Neutral Citation No. [2024] EWCA Crim 615

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202303651/B2

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday. 17 May 2024

Before:

LORD JUSTICE DINGEMANS
MRS JUSTICE FARBEY DBE
HER HONOUR JUDGE DE BERTODANO
(Sitting as a Judge of the CACD)

REX
v
MARCUS TAYLOR

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MR M ROWLIFFE appeared on behalf of the Appellant
MR R MILNE appeared on behalf of the Crown

J U D G M E N T
(Approved)

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an appeal against sentence. The appellant, who is a 44-year-old man with 22 previous convictions for 43 offences, including a previous conviction for rape, was convicted on 19 June 2023 of rape, assault by penetration and sexual assault.
2. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence and the victim of the offending has the benefit of life-long anonymity.
3. On 29 September 2023 the appellant was sentenced to an extended sentence of 18 years, being a custodial element of 12 years and a six-year extension period for the rape with concurrent sentences of 10 years for the assault by penetration and five years for the sexual assault.
4. The appeal raises the issues of whether the sentence was manifestly excessive because the judge was wrong to find: severe psychological harm; particular vulnerability due to personal circumstances; and significant planning; for the purposes of the offence-specific guideline; and failed to reflect issues of totality.

Factual circumstances

5. In March 2023 the complainant, then aged 27, messaged a few of her friends who knew about fixing cars as she had just found out that her car had failed its MOT and was going to cost some £900 to repair. One of those friends was the appellant whom she had known for about a year. There had been no previous intimacy between them and no sexual relationship or interest, according to the evidence given by the complainant. She had met him on a number of occasions and her ex-partner and her were quite close to him and his partner.
6. In the messaging and later telephone calls on 9 March 2023 the complainant was

discussing finding another car and the appellant suggested that he come round that evening to discuss this. He asked what time the children went to bed. That is a relevant fact because the judge identified that as part of significant planning.

7. Later in the day the complainant felt tired and so tried to cancel the meeting but the appellant said that he was working on Monday and would only be a short time. Again that is a relevant fact because the judge relied on that as part of the planning.
8. The appellant arrived at about 8.15 pm by which time the complainant had put the children to bed. The complainant and the appellant identified a few potential cars but the complainant noticed when she pointed out a car on Facebook that the appellant said that was ugly and motioned that he would strangle her to knock some sense into her, to which she responded by telling him to stop.
9. At around 10.30 one of the children needed a nappy change and so the complainant went out of the room in which she and the appellant had been sitting. When the complainant returned to the living room the appellant reached over, grabbed her hair and tried to kiss her on the lips. She pulled back, telling him he had a girlfriend and that she was not interested. The appellant then tried to get under the complainant's leggings in order to rub her vagina. She responded by trying to block him with her arms. The appellant continued trying to touch the complainant's vaginal area over her leggings, even though she was pushing him away and keeping her legs closed. She kicked him to get him off using her knees to push his chest away, but he pulled her leggings and underwear and pulled down her top. She told him she did not want this and the appellant inserted his finger into the complainant's vagina, which was the assault by penetration. He then inserted his penis into her vagina, which was the rape. He stopped having sex with her after about seven to 10 minutes. She asked him if he had finished and he said "No". At

one point during the rape he had stopped penetrating her, exposed her breast by pulling her bra to one side and sucked her nipples. That, together with the earlier assault around the vaginal area, was the sexual assault which was count 3. He left immediately after the offence. The complainant then locked the door and called her ex-partner and the police.

10. The appellant was arrested when he arrived home and in interview with the police he gave a prepared statement denying rape. He said he had had consensual sex with the complainant after they had been flirting and one thing had led to another. He said at no point did she ask him to stop nor did she look distressed.

Sentencing preparation

11. After conviction and in preparation for sentence two victim personal statements were taken. One was dated in May 2023 and one on 28 June 2023. The first statement went into much greater detail, saying that the complainant felt powerless, ashamed and anxious. She had suffered multiple panic attacks and was being treated with Sertraline in relation to that. At times she could not get out of bed and the offending had had a profound effect on her life. The second statement did not repeat that, but just dealt with the effects of the trial and the hope that in the future she might begin to recover.

