

Before :

Mr Justice McCombe

REGINA

- v -

**MICHAEL DONOVAN AND KAREN
MATTHEWS**

Julian Goose QC, Simon Kealey and Natalia Levine (instructed by the **Crown Prosecution Service**) for the Crown

Alan Conrad QC and Ahmed Nadim (instructed by **Finn Gledhill & Co**) for Donovan
Frances Oldham QC and Richard Butters (instructed by **Roger Clapham, Solicitor**) for
Matthews

Hearing dates: 11th November – 4th December 2008 and 23rd January 2009

SENTENCE

Mr Justice McCombe :

1. On 4 December 2008 these defendants were convicted by a jury of three offences: kidnapping, false imprisonment and doing acts tending and intended to pervert the course of justice. Sentencing was then adjourned for the preparation of reports. The reports are now available.
2. The case has given rise to an enormous amount of publicity in the media and has been the subject of public comment there and by the police. I have, therefore, thought it right to set out my reasoning, on the sentences that I shall shortly pass, in rather more detail than might be customary, in order hopefully to assist in accurate reporting and to facilitate a full understanding of the sentences that I consider to be appropriate.
3. The offences were committed between 19 February and 14 March 2008. On the first of those dates the two defendants put into action a plan whereby they were to take away Shannon Matthews, the 9 year old daughter of the defendant Matthews, and to keep her concealed in the hope, as the Crown alleged, of obtaining a reward for her eventual return. As part of that plan the defendant Matthews made a false report to the police that Shannon was missing. She did this by way of a 999-call made at 1848 hours on 19 February. Thereafter Matthews continued to assert to the police that her daughter had genuinely gone missing and she made emotive public appeals through the news media.
4. There ensued a massive police search and enquiry directed at the safe recovery of Shannon, a process of which the defendants were well aware and yet allowed to proceed unabated. The search and enquiry involved about 300 police officers and numerous members of the public as volunteers. The cost to the public purse was almost £3.2 million. In addition, well-intentioned members of the public contributed to the search by providing free photocopying facilities for leaflets, t-shirts and other publicity material. About 800 potential suspects were identified for interview and elimination. This process was begun and involved contact with the suspects, the taking of personal samples, enquiry as to possible alibis and searches of premises and vehicles. The processes were described in evidence by a senior police officer as “highly intrusive” into the lives of those involved.
5. Following Shannon’s abduction on 19 February, shortly after she finished school on that day, she was taken to the flat occupied by the defendant, Donovan. She was kept there by him, with the connivance of Matthews, for the next 24 days until she was recovered by the police on the afternoon of Friday, 14 March 2008. While held by Donovan, Shannon never emerged from the flat. Donovan compiled a written list of rules that she was to obey while at the flat to prevent her presence being detected. She was not to make noise; she was not to go near windows; she was to keep the volume of the TV low. Most significantly, it is clear that she was also drugged in this period with the adult sedative temazepam and with a travel sickness preparation called “Traveleze” of which the active ingredient is meclozine hydrochloride. Each of these drugs tends to induce drowsiness and lethargy when administered. Scientific testing revealed that the drugs were administered to Shannon not only in the period of her detention in the flat, but also for a period of up to 20 months prior to her recovery on 14 March. The unavoidable inference is that

this drug had been given to her on a regular basis and as a matter of routine while she was in the normal custody of Matthews. It was also administered in the period when she was kept at the flat.

