voluntary disclosure to the police of some of his offences, and his subsequent early pleas. Insufficient recognition was paid to the medical condition of the appellant, the age of the offences and the absence of evidence of any sexual offending in the interim. Setting these matters of mitigation against the offences committed by the appellant, even with the significant features of aggravation, a starting point of 18 years imprisonment before the guilty plea and remorseful co-operation with the police was excessive, and this resulted in an excessive sentence.

30. Before addressing the appropriate level of sentence, there are two separate features of the process which we must consider.

31. The first troublesome area of process is that the variation hearing took place on a day when the judge ordered the case to be heard, without formal listing, when, coincidently, both counsel in the case happened to be appearing before him in a different case. Neither of them had their original papers. The judge obtained the court file and proceeded with his decision, notwithstanding submissions that the proposed variation should not take place in the absence of the defendant, whether in court or by video link, unless he had waived his right to be present. The judge did not invite submissions from either counsel, observing that to require the defendant to travel to court would be detrimental to his health and he proceeded to order the variation.

32. S.155 of the 2000 Act provides a valuable safety net in the sentencing process, enabling the judge to reflect on the sentencing decision and if so minded, within a statutory period, to amend it. It is however no more and no less than a further hearing in the original case. As such it should be listed so that all the interested parties, not only the defendant, but the victims, and the public and the media may be present if they wish. This variation hearing undoubtedly took place in open court, but if no one with a direct interest in the case had any idea that it was to be listed, for those most closely concerned the hearing was effectively a private hearing. That should not happen.

33. The second is a complaint that the victim personal statement was not received by counsel for the defendant until the morning when he was due to be sentenced. Indeed this part of the process did not take place until after the case had been called on. Mr Wood on behalf of the applicant is critical of what happened in the present case, and suggests that it provides a good example of an inappropriate practice that has now developed and become wide-spread. Unless there was some breakdown in communication, late service of the statements is wholly inappropriate and, as we explained earlier in the judgment, wrong in principle. It must stop.

34. We have reflected on Mr Wood's careful submissions about sentence. This is a lamentable case. Three children abused, suffering life long consequences as a result, and seriously abused, with one child raped vaginally, and another raped orally, by a man who was in a position of trust, and whose threats enabled him to escape detection and condemned them to pitiful silence. Looked at as a total, this sentence was not manifestly excessive.

35. Accordingly, save in relation to the Sexual Offences Prevention Order, the appeal will be dismissed.

Billy Bennett

36. Billy Bennett, now aged 22, is a young man of positive good character, on 1 August 2012 in the Crown Court at Chelmsford pleaded guilty to three counts of rape, one count of kidnapping and one count of assault by penetration. The offences took place on the same date and involved the same victim. On 17 September 2012 before Mr Recorder Dodd QC for the rape offences he was sentenced to 9 years imprisonment on the rape count, for kidnapping to 4 years imprisonment, and for assault by penetration, to 6 years imprisonment, all the sentences to run concurrently. The total sentence was 9 years imprisonment, together with an order for forfeiture of a Ford Focus motor car and an appropriate order requiring indefinite compliance with the notification provisions.

37. These offences occurred on 19 May 2012, and the victim was a young woman, 26 years old, who had enjoyed a sober night out with friends in Chelmsford town centre. She started to walk the short distance home. As she did so a car came by which, she noticed, did a U-turn and then drove back down the road, apparently driving away. In fact it turned into a side road.

38. She carried on walking, and close to where she had seen the car apparently drive away, she saw the appellant walking directly towards her. He had his arm up and was holding something in his hand and, threatening to stab her if she failed to comply. He ordered her to "suck his dick". She begged him not to hurt her and he told her that if she did as he said she would not be hurt. He then repeated what he said. He undid his trousers and forced her head down onto his penis and said "suck my cock". While he did this he was holding an object in his hand, and she was terrified. He made her

crouch down and forced his penis into her mouth. After a short while he told her to get up, and ordered her into his car which was parked close by.

39. She was extremely frightened and she asked him to let her go. He ordered her, “Do as I say, I am not going to hurt you”. She repeatedly begged him not to hurt her. His response was that if she didn’t do as he said, and get into his car, he would stab her. So she entered her vehicle, which he then drove away.

40. At that stage she believed that her life was in danger, and as the car drove away she kept apologising to the appellant saying, “I’m sorry, I’m sorry, I’m sorry”.

