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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301706/B2-202302490/B2

[2024] EWCA Crim 705

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 6 June 2024

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE BRYAN

HIS HONOUR JUDGE CONRAD KC
(Sitting as a Judge of the CACD)

REX

V
LEON ALEXANDER

MS R SELVA appeared on behalf of the Applicant

APPROVED JUDGMENT

MR JUSTICE BRYAN:

1. This is a case to which the provisions of the Sexual Offences (Amendment) Act 1992 applies. Under that provision, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This judgment has been anonymised accordingly.
2. On 11 April 2023, in the Crown Court at Wood Green (Her Honour Judge Greenberg KC), the applicant (then aged 30) was convicted of four Counts of rape, sexual assault and causing or inciting a child to engage in sexual activity (Counts 1, 4, 5 and 6). He was acquitted of Count 2. A not guilty verdict was entered pursuant to section 17 of the Criminal Justice Act 1967 in respect of Count 3.
3. On 23 June 2023, the applicant (then aged 31) was sentenced as follows. On Count 5, (rape), an extended sentence of 17 years comprising of a custodial term of 14 years and an extension period of 3 years with a concurrent sentence of 5 years' imprisonment on Count 1 (rape), 18 months' imprisonment on Count 4 (sexual assault) and 10 months' imprisonment on Count 6 (causing or inciting a child to engage in sexual activity).
4. Sentencing the applicant, the judge made an order for a statutory surcharge "in the appropriate sum" (paragraph 10B of the Sentencing Remarks). A surcharge in the sum of £190 has been recorded on the Crown Court Record Sheet. The earliest of the offences of which the applicant was convicted was 12 February 2010. Therefore, the relevant charging regime was that imposed by the Criminal Justice Act 2003 (Surcharge) (No 2)

Order 2007. The surcharge did not apply. Accordingly the order for statutory surcharge “in the appropriate sum” was unlawful and we quash the same.

5. The applicant renews his application for leave to appeal against conviction and sentence, following refusal by the single judge (Mr Justice Picken).

6. Turning to the facts of the applicant’s offending. In the early hours of 6 March 2022, the 15-year-old complainant 1 (“C1”) was at her friend’s flat. At about 8:30 am the pair were on the balcony of the flat saying goodbye to one another. C1 noticed a man outside walking to the bus stop – that was the applicant. He made eye contact with her. C1 left her friend’s flat, which was on the first floor. She was descending the stairs when the applicant entered. He told her he lived in the block and started walking up the stairs. As he ascended, he continued talking to her, asking her how old she was and she responded saying she was 15. She kept her distance and was making her way to the communal door. The applicant kept talking to her and invited her to come inside the flat. C1 explained that she needed to go home but, as the applicant was still talking to her, she began to climb the steps towards him. He asked what Country she was from and began guessing. C1 asked him how old he was and he replied, “20”. C1 told him that she needed to leave. When she said this, the applicant turned her around, so that her back was to him. He held her by her waist. She felt him doing something behind her and turned to see that he had taken his penis out of his trousers. He grabbed her hand and put it onto his penis and started masturbating (the subject matter of Count 6). As he did this, she recalls that he was making a noise.

7. He asked her for oral sex but she told him that she would not do that. He began to beg her and said he was “going to bust”. He pushed her onto the second flight of steps and she landed on her bottom. The applicant forced his penis into her mouth. C1 tried to resist but she could not get away. With the penis in her mouth, he moved her head forcefully up and down the shaft until he withdrew and ejaculated on the steps (the subject matter of the oral rape, Count 5). C1 managed to get up and began walking down the stairs. The applicant said that he too was leaving to catch a train and, as he left, he took a photograph of her Snapchat handle. After the applicant left, C1 phoned her friend and explained what had happened; she returned to her friend’s flat. Whilst she was at the flat, she noticed that the applicant had added her on Snapchat. She asked him to send a photograph of himself but he refused. C1 left her friend’s flat shortly afterwards and went to the bus stop. She was approached by a lady who was concerned about C1’s distress. C1 told her what had happened and the police were called. The applicant then video called her and said he was on the overground train. The police traced the applicant and on 8 March 2022 arrested him. When he was cautioned, the applicant said, “I didn’t have sex with her, just oral”. He was interviewed later that day and answered “no comment” to all the questions and he was subsequently charged the following day.
8. Following the applicant’s charge in respect of the rape of C1, a review was conducted of other sexual allegations which had been made against him, but which had not resulted in a charge. One such allegation had been made in 2010 by complainant 2 (“C2”).
9. Two weeks before 12 February 2010, C2 met the applicant through a social networking site called “Profile Pic”. They began communicating on the site and they exchanged