12. A pre-sentence report was obtained which showed that the appellant continued to deny the offence.

Sentencing remarks

13. In the sentencing remarks the judge remarked that he had heard the trial and was in a position to make findings of fact about which he was sure. The judge summarised the offence and the victim impact statement and the judge referred to the facts of the appellant's previous conviction for rape. That had occurred when the appellant had met the victim at her flat, she had gone to bed as she was tired leaving the appellant to let

himself out, and she then woke to find him having vaginal sexual intercourse without consent.

14. The judge found that so far as this offending concerned it was Category A because there was a significant degree of planning. The judge referred to three features being: the questioning about what time the children were going to bed; coming around even though the complainant had said she was super tired; and the fact that there had been no romantic or flirtatious involvement before.

15. The judge found that there was severe psychological harm because of the anxiety attacks and need for medication. The judge found that the victim was particularly vulnerable due to personal circumstances, this was because the victim's ability to avoid, protest against or report the offence was limited. The presence of the children meant that the victim could not protest loudly for fear of waking them. The judge found therefore this was a Category A2 offence with a starting point of 10 years and a range of nine to 12 years, aggravated by the previous convictions and the assault by penetration and sexual assault. The judge noted that the assault by penetration had a starting point of eight years with range of five to 13, and the sexual assault was Category A1 with a starting point of four years and a range of three to seven years.

The offence-specific guideline

16. The offence-specific guideline for rape shows that category 2 features are severe psychological or physical harm. This was a case where the judge found that there was severe psychological harm. The drop down menu for that, to which we have helpfully been referred, says that the sentence level in this guideline takes into account a basic level of psychological harm which is inherent in the nature of the offence. The assessment of psychological harm experienced by the victim is for the sentencer to determine. Whilst

the court may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a victim personal statement or on his/her observation of the victim whilst giving evidence. It is important to be clear that the absence of such a finding does not imply that psychological harm suffered by the victim is minor or trivial. A further category 2 feature is the victim is particularly vulnerable due to personal circumstances.

17. A culpability A factor is a significant degree of planning.

18. We turn therefore to the grounds of appeal. Before we do so, it is important to recall that this court will not interfere with findings of fact made by a sentencing judge unless they are: internally inconsistent; inconsistent with an uncontroverted fact; or otherwise irrational.

19. So far as the finding of severe psychological harm was concerned, in our judgment this was a finding open to the trial judge. He based himself firmly on the two victim personal statements and he had seen the complainant give evidence and was able to make the assessment of severe psychological harm. It is to be noted that the complainant was requiring medication because of her anxiety attacks. In our judgment there is nothing in that complaint.

20. So far as the finding of particular vulnerability due to personal circumstances is concerned, we were helpfully referred to *R v Saunders* [2022] EWCA Crim 264, [2022] 2 Cr.App.R (S) 36 at paragraph 13 where reference was made about excluding the victim's ability to avoid or protest. The judge took account of the fact that first of all the complainant was unable to protest loudly because of the presence of the children and she was unable to flee the flat because of the presence of the children. In our judgment the

judge was entitled to draw those inferences from the facts before him. We note that it was common ground that the victim had not said that that had operated on her thinking, but these were, inferences that the judge was entitled to draw from the facts before him.

21. That brings us to the third point, which was a finding of significant planning for the purposes of the offence-specific guideline. The judge relied on three features. First of all the question about what time the children were going to bed; secondly, the fact that he came round even though the complainant had said she was super tired and tried to put him off; and thirdly, the absence of romantic involvement before.

22. We understand the submissions made on behalf of the appellant to the effect that those could all have been neutral factors but whether they were or not was really an assessment for the trial judge. The trial judge had seen the complainant give evidence and was able to make those findings of fact. In our judgment there is no basis for us to interfere with those findings and the judge was entitled to find that there was significant planning for the purposes of the guideline.

23. That brings us to the final point which was the uplift from the 10-year starting point to reflect both the other offending which took place at the same time and place, and the relevant previous conviction. As was pointed out in submissions on behalf of the appellant, the fact that the previous conviction was old was a relevant feature in reducing its effect but as was also pointed out on behalf of the respondent, the factual overlap between that offending and this offending was also relevant. In our judgment it is impossible to say that a two-year uplift from the 10-year starting point to reflect the overall offending in the other offences and the relevant previous conviction was manifestly excessive.

24. For all those reasons, we will dismiss this appeal against sentence. We should conclude

by thanking both Mr Rowcliffe and Mr Milne for their helpful written and oral submissions.

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

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