IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LEWES
MR RECORDER LAWSON-ROGERS T20177360

CASE NO 202300236/B4

[2024] EWCA Crim 1420

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 1 November 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE STACEY

SIR NIGEL DAVIS

REX
V
"PG"

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

The Applicant appeared in Person

J U D G M E N T

MRS JUSTICE STACEY:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person (or those persons) shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify those persons as the victims of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 16 February 2018, in the Crown Court at Lewes, before Mr Recorder Lawson-Rogers, the applicant was convicted of three counts of rape, four counts of indecent assault, one count of assault occasioning actual bodily harm, one count of indecency with a child and one count of cruelty to a person under the age of 16. The offences involved three complainants (who we shall refer to as "C1", "C2" and "C3"). The applicant was acquitted by the jury of one count of rape and two counts of indecent assault.

3. The applicant renews his application for leave to appeal against conviction, following refusal by the single judge. We have listened carefully to the applicant's arguments today and are grateful to him for explaining his points so clearly. We have also had the benefit of reading all the documents in the case and the written submissions he has made in full, prior to today's hearing. The allegations were of historical sexual assaults of his then partner's daughter C1, when she was 12 to 14 years old between the years of 1988 to 1990; his own son C2; and of a friend of C1's, C3. Lengthy and detailed grounds of appeal have been submitted (17 grounds and an additional further ground).

4. It is helpful however to step back for a moment before considering the individual grounds of appeal. The prosecution case principally consisted of the witness evidence of each of the three complainants. The accuracy of each of their accounts of what they said the applicant had done to them was relied on by the prosecution. A number of other witnesses gave evidence for the prosecution, including C2's mother and C1's mother, as well as her friend who had first introduced the applicant to C1's mother and they all gave relevant corroborating and partially corroborating evidence of what they had seen.

5. The applicant's barrister, about whom he does not complain, was able to cross-examine each of the prosecution witnesses and succeeded in obtaining a ruling from the Judge admitting bad character evidence about C2 so that the jury knew of C2's animosity to the applicant and his vitriolic Facebook postings about him. The jury therefore had the point that the applicant wished to make that C2 had a motive to fabricate the claim due to the ongoing row he was having with his father. The jury also knew of the discrepancies in some of the evidence about where the applicant had lived at various times and where the complainants said that events had taken place and the approximate dates.
6. The applicant sacked his barrister, but not his solicitors, after the cross-examination of the prosecution witnesses on 8 February at the close of the prosecution case. After being given time to prepare and a delay on account of the applicant's health, and after receipt of a medical report that confirmed he was fit to proceed, the applicant then gave evidence on 12 February 2018 and was cross-examined the next day on 13 February. He then called five witnesses in his own defence, including the granddaughter of one of the proposed witnesses, the friend of C1's mother who had first introduced her to the applicant. He made his own closing speech.

7. The judge made a careful summing-up that was balanced and fair, and summarised all the evidence, including the applicant's evidence and that of his witnesses, and the applicant's explanation for why he said the allegations were false and had been made up against him. His explanation was that he believed there had been a falling out between him and his son C2, over a dispute over toner cartridges and then C2 had then encouraged C1 and C3 to make false complaints against him, possibly with financial incentives.

8. The judge adopted the approved wording in the Crown Court Compendium Bench Book to give the jury directions concerning delay, memory and assumptions which were fair and balanced and reasonable (at pages P12 at letter D through to P13 letter D of the transcript of the summing-up). It was for the jury to decide who to believe and if they were sure the allegations were true. In order for the jury to have reached the verdicts that they did they must have been sure that all but three of the counts in the indictment had occurred in the way described by the complainants, even if the complainants were mistaken about one or two irrelevant details of time and place.
9. The applicant's solicitors were rightly criticised by the Legal Ombudsman for the way in which the applicant's case had been prepared. It must have been very concerning for him in the run up to trial and we well understand how he had lost confidence in his solicitors. But it is not reasonably arguable that any of the criticisms had had an impact on the outcome of the applicant's case. His solicitors had instructed a capable barrister, whom he does not criticise, who was able to remedy the problems that the solicitors had created. None of the missed deadlines prejudiced the trial as the trial judge overlooked all of them. Because the judge had to discharge the first jury five days into the trial for

unrelated reasons - when a juror felt unable to continue because of the nature of the evidence - it meant that the applicant's barrister had plenty of time to view all the USB sticks that the solicitors had not provided to him earlier, to obtain full instructions from his client and to fully familiarise himself with all the papers. He was then able to make the successful application to the judge that most of the contents of the USB sticks should go to the jury, so that the applicant could make his points more forcefully for the jury to consider whether the complainants' evidence was unreliable. There was in fact considerable prosecution evidence on which the jury could be sure that entitled them to convict and a fair trial was conducted as evidenced by the mixed verdicts.

10. In relation to each of the grounds of appeal, we adopt the detailed reasons given by the single judge explaining why none give rise to reasonably arguable grounds of appeal. Further matters raised today by the applicant repeated the concerns that his barrister had no proof of evidence at the start of the first trial, that the postponement request made at the outset of the first trial before the jury was discharged for other reasons was unsuccessful and that the barrister had not seen the contents of the USB stick. All those criticisms fall away because the jury was discharged which therefore gave the barrister the extra five days in order to prepare the case.

11. The criticism of the Legal Ombudsman's ruling and the finding that there was unreasonable behaviour by his solicitors was just and valid and the firm accepted the criticisms. But there is no causal link between the guilty verdicts and the solicitor's shortcomings for the reasons we have explained. We add that any connection with Mr Stephen Yaxley-Lennon or Tommy Robinson as he calls himself, is not relevant to

the case and there is no evidence that it affected the outcome. The issues in the case were whether the applicant had sexually abused the three complainants as alleged by them.

12. The applicant also applies to adduce new evidence in support of his appeal. This includes documents such as proof of his various addresses, with dates, in the late 1980s and early 1990s, his bail records kept by the Ministry of Justice or Her Majesty's Courts and Tribunal Service and evidence of new witnesses. All of this information could have been made available in time for the trial and there was no good reason why any of this evidence was not sought earlier. But in any event, it is not clear how any of this evidence would have assisted the applicant. The precise date and location of the commission of offences such as these is not material and there will be little benefit from compelling Jillian Harpely to attend court when the applicant himself considers that she would be a hostile witness. The criteria in section 23 of the Criminal Appeal Act 1968 have not been made out and nor has the correct procedure been followed, and we therefore refuse the application to adduce new evidence.

13. The appeal is also lodged some 1,768 days late; that is over 4½ years out of time. The applicant's explanation today to us is that he was waiting for the Legal Ombudsman's report, which was made available in 2021, and then had immense difficulty finding lawyers to represent him and problems with legal aid resulting in further delay and that he was trying to ascertain the full facts. However, it is far too late to seek to reopen this matter now, with the inevitable additional distress to the complainants. But, in any event, since there are no arguable grounds of appeal, it is not in the interests of justice to extend time. For all those reasons, all the applications are refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk