

Neutral Citation Number: [2010] EWCA Crim 2076

No: 201003306 A6

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 11th August 2010

**B e f o r e:**

**LORD JUSTICE LAWS**

**MR JUSTICE CHRISTOPHER CLARKE**

**MR JUSTICE GRIFFITH WILLIAMS**

**R E G I N A**

v

**NICOLE CLARKE**

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**Mr S M Sharma** appeared on behalf of the **Appellant**

**J U D G M E N T**

(As Approved by the Court)

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1. MR JUSTICE CHRISTOPHER CLARKE: On 29th April of this year, at the Crown Court at Birmingham, the appellant pleaded guilty to doing acts tending or intended to pervert the course of public justice. On 3rd June she was sentenced to 15 months' imprisonment. She now appeals by leave of the single judge.
2. The facts were these. The appellant and her then husband, Richard Harper, whom she divorced in September 2009, had a daughter called Lily, who was aged five at the time of the offence. At the time of the offence the appellant and Harper had separated and Harper was in a relationship with a woman called Zoe Beaman.
3. On 1st June 2009 a call was made to the police by a female claiming to be Zoe Beaman. The caller alleged that Harper had assaulted her. As a result an ambulance and police officers were dispatched to the address given. Zoe Beaman answered the door and advised them that no-one had made the call. Harper's father later told him that he had received a call from the appellant telling him that his son had been arrested for assaulting Zoe Beaman and that she was in hospital. Harper believed that the appellant knew Zoe Beaman's address because that was where correspondence concerning their divorce was being sent.
4. On 3rd June 2009 a telephone call was made to the police. The call was later traced to the same telephone kiosk as the call made on 1st June. The caller stated that her name was Zoe Beaman. The caller stated that her partner, Richard Harper, was on his way to kidnap his daughter Lily from school. The caller stated that Harper had just found out that Lily was not his natural child and that he was upset and not thinking straight. The police contacted the child's school and then attended the school. The appellant was already there with Lily. The police transported them both home.
5. The appellant later provided a statement to the police stating that the child's head teacher at school had told her that Harper attended the school to take Lily away to the dentist, but that the school had refused to let Lily leave with him. The tapes of the 999 calls were retrieved and it was clear from the telephone calls that the voice was that of the appellant.
6. The following day, on 4th June, the appellant called the police and alleged that Harper had smacked her daughter to the face several times. Lily was interviewed by the police via video and stated that about a year ago her father had slapped her to the face at a crowded bus stop. Her account was very sketchy. She stated that she felt very scared about her father hiding in bushes and trying to take her away. The prosecution case was that Lily had been coached by the appellant and persuaded to give a false account.
7. On 15th June 2009 the appellant alleged that a note had been put through her door. The note was made of newspaper cuttings which spelt out words to the effect of "I'm going to get Lily. Your life at risk". The appellant told the police that she believed that Harper was responsible for this and that he wanted to abduct Lily and take her to Spain. The note was forensically examined and the appellant's fingerprints were the only ones recovered. The appellant said that she had handled the note in order to read it.

8. On 17th June Harper attended a police station for a voluntary interview. He denied that he had attended his daughter's school, that he had ever tried to take her out of school, that he assaulted his daughter or that he had posted a note through the appellant's letter box. He said that he had received almost 80 text messages from the appellant about the fact that she would not allow him access to their daughter. Zoe Beaman confirmed that she had never made any calls to the police and the head teacher confirmed that Harper had never attempted to take Lily out of the school for any reason.
9. The appellant was arrested on 16th November 2009. She denied that she had made any of the calls to the police claiming to be Zoe Beaman. When confronted by a number of prosecution witness statements, including a statement from the head teacher, she made no comment.
10. As is apparent from that summary, in the month of June of last year the appellant falsely alleged to the police that her husband had assaulted his new partner; she told his father that he had been arrested for doing so; she told the police that he was on the way to kidnap their daughter and that later he had attended the school for that purpose; she falsely alleged that he had slapped their daughter several times; she coached the daughter to give a false account and produced a note which she falsely suggested had come from him, saying that he was coming to get the daughter and that the appellant's life was at risk.
11. In sentencing the appellant, the learned judge observed that when women complained of rape the Court of Appeal had been concerned to ensure that those who made such false claims were treated severely because they undermined other claims that were true. He pointed out that this was not such a case because the appellant did not complain of rape, but he said she had complained of almost everything else and the field of domestic abuse was not dissimilar to that of rape. There were parallels to be drawn and the policy of discouraging false claims was much the same. Her plea, he said, did not deserve maximum credit because she had declined to tell the truth to the police, but she would receive significant credit for her plea. He expressed the view that after a trial the sentence would have been two years and that the sentence he would impose was 15 months.
12. The seriousness of this offence is obvious from its description. That which the appellant did tended and was intended to pervert the course of public justice. An innocent person is falsely accused, causing him not merely the strain of a false accusation, but the risk that he may be prosecuted on the strength of it. The fact that false accusations are and are shown to be made provides a foundation for those who are justifiably accused to assert that the accusations against them are untrue.
13. In this case, however, the allegation was not of rape and any analogy with such cases must not be pressed too far. It was not, however, a single allegation and the appellant's conduct extended to claiming that there had been a threat to kidnap and to threaten that her life was at risk. Conduct of this kind affects not only the wrongly accused partner, but also the child, and seriously wastes valuable public resources.

14. There are, however, a number of matters that have also to be taken into account. Firstly, although the complainant went through the interview process, he was never in fact charged with anything or arrested. It became fairly rapidly apparent that the allegations were false. Secondly, it is necessary to consider the appellant's personal circumstances. She was at the time of sentence just 23 and of previous good character. She does not suffer from any recognisable mental illness, but it is tolerably plain that she is a significantly disturbed individual who felt let down, was isolated and had a history of being emotionally neglected as a child with a mother and step-father who were heavy drinkers. The false accusation allegations were made after her relationship with the complainant had broken down and soon after her third miscarriage. A psychiatric report prepared in this case recommended that she would benefit from long-term psychological intervention. Although she was not frank with the police, she entered a guilty plea on a full facts basis at the plea and case management hearing, which was the first available opportunity to do so. Her letter to the judge showed remorse. Since June of 2009 there has been no repetition of this or any other type of offending. She was also the mother of Lily, who is now six. At the time of sentencing in June of this year she was seven months pregnant, expecting her first child by her new partner, with whom she has a stable relationship. An immediate sentence of imprisonment would bear particularly hardly on her and, more importantly, her two children in those circumstances.
  
15. Taking all of these matters into consideration, we have come to the conclusion that the imposition of an immediate custodial sentence was too severe. That which the appellant had done merited a custodial sentence, but in the light of the matters to which we have referred, and in particular the effect of such a sentence on her two children, we are of the view that the sentence can and should properly be suspended. We propose therefore to quash the sentence of immediate imprisonment and to substitute therefor a sentence of 12 months suspended for 18 months, subject to a supervision requirement. The supervision and the operational period will be 18 months in each case. To that extent this appeal is allowed.