6. The evidence further revealed the presence at Donovan's flat of a strip of semi-elasticated material tethered to a loft beam with a loop at its bottom end. If employed as a tether on Shannon it was so installed as to allow her access to the lavatory but not to the door or the windows of the flat. Notwithstanding the absence of scientific evidence linking this material to Shannon or either defendant, it is again an unavoidable inference that it was either used or intended to be used if necessary to restrain Shannon while she was being held at those premises.
7. While the evidence is clear that Shannon was not physically harmed during her confinement (other than by the administration of the drugs to which I have referred) and was recovered, to all appearances, safe and well, it is clear as a matter of common sense that it must have been highly disturbing to a 9-year old child to be removed suddenly from her normal environment, her school, her siblings and her friends, without knowing when (if at all) she would be returned.
8. There is now available, after a request by me, a statement from a Senior Social Worker employed by the relevant local authority, reporting on the welfare of Shannon and her siblings since the recovery of Shannon after abduction. That evidence indicates that each of the four of Matthews' children that were in her care before these events have suffered adversely from them. With regard to Shannon the witness says this:

"Shannon was subject to kidnapping and false imprisonment for a period of 24 days at the home of a man she hardly knew. Shannon was disturbed and traumatised and frightened when she came into the care of the Local Authority. She appeared to relive her experiences and she often complains of having nightmares where she is being tied up. Shannon will need periods of psychotherapy followed by individually based therapeutic interventions to help her to recover from her experiences."

The witness concludes by saying that all of the children will be in need of therapeutic input and that this is likely to continue for some considerable time.

9. In addition, it is not without relevance to mention that a national newspaper offered a reward of £50,000 for information leading to the safe return of Shannon. While, no doubt, the reporting of sad cases of this type will enhance the circulation of newspapers, the reward was offered in good faith and there was always the possibility that an ordinary member of the public, having nothing to do with the defendants' scheme, would provide information that would trigger the payment of the reward, leading to there being another "victim" of these serious offences – a potential victim which I am sure will not object, however, to being called far less important for the court's consideration than Shannon, but a potential victim nonetheless.

10. Kidnapping and false imprisonment are “serious offences” for the purposes of the dangerous offender provisions of Chapter 5 of the Criminal Justice Act 2003. I would say immediately, however, that I am not of the opinion that either of these defendants poses a significant risk to members of the public of serious harm occasioned by the commission by him or her of further specified offences. Accordingly, I shall not pass sentences under the provisions of Chapter 5 of the 2003 Act.
11. I am quite satisfied that in the case of each of these defendants the offences are so serious that only custodial sentences can be justified for them. However, one has to bear in mind section 153(2) of the 2003 Act by which it is provided that a custodial sentence must be for the shortest term that in the opinion of the court is commensurate with the seriousness of the offence.
12. Cases of kidnapping are infinitely variable in nature and call for sentences of infinitely variable length. There are no statutory provisions relating to sentence. There are no guidelines published by the Sentencing Guidelines Council. There are many examples in the reports of sentences passed in individual cases, but there is only one reported “guideline case” and no case like the present on its facts. The guideline case is *R v Spence & Thomas* (1983) 5 Cr. App. R(S) 413, where the appellants were convicted of kidnapping and attempted kidnapping of two prostitutes; one was forcibly abducted and the other escaped. The offences were committed over a period of hours. The offenders were sentenced to 8 years and 6 years imprisonment respectively. In giving the judgment of the court on their appeal Lord Lane CJ said,

“It seems to this court that, as with so many crimes so with kidnapping, there is a wide possible variation in seriousness between one instance of the crime and another. At the top of the scale of course, come the carefully planned abductions where the victim is used as a hostage or where ransom money is demanded. Such offences will seldom be met with less than eight years’ imprisonment or thereabouts. Where violence or firearms are used, or there are other exacerbating features such as detention of the victim over a long period of time, then the proper sentence will be very much longer than that. At the other end of the scale are those offences which can perhaps scarcely be classed as kidnapping at all. They very often arise as a sequel to family tiffs or lovers’ disputes, and they seldom require anything more than eighteen months’ imprisonment, and sometimes a great deal less. This case plainly falls between those two extremes.”
13. Since that case there have been numerous further examples of cases in the Court of Appeal decided on their own facts. Examples are only that, namely examples, but it may be of use to those reading these remarks, for whatever purpose, just to have before them two of these selected at random to illustrate the range of offences and the possible range of sentence.
14. In *R v Winslow* [2005] 2 Cr App R(S) 51 the appellant pleaded guilty to three counts of kidnapping. He had jumped into a car driven by a children’s nanny,

