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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 128



No. 202100944 B4

Royal Courts of Justice

Friday, 21 January 2022

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE FRASER
HIS HONOUR JUDGE PAUL WATSON QC

REGINA
V
ALFRED SPRAGGON

**REPORTING RESTRICTIONS APPLY:
THE SEXUAL OFFENCES (AMENDMENT) ACT 1992**

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MR D. COMB appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

- 1 Alfred Spraggon, is now aged 78. On 10 March 2021 in the Crown Court at Newcastle upon Tyne he was convicted of one count of indecent assault on a male and three counts of indecency with a child. Those counts were paired and related to two separate complainants. He was acquitted of three other counts of indecent assault on a male and two other counts of indecency with a child. Those counts related to the same complaints, but different forms of behaviour or different periods of time. He was sentenced on 17 May 2021 to varying consecutive terms of imprisonment which totalled five years.
- 2 There was a co-accused Raymond Mongan, who pleaded guilty in June 2020 to seven counts of indecent assault on a male and two counts of indecency with a child. His total term of imprisonment was ten years and ten months.
- 3 The applicant now applies for an extension of time of seven days in which to renew his application for leave to appeal against conviction following refusal by the single judge. The application is out of time due to administrative problems at his solicitors. We shall extend time in which to renew the application for leave, given the very modest period involved. This is entirely separate to any consideration of the substantive issues in the case.
- 4 The matters relating to this applicant begin with a man called David Atteridge. In 2002 he went to the police and alleged that he had been the subject of sexual abuse at an orphanage in Newcastle named St Vincent's. The abuse he said occurred in the early 1960s. He made a written statement to the police at that time. He alleged that he had been sexually abused, both by this applicant and his co-accused, when he was aged between about 11 and 15 years old. The abuse included regular occasions on which the applicant would get into the witness's bed and masturbate him and also would get the witness to masturbate the applicant. That mutual masturbation would end in ejaculation on occasion. He said that the abuse occurred in a dormitory at the orphanage shared by several boys after the boys had gone to bed. At that stage, the applicant and the co-accused were interviewed by the police. That was in July of 2002. However, no further action was taken. Mr Atteridge died in October 2013.
- 5 In November 2016 a man called Michael Howe went to a police station in Newcastle. He was a man of 62. As a child he had lived in the north-east. Subsequently he had moved to live in the Home Counties. He was visiting Newcastle, in part because he was very ill and wished to see places that he was familiar with from his youth. He went to the police station and reported that he had been sexually abused as a child whilst he was resident at St Vincent's orphanage. That had occurred at about the same time as the abuse involving Mr Atteridge. He gave a video recorded interview to the police near to his home in Surrey in the later part of November 2016.
- 6 In that video recorded interview he described sexual abuse of him by the co-accused Mr Mongan. That abuse was, as we have said, at about the same time as the abuse suffered by Mr Atteridge. In his evidence he also referred to the applicant. He did not say that the applicant had sexually abused him. However, he did describe the applicant as committing sexual abuse on other children. He spoke about the applicant and Mongan being in the dormitory which was occupied at the time by Mr Howe together. He said that so far as he could tell the two men would "divvy up" the boys. They would stay overnight. Indeed, they had beds in the dormitory. Of the other boys in his dormitory to whom he referred, one was named Derek Robinson. He, said Mr Howe, occupied the bed next to him for a time. He told the police that Mr Robinson had been sexually abused and that had been, amongst other people, by the applicant.

