Case No: T20187043

Swansea Crown Court
Criminal Division

Swansea Crown Court
St Helen's Road, SA1 4PF

Date: 14 September 2018

Before :

THE HON. MR .JUSTICE PICKEN

- -

Between :

R

V

BRATHWAITE

- -

Approved Ruling

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE PICKEN

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1. Due to the age of the defendant, an order has been in place throughout these proceedings under section 45 of the Youth Justice and Criminal Evidence Act 1999 restricting publication of any information that would be likely to identify Rueben Brathwaite, whom I have today sentenced in respect of the murder of his stepmother, Fiona Scourfield.

2. The BBC, Wales Online and a local freelance journalist have suggested – without formally applying – that this restriction should be lifted in the particular circumstances of this case.

3. From 13 April 2015, the 1999 Act provides the relevant statutory power for the criminal courts to grant anonymity to juvenile defendants, victims and/or witnesses in adult criminal proceedings (as opposed to Youth Courts). This replaces the former powers under section 39 of the Children and Young Persons Act 1933 in relation to criminal proceedings, although that latter statute continues to apply to civil and family proceedings. It has been held that the case law under section 39 of the 1933 Act provides appropriate guidance to the principles and practice to be followed concerning applications under section 45 of the 1999 Act: see ***R v H*** [2015] EWCA Crim 1579 per Treacy LJ at [8].

4. Section 45(3) of the 1999 Act provides that the Court may direct that no matter relating to any person concerned in criminal proceedings shall, whilst he or she is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him or her as a person concerned in the proceedings. An order under this section may be made in respect of a witness (including the victim) or a defendant and has effect until the defendant attains the age of 18 (section 45(7)). In deciding whether to make an order, the Court should have regard to the welfare of the person concerned (section 45(6)). Section 45(8) identifies particular examples of information that a reporting restriction under section 45 may contain, including the young person's name, home address, school, place of work, and still or moving images.

5. There must be a good reason for imposing an order under section 45 given that it is, obviously, a departure from open justice, which is a very important principle in our society. The Court must, in short, be satisfied that, on the facts of the case before it, the welfare of the child in maintaining anonymity outweighs the strong public interest in open justice. The cases under section 39 of the 1933 Act make it clear, however, that the simple fact of a defendant being under 18 is not in itself an overwhelming or automatic justification for an order restricting identification of the defendant by the media. Thus, in ***R v Lee (a***

minor) [1993] 1 WLR 103 it was said that the mere fact that the accused or convicted party is under 18 is not of itself a sufficient justification to make a section 39 order. The Court added that it was wrong to say that it would only be in rare and exceptional cases that an order for anonymity would not be made. The Court has a discretion and this is not fettered.

6. On an application of this kind, the Court has to undertake the balancing exercise in accordance with the principles identified by Simon Brown LJ (as he then was) in ***R v Winchester Crown Court*** [2000] 1 Crim. App R 11 (Divisional Court), which were restated by Hooper LJ in ***R (Y) v Aylesbury Crown Court and Others*** [2012] EWHC 1140 (Admin), as follows:

"i) In deciding whether to impose or thereafter to lift reporting restrictions, the court will consider whether there are good reasons for naming the defendant;

ii) In reaching that decision, the court will give considerable weight to the age of the offender and to the potential damage to any young person of public identification as a criminal before the offender has the benefit or burden of adulthood;

iii) By virtue of section 44 of the 1933 Act, the court must 'have regard to the welfare of the child or young person';

iv) The prospect of being named in court with the accompanying disgrace is a powerful deterrent and the naming of a defendant in the context of his punishment serves as a deterrent to others. These deterrents are proper objectives for the court to seek;

v) There is a strong public interest in open justice and in the public knowing as much as possible about what has happened in court, including the identity of those who have committed crime;

vi) The weight to be attributed to the different factors may shift at different stages of the proceedings and, in particular, after the defendant has been found, or pleads, guilty and is sentenced. It may then be appropriate to place greater weight on the interest of the public in knowing the identity of those who have committed crimes, particularly serious and detestable crimes;

vii) The fact that an appeal has been made may be a material consideration."

7. It is, therefore, the case that, where an application, as here, is made after sentence, the balance has shifted more towards permitting publication in the interests of open justice, as that principle is more likely to outweigh the interests of the juvenile defendant. There will, however, be cases in which the balancing exercise, even after conviction for a serious

offence, results in anonymity being continued: see, e.g., ***R v Z*** [2016] EWHC 3728 (QB) per Fraser J. Each case must obviously be considered on its own merits.

8. An example of the exercise leading to the Court permitting the identity of a defendant being published is ***R v Cornick*** [2014] EWHC 3623 (QB) concerning section 39 of the then-applicable 1933 Act. In that case, Coulson J (as he then was) permitted identification of a defendant who had pleaded guilty to murder and who was 16 at the time of sentence and 15 at the time of the offence. He had, after careful planning, attacked his Spanish teacher at school during a lesson with a knife in front of numerous classmates. The attack was described by the judge as *"relentless, brutal and cowardly"* and involved his chasing her as she sought to escape, stabbing her many times. The victim was a much-loved teacher in respect of whom the defendant had developed an obsession about killing. The judge considered the evidence before him from psychiatrists that identification of the defendant may make his rehabilitation more difficult, but concluded that the result of the balancing exercise in which he was engaged was firmly on the side of the public interest in identification.