with two children being carried as passengers. He had threatened them all with a knife and demanded money. Eventually, the nanny attracted the attention of someone who came to her assistance and the appellant was apprehended. He was sentenced to 6 years imprisonment which was reduced to 4 years on appeal. (It will be well known to all that the entry of a plea of guilty results in a reduction of the sentence that otherwise would be passed after a contested trial. In the *Winslow* case, therefore, a sentence of something in the order of 6 years would have been appropriate after a trial.)

15. In *R v Rashid* [2004] 2 Cr App R(S) 5, which was a true ransom case, the appellant was convicted at trial of kidnapping, false imprisonment and blackmail. Three men had attacked a corner shop. One of the men discharged a handgun and attacked a person present in the shop. The victim was taken out of the premises and forced into a car. He was prevented from escaping by a stab in the back. He was handcuffed and put on the floor of the vehicle. He was then transferred to another vehicle and taken for a journey of about an hour. He was taken blindfolded into the rear bedroom of a terraced house where he was detained for 30 hours. Contact was made with his family and £75,000 was demanded. During this period the appellant was with the victim. Violence was threatened but none was used. Arrangements were made for the payment of £35,000 which was left in a park hut. The victim was then taken to hospital by the appellant where he was found to be suffering from severe and life threatening injuries and would suffer from permanent restriction of movement in his arms. The appellant was sentenced to 10 years imprisonment for kidnapping, 4 years consecutive for false imprisonment and 4 years concurrent for blackmail, giving rise to a total sentence of 14 years imprisonment. On appeal the total sentence was reduced to 11 years imprisonment.
16. I cite those cases simply to illustrate the variety of cases of this type that come before the courts and to show the levels of sentence that have been held to be proper in just two of those cases, in the first of which the offence might be thought to be rather less serious than the present and the second rather more so. One could cite many more.
17. In the present case, it seems to me to be right to regard the offences of kidnap and false imprisonment to be a continuum of offending, attracting appropriate concurrent sentences. The offences were clearly serious ones. They involved the forcible or fraudulent abduction of a young child, with the consequences to her that I have related. She was drugged and probably restrained. (I bear in mind in this context the statement of the social worker to which I have referred above.) There was the planned abstraction of money and the potential payment of a reward to a deserving member of the public who might have discovered Shannon's whereabouts, giving rise to possible further financial loss. I shall return to the appropriate sentence a little later.
18. As a separate matter there is the offence of perverting the course of justice. This offence resulted in a huge expenditure of public resources and the putting at risk of intrusive criminal processes of a very large number of innocent victims. No doubt it also had the result of diverting police resources from the investigation of other crimes.