- 7 It is to be noted that Mr Howe did not know Mr Atteridge and was wholly unaware of the complaint that had been made back in 2002.
- 8 After the interview with Mr Howe, the police traced Derek Robinson. He was video interviewed in May 2017. He described abuse similar to that as described by Atteridge. He named both the applicant and the co-accused Mongan as having sexually abused him. That then was the evidence against the applicant.
- 9 He was not charged until July 2019. It maybe that at least part of that delay was due to the fact that there were more extensive enquiries in relation to the orphanage to be conducted, in particular in relation to the co-accused. In any event, by the time the applicant was sent to the Crown Court, Michael Howe had died. As we have already observed, Atteridge had died back in 2013. Derek Robinson died in December 2019. Thus it was that none of the three complainants were available to give evidence in person.
- 10 Because of that position, the prosecution made a hearsay application in respect of each man. The trial judge provided a comprehensive written ruling dated 9 February 2021. It was a ruling delivered approximately four weeks before the trial. He ruled that the witness statement of Mr Atteridge and the video recorded interviews of Howe and Robinson should be admitted as hearsay evidence. That ruling is challenged before us on two bases. First, it is said that the counts on the indictment against this applicant which related to Robinson and Atteridge were wholly dependent on hearsay evidence and that admitting the evidence rendered the trial unfair, not least because the applicant was not in a position to challenge the evidence. The submissions on unfairness, to which we shall refer in more detail shortly, go wider than that, but the essence of the submission is the trial was simply not fair. Second, irrespective of any issue in relation to hearsay, the evidence of Mr Howe should not have been admitted, at least not in the form it was admitted, because it was bad character evidence relating to the co-accused Mongan, who was by then a non-defendant. As such, it should have been subjected to the test of relevance as set out in s.100 of the Criminal Justice Act 2003. It is not necessary for us to rehearse that test, which is very familiar. The submission is, that had it been so subjected, it would have been apparent that the test was not met.
- 11 This is a renewed application for permission. It is neither necessary nor appropriate for us to rehearse in detail the principles and authorities relating to the admission of hearsay evidence. We shall address the position in summary form only.
1. A court faced with an application to admit hearsay evidence must follow the steps as set out in the case of *R v Riat & Ors* [2013] 1 Cr App R 2. We observe that there is other authority relating to the admission of hearsay evidence, not least *Horncastle* in the Supreme Court and in the European Court of Human Rights. However, the guidance in *Riat* is comprehensive and is applied up and down the country in Crown Courts every week to the benefit of the criminal justice system.
 2. The first step, as provided in *Riat*, is to ask whether there is a specific statutory gateway via which the evidence can be admitted.
 3. If there is a gateway, the court then must consider the apparent reliability of the evidence and the practicability of the jury testing and assessing it. In this regard, the provisions of s.124 of the 2003 Act are crucial.
 4. The next issue is whether any statutory interests of justice tests apply.

5. If each of these hurdles is surmounted, the court must go on to ask whether the power to exclude evidence, pursuant to s.78 of the Police and Criminal Evidence Act or s.126 of the 2003 Act, should be exercised.
6. Finally, if the hearsay evidence is admitted, the court must keep under review the reliability of the evidence in the case. If it becomes apparent that the evidence is so unconvincing that any conviction would be unsafe, the case must be withdrawn from the jury.
- 12 The trial judge set out these principles at the outset of the ruling. He identified *Riat* as their source. Having done that, he conducted an admissibility exercise in relation to each of the three witnesses individually. That clearly was the appropriate course. This was not a case of admit one, admit all. The judge avoided falling into that trap.
- 13 In his skeleton argument, prepared for the purposes of this renewed application for leave to appeal, Mr Comb, who appeared at trial, sets out the reasons why he says the judge fell into error in conducting his admissibility exercise. He says, first, the evidence in support of the counts faced by the applicant was entirely in the form of hearsay. The trial process was devoid of the essential adversarial element of challenge synonymous with fairness in the common law tradition. That submission has been developed before us orally today.
- 14 In our view this rather elegant language simply seeks to disguise a submission reviving the "sole or decisive" rule, which, as *Rias* makes clear, does not apply in English law. On the submissions made both in writing and orally by Mr Comb, with great respect to him, there would be in our view few circumstances in which hearsay evidence in circumstances such as these would be admissible. We apprehend that he would say that is the only proper result. In our view, the proposition is not sustainable.
- 15 Second, he points out that the hearsay evidence was provided many decades after the alleged events. The elements of contemporaneity and spontaneity, which typically mitigate against the unreliability inherent in hearsay, were absent. It is true that hearsay may be more reliable if contemporaneous with the relevant events. Equally, in cases such as these, where adults complain of sexual abuse when they were children, years if not decades before, the phenomenon of delay in reporting is well-recognised. Moreover, in this case there were very similar complaints being made by wholly unconnected individuals.
- 16 Third, it is said that this was a set of allegations made in an institutional context. The nuns in charge of the institution, it is said, were responsible for the culture of violence and fear that existed, such that it was not possible or feasible for victims of sexual abuse to say anything at the time. However, as might be expected, the nuns who worked at the orphanage back in the 1960s now are all deceased. The availability of records was, as Mr Comb puts it, "patchy". In our judgment all of that would apply even if the witnesses were still alive. Those are matters relating to whether it is fair to try somebody in relation to allegations dating back as long as these did. It is, with respect, nothing to do with the fact that the evidence on which the prosecution relies was hearsay.
- 17 Fourth, it is said that the age of the allegations was not the fault of the applicants and not a case in which it was said that an abuser had put a victim in fear of giving evidence against him or complaining. That proposition is clearly correct. Equally, we conclude it is of no relevance to the issue of the reliability of the evidence.
- 18 Five, it is argued that it was not possible to explore the reasons for delay with the witnesses: of course it was not. The witnesses were deceased. However, some reasons were given by