41. The appellant knew exactly where he was going. He took a short direct route to the entrance of a disused hospital where he would not be interrupted. Once there, while still in the vehicle, the appellant undid his trousers and pushed her head down onto his penis. He removed his penis from her mouth and after that began forcibly to kiss her, forcing his tongue into her mouth, and then pulling or trying to pull her leggings down. Her overriding and overwhelming sense at the time was that she was going to die. He then pushed her head back onto his penis, this time for a number of minutes, and then managed to pull down her leggings.

42. She was sat in the passenger seat. He leaned over and forcibly pushed his fingers into her vagina. It hurt a great deal. After this digital penetration, the appellant climbed over from the driver’s seat, ordered her to take her leggings off and then tried to insert his penis into her vagina. To begin with he was unable to do so. As she describes it, this appeared to make him “more wound up”. He ordered her to get herself wet, put his penis back into her mouth briefly, but long enough and with such force that she felt that she was choking. He put his fingers back into her vagina and ordered her not to try and get out of the car. Then he walked around to the passenger door while she was still inside the vehicle, he picked up a bottle of water from within the car, and poured water over the victim and himself apparently to provide some lubrication. He then raped her, telling her that she must not worry, she would not catch anything from him. After a while he ejaculated inside her.

43. Once this incident was over, he asked her for some identification. She showed him some cards. Eventually she asked if she could go, and he said that she could. She sorted out her clothing, put her shoes on and ran away the short distance to her home. The appellant drove his vehicle away. Notwithstanding the dreadful experience, the victim took in details about the vehicle, including its make, its model and its registration number.

44. When she reached home, she telephoned the police. Quite apart from her description of the incident, she was able to provide the police with ample material to enable them to trace the defendant to his mother’s home address by the afternoon of 20 May.

45. The appellant was not at home on that occasion, but the police made it clear that they intended to speak to him. At 6.25 that evening he went to Brentwood Police Station, where he was arrested and interviewed. The interview involved a mixture of comment and no comment, but he was clearly apologising to the victim, saying it wasn't right, and that he had handed himself in because he had a guilty conscience and that what he had done was wrong. He explained that he did not really know what he had been doing because he had taken drugs in the form of cocaine. The apology was repeated, and in due course he pleaded guilty.

46. The victim was to tell the police that the appellant had been forceful, menacing and controlled, behaving as if he had "formulated a plan". In the immediate aftermath of the offence, she was extremely concerned about the possibility that he had transmitted a sexual disease to her. On the day of the sentencing decision, that is approaching five months after the rape, appropriate tests demonstrated that there had been no such transmission.

47. The victim impact statement read by the judge led him to observe that she had been "very badly affected" by what had happened to her and that the events would remain with her for a very long time.

48. The judge concluded that an indeterminate sentence would not be appropriate. Counsel for the prosecution suggested that the rape offence fell within the second category identified in the Definitive Sentencing Guidelines Council, with an indicative range of six to eleven years where a person of good character was convicted after a trial. It is, however clear, that counsel was limiting this categorisation to the count of rape alone, for he added that "consideration, of course, has to be had, as regards to assault by penetration" and the count of "kidnap".

49. The judge addressed the incident as a whole, which he rightly described as a "horrifying experience", noting that because the victim had been able to give the police a clear account of what had happened and the details of the appellant's car, the appellant had surrendered to the police, admitting what he had done and apologising for his behaviour. His only explanation was that he had taken cocaine, which the judge suggested did not excuse or mitigate his behaviour. This was a sustained attack, which lasted over half an hour, involved the element of kidnap or detention, repeated threats to use a weapon, which the victim believed was a knife, and ended when he ejaculated inside her without attempting to use any form of contraceptive. The judge also believed that the decision to drive to the deserted hospital site to continue the sexual assaults suggested a "modest degree" of planning.

50. After considering the victim impact statement, which set out in unequivocal language the impact of the offence on the victim, he passed the sentence which is the subject of the present appeal. As we have already indicated, we considered an application, supported by Mr Little on behalf of the prosecution, and without objection from Mr Panayi, that we should allow the victim to give evidence in accordance with the

properly prepared statement. We did so, and we heard her evidence. The grave nature of this crime and its continuing severe impact on this particular young woman is clear.