19. The range of offence of this type is again very wide: it includes interfering with witnesses, concealing evidence, interfering with jurors and, as here, making false allegations of crime. There is no statutory indication of sentence. There are no guideline cases and again there are no guidelines from the Sentencing Guidelines Council.
20. To give one recent example in the category of making false allegations of crime, I would mention *R v Inaam* [2007] 1 Cr App R(S) 34. After a family dispute the defendant in that case made a complaint that relatives had visited his home and had fired shots through his window while he was inside. The two men accused were arrested and charged with attempted murder. The defendant's brother telephoned the police and said that the defendant had gone missing and that he had received a message that the defendant would be harmed unless the charges were dropped. The defendant subsequently also made a statement to the police that he had been kidnapped by three men unknown to him and had been detained by other relatives. Those relatives too were arrested and accused of kidnapping. They were able to demonstrate that they had not been involved and that the kidnapping story was false. The defendant's sentence of 5 years imprisonment, passed after his pleas of guilty, was reduced to 4 years in the Court of Appeal.
21. In that case, of course, specific individuals had been accused of very serious offences. Here, while the allegations made led to a large number of individuals falling under police scrutiny, no specific individual was targeted by these defendants. Again, I cite the case merely as a comparator for information purposes.
22. Finally, it has to be remembered that when sentences are passed for a number of offences, committed as part of a course of criminal conduct, the sentences can be expressed to be served consecutively to one another or concurrently to one another. It remains important to pass a sentence that, in total, is not excessive for the offending as a whole. The law requires this; it is called the principle of "totality". This may mean that the total sentence for all the offences is rather less than would be the case if one simply passed sentences for the individual offences and added them together. In the interests of a proper total sentence, the final term of imprisonment will be rather less than that.
23. Counsel for the Crown at my invitation indicates that a total sentence in the range of 8 to 10 years would be appropriate for the court's consideration. That is helpful to the court, but as Mr. Goose QC correctly states it is not the function of the Crown to "ask" for any particular sentence. He was only responding to my request for any help that he was able to give in the context of this most unusual case. On the other hand, Counsel for the defence submit that the appropriate range is 5 to 8 years imprisonment in total. I should say immediately that my initial impressions had been that a range 7 to 9 years imprisonment was appropriate.
24. With those words of explanation, I pass to the sentences in this case. Overall I regard the offences of kidnap and false imprisonment of young Shannon as the most serious of the three offences of which these defendants have been

convicted. This is contrary to the view expressed to me by Counsel for the Crown in his helpful remarks. The offence of perverting the course of justice is, of course, also serious, but in my view distress caused to a 9 year old girl outstrips it in seriousness. I have expressed the view that the kidnapping and false imprisonment offences constituted a continuum for which concurrent sentences are appropriate. Clearly, there must be an additional sentence in the totality in respect of perverting the course of justice. I consider that the correct course is to pass consecutive sentences for the kidnap and false imprisonment on the one hand and the perversion of the course of justice on the other, each somewhat shorter in length than they would have attracted if each had stood alone. This is for reasons of “totality” of sentence, the principle of which I have already explained.

25. Equally, in this particular case, it is important not to allow the symptoms of hyperbole that have been displayed in some quarters to inflate the sentence beyond that which is properly called for by the facts of the case.
26. I see no reason to draw distinction between the two defendants in terms of their offending. Neither Mr Conrad nor Miss Oldham suggested that I should do so. In my judgment their culpability is the same. In saying that, having regard to their low intellect, as emerged in evidence at trial and in the pre-sentence reports, it must be doubtful whether they could have conceived or continued these offences without the assistance or connivance of others. The pre-sentence report in Matthews’ case comments that neither defendant seems to have the cognitive ability to devise and orchestrate such an elaborate offence with any degree of likelihood of success.
27. The report prepared on Matthews is helpful to the court. She is 33 years old and has no previous convictions. She has had a difficult past, growing up in a family of 8 children where educational achievement appears to have been of little value. It seems she has seven children by a number of fathers. Her only experience of employment was as a part-time cleaner prior to the birth of her first child when she was 20 years old. Since that time she has lived off state benefits. She has ended up disappointed by a number of personal relationships. The reporting probation officer states:

“In reviewing her childhood and adolescence, it becomes apparent that she grew up with inconsistent parenting, few if any social boundaries and a lack of positive role models, guidance or support. Consequently, in the absence of expectation she failed to generate personal or practical aspirations and her only ambition was to become a mother. In adult life Ms Matthews experienced a number of relationships with males who themselves were inconsistent and most, if not all her relationships have been characterised by domestic violence, poor communication and ultimately acrimonious separations.”

It is to her credit that, in such circumstances, she has not (as is so frequent in such cases) resorted to petty offending in the past.