the witnesses in their evidence. It was for the jury to assess whether those reasons were sensible.

- 19 We are invited to stand back and consider whether this criminal trial was a trial that met the normal standards of fairness of the criminal process in England and Wales. We are quite satisfied that in a normal case a witness will give a reason for delay and will stick to it. The fact that the jury whether unable to listen to cross-examination of a witness on that topic, in our judgment is of relatively tangential effect.
- 20 We pass over the argument in relation to bad character evidence since we shall have to return to it shortly.
- 21 The final matters relied on by Mr Comb are that there were indicators that the makers of the statements were unreliable i.e. the witnesses Howe, Robinson and Atteridge. Very little was known about either of the complainants who gave evidence directly about the applicant's activity. We observe that in relation to all three deceased witnesses there were agreed facts. In Howe's case they dealt with his medical condition at the time he provided his video recorded interview, with particular reference to his mental state, together with a history of his convictions for dishonesty. In Atteridge's case there were agreed facts about his issues with alcohol and in Robinson's case a considerable amount of background detail about his contact with nuns after he had left the orphanage, together with his domestic circumstances. We observe that that sort of detail about a witness very often would not emerge in any admissible form if the witness is alive. In this case, moreover, the jury were able to see Robinson give his account. His interviews had been video recorded. This was not a case of simply trying to assess somebody on the basis of written words on the page.
- 22 In our judgment, the trial judge analysed with very considerable care the suggestion of unreliability witness by witness. He dealt with the points raised before him by the applicant, which are repeated before us. For us to conclude that his analysis fell into error, we would have to conclude, at least for the purposes of this application, that arguably his decision was wrong. He was exercising a judgment based on a whole variety of matters. We are quite satisfied that it is not arguable that his decision was wrong. We noted that when directing the jury the judge was scrupulous in setting out matters relevant to the jury's consideration of the hearsay evidence. His written directions included the questions that would have been put to each witness in cross-examination. He also set out the evidence which potentially could affect the witness's credibility. As we have said, the core complainant made by Mr Comb is that the applicant was deprived of a fair trial by the admission of this hearsay evidence. We are satisfied that this judge was acutely aware of the need for all possible steps to be taken to achieve a fair and balanced trial. That is what he did. In our judgment, the first ground of appeal is not arguable.
- 23 We move then to the question of the evidence of Michael Howe and how that should have been treated by the judge. It was not alleged that the applicant had committed any offence against Michael Howe. His evidence bore principally on the co-accused, who pleaded guilty well in advance of the trial. It is said that Howe's evidence, therefore, was bad character evidence vis-a-vis the co-accused Mr Mongan. As such, it had been to be (a) of substantial probative value in relation to a matter in issue between the prosecution and the applicant, and (b) of substantial importance in the context of the case as a whole.
- 24 The applicant's case was that although he worked as a volunteer at the orphanage, he had never engaged in sexual abuse of any resident there. The issue as between him and the prosecution was whether the witnesses Robinson and Atteridge were accurate, reliable and truthful. The submission on behalf of the applicant is that Howe's evidence was of no

probative value in that regard. Likewise, of no probative value was whether any sexual assaults were committed by Howe.