51. In a well structured submission Mr Panayi submitted that the sentence was manifestly excessive. The appropriate category within the current guideline was the middle category, with a range of 6-11 years custody after a trial, and that although there were a number of serious features of this crime, care should be taken not to double count, in particular the element of abduction or detention which was already included within the aggravated features of the offence. He suggested that the only additional aggravating features, legitimately to be considered in the sentencing decision, were the fact that the attack lasted some half an hour, and was therefore sustained, that the use of a weapon was threatened, and that the appellant ejaculated within the victim without using a condom. These were not sufficient to take the offences into the higher category. They were rightly placed in the middle category, even if higher up that range. As against these features, he underlined the appellant's youth and positive good character, and his obvious remorse and positive assistance to the investigation, which ultimately culminated in his guilty plea at the earliest possible moment.

52. Our decision in this appeal has not been altogether straightforward. In some ways the discussion focussing on the question of the category of the offence within the appropriate guideline has been, as it sometimes is, something of a distraction. Whether one treats the offence as a middle category offence with serious aggravating features, or treats the serious aggravating features, taken with the broad facts of the offence, as justifying categorisation at the more serious level, is in some ways academic. This offence occurred when this young woman was close to her home (a feature which has had a particular impact on her) and she was orally raped in the street, then driven away and orally raped again, and then vaginally penetrated, with force, by fingers and then penis in the car until the appellant ejaculated. This was indeed a "quite horrifying" experience, and the impact on the victim is severe and she will be emotionally scarred for the rest of her life. Allowing for the genuine mitigation, our conclusion is that the sentence was at the high end of the appropriate range, but not excessive so that this court should interfere with it.

53. Accordingly the appeal will be dismissed.

Ronnie Hall

54. Keith Lauder lived at 157 Hinchcliffe, Orton, Peterborough. Megan Hall, the appellant's daughter, lived next door. At about 8.30pm on 10 July 2011 Mr Lauder was disturbed by his dog barking. He went to investigate and was confronted by a man who had entered through the rear kitchen door. The man pointed a rifle at Mr Lauder's face and said "take your top off, you know why, you know what I'm on about". Mr Lauder backed away into his front room, but he was pursued by the man, who struck him in the jaw two or three times with the butt of the rifle, causing serious facial injuries. He then managed to escape to the back of his house, making his way

to a nearby shopping centre and alerting the police. In the meantime the intruder caused considerable damage inside the house.

55. Mr Lauder made a witness statement on 20 July 2011. In the course of the witness statement he described the individual who had attacked him:

> "… (I) … was immediately confronted by a male who I did not recognised. He was about 5'7" tall and of stocky build with black hair, he was aged in his mid 40's. I noticed the male was carrying a single barrelled rifle … I was taken aback by this and very shocked … the man then shouted at me in a deep Scottish accent, saying … I was confused by this. I was asking what this was about, he just said, "you know what it's about". I'm not 100% sure what happened next but I recall getting away from the male …"

56. A sample of the appellant's blood was found at Mr Lauder's home, where significant damage had been caused. The appellant was arrested on 27 October 2011. At the request of the defence, an identification procedure took place on 25 January 2012, and Mr Lauder did not identify the appellant as his attacker.

57. Before the trial, the appellant served a defence case statement, part of which reads:

> "The defendant states that the victim of this offence, who is unable to identify the offender, knows the defendant by his first name of Ronnie and is aware that the defendant is the father of his neighbour, Megan Hall. Had the defendant been responsible for the offence, he would have been identified by the victim.
>
> … The defendant had visited the victim at his home address on a number of occasions. During one of these visits the defendant and others were "messing around" when he accidentally smashed a picture frame and cutting his finger. He recalled the frame being on a wall and the picture itself was of a young girl".

58. In response, a further statement dated 19 January 2012 was taken from Mr Lauder. Among other matters, Mr Lauder confirmed that he had met "the father of my old next door neighbour", but once only, that he had never been visited at home by him and did not really know him. He added that he felt he would not be able to identify Megan's father from the time he met him, which was more than a year before.