28. The report prepared in Donovan's case has also been instructive. The defendant, Donovan is 40 years old he has previous convictions dating back to when he was 12 years old for arson and two theft offences. For these he received an Attendance Centre order. In 1985 for an offence of criminal damage he was conditionally discharged. It seems to me that these past offences are of no relevance in setting a sentence in this case.
29. Donovan also comes from a large family. He has 8 siblings. He was previously married and he has two daughters now aged 13 and 11 respectively. Evidence was given at trial that the loss of custody of the daughters into local authority care, after the breakdown of his marriage and a short period of sole custody, caused Donovan considerable distress. He has not seen the children for approximately two years. He has had medical problems, including episodes of depressive illness and a physical illness called dystonia which can cause muscles to go into spasm. He suffered a head injury in a serious road accident in about 1990. He has not been in employment since that time. There is no evidence of drug use or alcohol abuse.
30. In the final assessment the probation service reports that Donovan presents a medium risk of causing serious harm to children that are known to him; the risk is said not to be imminent or immediate but would depend upon a congeries of conditions coming to together in the future. It is important to state the clear conclusion of the probation service that there is no evidence to suggest that Donovan presents a risk of violent or sexual offending wither to children or to adults. Suggestions are made as to how such other risks as there are might be avoided hereafter.
31. I turn to the mitigation urged upon me by counsel for the defendants.
32. Each counsel acknowledged the obvious aggravating features of the case: sedation, length of detention, isolation from friends and siblings, possible restraint, huge diversion of police resources. However, n mitigation of the offences, it is pointed out that Shannon was not physically harmed; she was well looked after and nourished; she was not called to give evidence at trial.
33. For Donovan, Mr Conrad urges that it is likely that he was subject to some pressure to commit the offence even if it was short of the duress capable of exonerating him from the offence. It is argued for both that they were not of sufficient intelligence to conceive and implement this plan without the involvement of others. For each defendant it is rightly urged that, owing to the notoriety of the case, the inevitable custodial sentences are likely to bear harder on them than perhaps on other offenders and may lead to them being ostracised and possibly bullied. Donovan was subjected to a serious physical attack while in custody during the trial. Some mitigation of sentence is, in my judgment, appropriate because of this factor.
34. For Matthews it is urged in addition to the points already mentioned that in the past she had shown herself to be a caring mother, proud of her children and that this is documented in social security files.
35. The defendants will now stand.

36. The offences that you committed were truly despicable. It is impossible to conceive how you could have found it in you put this young girl through the ordeal that you inflicted upon her. It is incomprehensible that you could have permitted your friends, neighbours and in your case, Matthews, even your children to sacrifice time and energy in extensive searches for the supposedly missing child. It is also incomprehensible that you could stand by and watch enormous police resources being wasted, in an earnest and distressing search which many officers would have thought could only lead to a tragic discovery. You must have realised that large sums of public money were being expended and wasted in these efforts and that valuable police time was being diverted from the investigation of other crime. You may not, however, have realised the distress that you would cause to innocent people who may have come under police suspicion of having kidnapped Shannon.
37. The effect of the sentences that I now pass will be that you will serve one half the total term of imprisonment in custody and then you will be released on licence for the remainder of your sentence. While you are on licence you must comply with all its conditions. At any time during the licence period the Secretary of State may revoke it and order your return to custody.
38. In each of your cases, I sentence you to total terms of imprisonment of 8 years. That is made up in each case of a sentence of 6 years imprisonment on count 1 for kidnapping, 3 years imprisonment on count 2 for false imprisonment, to be served concurrently (that is at the same time at the 6 years on count 1), and 2 years imprisonment on count 3, for doing acts tending to and intended to pervert the course of justice, to be served consecutively to (that is in addition to) the sentences passed on the other two counts. I repeat that is a total term of imprisonment of 8 years.
39. In the case of you, Donovan, the period of 311 days spent in custody on remand will count towards sentence and in your case, Matthews, the period of 289 days spent in custody on remand will also count towards sentence.