

Case No: 20106490/A1

Neutral Citation Number: [2011] EWCA Crim 1099

**IN THE COURT OF APPEAL
CRIMINAL DIVISION**

Royal Courts of Justice
Strand London, WC2A 2LL
Date: TUESDAY, 5TH APRIL 2011

B e f o r e:

**LORD JUSTICE TOULSON
MR JUSTICE KEITH
HIS HONOUR JUDGE BEVAN QC
(SITTING AS A JUDGE OF THE CACD)**

R E G I N A

v

MARIA ROSARIO BRUSTENGA-VILASECA

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MISS K THORNE appeared on behalf of the **Applicant**

J U D G M E N T

1 **JUDGE BEVAN QC:** On 10 September of last year at Guildford Crown Court the appellant pleaded guilty to doing an act tending and intending to pervert the course of public justice in that she: one, made an allegation of rape to Surrey Police that she had been the subject of a sexual attack on 19 April 2010 in Borelli Walk, Farnham; two, agreed to undergo a forensic and medical examination in accordance with the police investigation that had been commenced; three, having been advised on 24 April that a male had been arrested on suspicion of rape and taken into custody, agreed to take part in an identification procedure all in the knowledge that the allegation was false. On 5 November she was sentenced to 16 months' imprisonment on the basis that the sentence after conviction would have been two years. The single judge granted leave.

2 The facts are as follows: she is originally from Spain. At the time of the offence she was living in Farnham with members of her family, studying at college and had a job. On 21 April the police received a call from a doctor. He reported that she had attended the practice complaining of vaginal bleeding and told him that she had been sexually assaulted two days earlier. The doctor confirmed with her that she wished to pursue a complaint of rape. She told the doctor that she was a virgin before the attack and was anxious that her family were not told. She was taken to an examination suite where she was found to have internal injuries. She gave the police a detailed account of walking through a park after work in the early hours of the morning. A stranger came up behind her and grabbed her arms and pushed her to the ground and raped her. The police subsequently attended her home to try to recover her clothing and took her to the park to ascertain where she might have discarded her underwear.

3 Arrangements were made for a formal interview, but six days before it she contacted the police in tears saying she had had enough and wanted it to stop, adamant that she did not wish to pursue the allegation. Asked to think matters over, the next day, 24 April, the police contacted her and informed her that a man had been arrested. She agreed to participate in an identification procedure.

4 On the 27th she again contacted the police wanting the investigation to stop. Seen again on the 29th, she expressed her wish for everything to end. The police explained that it was not that simple, because of the serious nature of the allegation and the risk to others. She refused to be interviewed.

5 Investigations continued and many hours of CCTV footage were viewed, which revealed that she had not been in the area at the relevant time, but had been leaving work and picked up in a motor vehicle, and eventually it was discovered that she had attended a party at a friend's house, where she had consumed alcohol, stayed the night and had sex with a 19-year old male, accounting for her injuries. On arrest, she effectively transferred the rape from the park to the party, maintaining rape but at a different location and by somebody else.

6 A senior investigating officer made a statement indicating that 50 members of police staff had commenced a large scale investigation; 8 officers were deployed for 8 days to conduct house to house inquiries; viewed over 500 hours of CCTV footage; the man arrested spent 17 and three-quarter hours in custody before being eliminated, having agreed to a forensic examination and been interviewed at length; £12,000 was spent on forensic examination; 48 witness statements were taken; an anniversary witness appeal was conducted; at least 3,000 hours of police staff time were used on the investigation, partly because of a genuine complaint about another rape by someone else in the area causing the police concern that there was a serial rapist at large. Therefore, although she tried to stop the investigation, she persisted in it from 21 April to 5 May.

7 His Honour Judge Stewart, in sentencing, referred to the aggravating features that we have referred to, not least the consequences for the young man wrongly arrested and the fact that false allegations of rape increase the plight of genuine victims and damage the administration of justice in this sensitive area.

8 In mitigation counsel referred to her impeccable character, her strict Catholic up bringing in a rural area of Spain, and her concern over her parents' reaction to even attending a party, let alone pre-marital sex. The pre-sentence report recommended a community order or a suspended sentence with unpaid work and the sentencer considered a psychiatric report, as we have, dealing with her isolation, loneliness and depression.

9 The single judge granted leave on the basis that the unusual features rendered the length of the sentence arguable.

10 The sentencer took all the mitigation into account and had to resolve a difficult balance between that and the cost of her lies in terms of the police, the damage to genuine victims and the innocent man arrested. Over the two weeks before she told the truth, those costs were considerable and resulted from her unwillingness to face up to actions she had regretted taking.

11 However, unlike the usual false allegations of rape, she did not identify an individual and she did not presumably foresee the arrest of anybody. This case is no precedent for that typical case, and is not, therefore, an example of the usual false complaint. Here, she was simply transferring whatever happened at the party into an anonymous rape elsewhere. The combination of that fact and the personal factors in her mitigation suggest the wrong approach by the sentencer, despite the aggravating features. However, we take the view that for a false accusation of this kind an immediate custodial sentence was inevitable, but the appropriate level is less than in the usual case, and we therefore quash the sentence imposed and substitute a sentence of 6 months' imprisonment, which will lead to her immediate release.