59. The Crown relied on powerful evidence to establish that the appellant was the burglar. First, his blood which was found on a sideboard with broken glass on it. The Crown also relied on the general presentation of Mr Lauder's home, which was normally kept in a tidy fashion, to show that the blood could not have been left over from an earlier

incident. There was an account of a witness who described a tall man with bloodied knuckles was coming out of the victim's house via the back garden, carrying something like a shovel or a spade, and leaving the scene in a dark coloured Subaru vehicle, with a registration number, part of which was said to be AE52 or 53. The appellant owned a black Subaru vehicle, registration number AE518WK. The Crown relied on Mr Lauder's evidence that his attacker had a Scottish accent, as does the appellant and on the fact that the appellant's daughter lived next door to the scene. In addition the appellant's previous convictions were admitted, and they were said to establish a propensity to commit violent offences of this kind. Finally the Crown drew attention to the appellant's failure to mention in his police evidence important facts which subsequently emerged to underline that his evidence at trial was not credible.

60. At trial Mr Lauder gave evidence. In chief, he was asked if he was able to look at the face of the person who was attacking him, and he replied, "not straight away, no". After recounting what had happened and what had been said, and describing the speaker's Scottish accent, he was asked whether at that stage he realised that this was someone he had met before. His answer was:

> "well, I was a bit confused with what was happening, but – and then it came back to me that it is – I'd met him once before".

Counsel restated the question, asking whether he had recognised the man at the scene. The answer was "no", at the time he agreed the man was "a stranger". No doubt with the defence case statement in mind counsel asked Mr Lauder whether any pictures had been smashed at his house, and whether he had ever met Megan's father. He answered that he had met Megan's father on one previous occasion at Megan's house, a couple of months before the burglary. He had only met the father briefly, the father had never been into his house, and, none of the broken glass shown in the photographs was present at the scene before the burglary. He confirmed that he had not recognised the man who assaulted him at the time, having only met him on one brief previous occasion.

61. In cross-examination it was suggested to Mr Lauder that he knew Ronnie Hall well as the father of his neighbour and that the appellant had visited his house on a number of occasions. Mr Lauder denied it. It was suggested to him that he clearly knew Megan's father by sight, to which he replied:

> "When I saw him out on the street I'd recognise him but he's never been to my house".

It was then suggested that this must mean that the person who carried out the attack was not Megan's father. Mr Lauder responded that in the course of such an attack "you don't instantly know what is happening". He went on to say that he would not be able to identify Megan's father, "but if I saw him walking down the road, I'd be able to point him out to you".

62. Thereafter the evidence was concluded, and after a summing up which has not been criticised in any way, the appellant was convicted.

63. Shortly after the conviction, on 23 March 2012, Mr Lauder made a victim impact statement. After describing his injuries and ill treatment, he said:

> "I don't really know my attacker. I'd only met him once. I did know that he was the father of the girl next door. I had no problem with him or his daughter".

64. As we have emphasised earlier in the judgment, a victim personal statement must be in proper evidential form. That applied here. Of course, a truly inconsistent statement in such a document, whether made before or after a trial, may be introduced into evidence at the trial (or indeed considered as possible fresh evidence after conviction), if it has any relevance to the issues before the jury, or, if the jury has convicted the defendant, to the safety of the conviction. In circumstances, it cannot be simply brushed aside.

65. Mr James, on behalf of the appellant, submits that this passage in the victim personal statement renders the conviction unsafe. He relies on the phrase "I did know that he was the father of the girl next door" to demonstrate that in his evidence at trial Mr Lauder was lying about the issue with which he had been pressed. This, he said, undermines Mr Lauder's credibility. This credibility was relevant not merely to his own evidence generally, but to the strength of the case overall, and indeed even to the question of the admissibility of the appellant's previous convictions.

66. In response Mr Little for the Crown suggested that the issue of Mr Lauder's previous meeting with the appellant was fully before the jury. At that stage the defence had available to them Mr Lauder's two witness statements, and the content of the victim personal statement does not in reality take these matters any further forward. In addition, Mr Little emphasises the context of the victim impact statement, which was made exactly a week after the jury had convicted the father of the girl next door. Properly understood in context, the victim's personal statement is not and could not reasonably be thought to be a lie. In any event the combination of the evidence in the case means that the conviction is safe.

67. We agree. The issue as to whether Mr Lauder knew his attacker, recognised him at the time, and for no apparent reason was concealing that fact, was fully ventilated before the jury. This victim personal statement was not inconsistent with the broad evidence Mr Lauder had given, or with the prosecution case. Properly understood, the statement does not mean "I recognised my attacker at the time". Rather the fair reading is that the witness had met the man, who by then had been convicted of the attack, once, as the father of the girl next door and that he did not really know him. There was ample evidence to sustain this conviction. For these reasons the conviction is not unsafe and the appeal is dismissed.