9. Another more recent example is ***R v Markham & Edwards*** [2017] EWCA Crim 739 in which the Court of Appeal upheld the decision of Haddon-Cave J to lift reporting restrictions in a case where a daughter and her schoolfriend murdered her mother and younger sister. This was on the basis that the two defendants were guilty of an exceptionally grave crime such that there was a high public interest in their identification in that, if unable to report their identity, it would be impossible properly to understand that the murders took place in a closed family context, leaving a vacuum *"which exacerbates the risk of uninformed and inaccurate comment"*. Sir Brian Leveson P stated as follows at [88]:

"As for the exercise of discretion in this case, in our judgment, reviewing his decision and exercising our discretion independently, Haddon-Cave J reached the correct conclusion on the facts of the case. The facts of the case (and, in addition, the sentencing remarks) cannot be properly understood without identifying that the appellants murdered the mother and 13 year-old sister of Kim Edwards. Furthermore, no new material has been put before us to justify the conclusion that lifting anonymity would cause harm to either appellant …."

He went on at [89] to say this:

"Further, there is no evidence before us that reporting their identities would adversely affect the future rehabilitation of the appellants, and, thus, be contrary to the welfare of a child, which would give rise to a

weighty consideration in the balancing of competing considerations in the assessment that we must make. The reality is that anonymity lasts only until 18 years of age and both appellants face a very considerable term of detention that will stretch long into their adult life. The process of reflecting on their dreadful crimes, addressing their offending behaviour, and starting a process of rehabilitation will be a lengthy one. … ."

10. The same first instance judge, Haddon-Cave J, in a different case last year, involving not murder but rape and attempted murder, ***R v Charlie Pearce***, reported on the Judiciary website, identified a number of factors which, in his view, justified the lifting of reporting restrictions: see [49]-[53]. These included the facts that: the crime committed by the defendant was particularly grave; the attack was so brutal and shocking that it has naturally attracted substantial local and national interest; the public would be aided by disclosure with regard to coming to terms with the incident; and the anonymity order would last but for a few months in any event.

11. I consider that these same factors are applicable in the present case – together with the further point that it seems highly likely that the local community already know of the defendant's identity. Indeed, both counsel (Mr Hipkin for the prosecution and Mr Hobson for the defence) take the same view.

12. Dealing with these matters just briefly, in the circumstances, first, there can be no question but that the murder committed by the defendant is very grave indeed. As I described in my earlier sentencing remarks, the defendant killed his stepmother having only minutes earlier been drinking tea with her. He hit her with the blunt end of an axe so that she fell unconscious to the ground when he struck her again - repeatedly. Then, as he saw blood coming out of her skull, he used a samurai sword to slice at her neck, only then as she lay there either dying or already dead, to take photographs of her which he tried to upload to the '4chan' website. Then, he called the police and explained in the most matter-of-fact way what he had done. All of this he did to his stepmother – to somebody who loved him and cared for him – and for no readily discernible reason. This was a savage offence which, it seems to me, the press should be allowed fully to report – and to do so now.

13. Secondly but following on from the first point, the attack was so brutal and shocking that it has naturally attracted substantial local and national interest. A woman known for her passionate concern for animals has been killed in circumstances which as far as the public are concerned are wholly unknown. It is, for this reason also, only right that there should be reporting of the full circumstances of this murder and, in particular, that it took place in a family context

14. Thirdly, although again this point really flows from the last, I consider that this is also a case in which the public – particularly the local community - would be aided by disclosure with regard to coming to terms with the incident. At the moment the public has no knowledge as to who committed the murder – whether it was somebody local or from elsewhere, whether it was a stranger or somebody known to the deceased, and other such matters.

15. Fourthly, and once more following on from the previous point, in circumstances where it is known that Fiona Scourfield has died and her stepson is no longer around, it is likely that people have been speculating that the defendant is responsible for what happened. If that is the case, then, to lift reporting restrictions would do no more than confirm that speculation.

16. Fifthly, although at the time of the murder, the defendant was 16 years' and 11 months' old, his date of birth being 5 April 2001, he is now 17 years' and 4 months' old. The reporting restrictions currently in place are, therefore, not going to last for very much longer – a matter of only a few more months. The defendant will, obviously, be in custody at that stage and for a substantial time after that. In those circumstances, allowing the press to report now, rather than requiring such reporting to be deferred, would have no effect on the rehabilitation process.

17. For these reasons, and noting the recognition on Mr Hobson's part that reporting restrictions should indeed be lifted, I am clear that it would not be right to keep the public in the dark about the defendant's identity, and that the results of the balancing exercise are in favour of lifting anonymity.

18. I would, in this context, add – perhaps as an additional reason why it is appropriate to lift the reporting restrictions - that it seems to me that it would also be appropriate that the public should know about the defendant's use of the internet in the lead-up to the offence. Most disturbingly, as I pointed out during my sentencing remarks, during its very commission the defendant attempted to upload images of his stepmother as she laying dying or already dead. It seems to me only right that this should be made known in order that there might be an informed public debate about the implications of this tragic case.