- 25 When he was delivery his ruling on the admissibility of Howe's evidence, which was delivered at the same time as he gave his ruling on the admission of hearsay evidence, the judge did not address directly why the evidence was relevant and how it was admissible. However, he did at that time rule on the admissibility of the co-accused's pleas of guilty and he refused to admit those pleas before the jury. He did so by reference to s.78 of the Police and Criminal Evidence Act 1984. He did not consider the provisions of s.100 of the 2003 Act. At a subsequent hearing, which occurred at the start of the trial, when an application was made to edit the ABE interviews of Howe, the judge explained, if explanation were needed, that he considered that the evidence of Howe "had to do with the alleged facts of the offence with which the defendant is charged." It did not fall within the bad character provisions. Thus, it was he had not considered s.100 of the 2003 Act. It was relevant because the activity of the co-accused (the main focus of Howe's evidence) was inextricably linked to the allegations against the applicant.
- 26 We observe that the words "to do with" have a broad application: see *Ditta* [2016] EWCA Crim 8. In this instance, there was a clear temporal and locational connection between the offending of the co-accused Mongan and the allegations against the applicant. But it went further than that. According to Howe, the co-accused and the applicant in effect would decide between themselves which boy each was to take as his sexual victim. Howe's evidence was inter alia that he was sexually assaulted by the co-accused whilst the boy in the next bed, Robinson, at one point fell prey to the applicant. To that significant degree, Howe's evidence went directly to the allegations against the applicant. Moreover, the evidence of Howe, describing as he did the general practice within the dormitories at the orphanage, was evidence which clearly had to do with the case against the applicant.
- 27 It is submitted that the judge wholly undermined this approach when in his legal directions he said this:

"Mr Mongan's participation or otherwise is not relevant to your consideration of the case against Mr Spraggon."

We disagree. We consider that the submission fails to grasp the point which that direction was seeking to make. The judge there was emphasising that the mere fact that Mr Mongan had committed sexual assaults could not be evidence in itself that the applicant had done so. The judge, rightly, was warning the jury against adopting an approach of guilt by association. Read as a whole, the judge's directions made it clear that the evidence of Howe was relevant in the case of the applicant for two reasons. First, because of what Howe said in relation to the applicant's activity. Second, because of the factual links between what the co-accused Mongan did and the allegations against the applicant. The grounds of appeal argue that the trial was overshadowed by this evidence relating to abuse committed by others. In our judgment, this overstates the significance of the evidence. The jury were provided with a route to verdict which set out the issues in relation to the applicant very clearly. It is to be noted that the route to verdict required individual consideration of each count in relation to each complainant. The jury returned mixed verdicts in relation to each complaint. The factual summing-up did of course deal with Howe's evidence. The judge concentrated on the evidence more directly relating to the applicant. True it is that some trials become bogged down in evidence of potentially peripheral relevance, but this was not such a trial. The evidence complained of was relevant. It was not allowed to assume an importance beyond that which it deserved. We reject the argument that it did. It follows that there is no arguable ground of appeal in that respect either.

- 28 It in our judgment is clear that these convictions were safe and, notwithstanding the helpful and cogent arguments from Mr Comb, we refuse this renewed application for leave to appeal.
- 29 We do not leave this case without commending the trial judge for his careful handling of the entire proceedings and, in particular, his very careful and detailed ruling in respect of hearsay, which has made our task all the easier.
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This transcript has been approved by the Judge.