telephone numbers and sent texts before speaking on the telephone. They arranged to meet on 10 February 2010 but C2 changed her mind and did not turn up. The applicant was angry with her and asked her to meet with him that following day. Not wanting to let him down again, C2 agreed. She travelled by bus to Finsbury Park, alighting at the bus stop next to the Arsenal shop and waited for the applicant. After about 30 minutes the applicant arrived, the pair chatted and they took a bus to Whitehart Lane. The applicant explained that they could go to his flat and that his mother was there. As they walked together, they chatted amicably about clothes and inconsequential things. C2 had no intention of engaging in any sexual activity with the applicant, she believed that they were simply going to his flat to spend time together. As they walked along, they came to a block of flats. C2 assumed that this was where the applicant lived as he pushed the front door and went inside. She followed him. In the entrance hall there was another door. C2 followed the applicant, believing she was going to the lift. She had in fact, unbeknown to her, entered the electricity cupboard. It was dark. The applicant said that there was no electricity. The applicant told her to take off her coat, which she did, and then he began to kiss her. She told him to stop. He did not. He became angry and began to shout at her. Frightened, C2 gave in and kissed him back. He undid her top and licked her nipple. C2 told him to stop but he did not. C2 pushed him but that did not stop him. The applicant began to pull at her clothes. C2 repeatedly told him to stop but he dragged her to the floor and he pulled at her trousers. She screamed at him to stop but he did not. He opened her legs and put his penis into her vagina. He continued for about 10 minutes until he ejaculated (the vaginal rape is the subject matter of Count 1). He got up and left leaving C2 lying on the floor. After he had left, C2 managed to find the light switch and turn the light on. It was then that she realised that the applicant had taken her phone and

her purse. She got dressed and left the building. She saw a lady about to leave her house and asked her to call the police. On 14 February the police arrested the applicant for the rape of C2. He was cautioned and said, "I didn't rape her". Later that day he was interviewed, where he denied that he had raped C2 and maintained that the pair had engaged in consensual vaginal intercourse instigated by her.

10. Another allegation made against the applicant was in 2017 by complainant 3 ("C3"). On 20 April 2017, at about 10.45 pm in the evening, C3 saw the applicant in a shop. She recognised him as they had met the year before and the pair had exchanged telephone numbers and then text messages. Following the exchange however of some messages, C3 blocked him after he had sent her an unsolicited image of his penis. C3 was of the view that the applicant did not appear to recognise her. After she left the shop, the applicant followed her. When he caught up to her, he engaged her in conversation. She asked, "Don't you recognise me?" and he said, "No". He walked with her along Bounces Road and then into St Peter's Road N9. As they walked, the applicant asked her for her telephone number and she gave it to him as she thought he was friendly. When C3 stopped to cross the road to continue her journey home, the applicant pushed her into a parked car and held her there. She told him to stop and that her boyfriend was coming, hoping that this would stop the applicant but it did not and he carried on. He removed his penis from his clothing, thrust it between her legs and began to grind against her saying, "You know you want this". He held her in place as he did this. C3 struggled throughout and managed to get away after about 30 seconds (this was the subject of Count 4, sexual assault). C3 ran home. Over the course of the weekend, the applicant called her (she did not answer the calls) and also sent her a text message asking if she would like to go to the

cinema. The applicant was identified through his telephone number and was traced and arrested.

11. In the course of his interview, the applicant stated that he knew the complainant and on 20 April, when he saw her, the pair engaged in mutual kissing and it was C3 who grabbed his buttocks and began to rub his penis through his trousers. She removed his penis from his trousers and put it between her thighs and began grinding against him until he ejaculated. He maintained that she had laughed at him but became angry when he received a text message from another girl and she left.

12. The prosecution case was that the applicant was a serial sex abuser who had been offending since 2010 until his arrest in 2022. In summary, in 2010 he had vaginally raped C2 in an electrical cupboard at the block of flats; then in 2017 he had sexually assaulted C3 as she walked home; and then, in 2022, he had orally raped C1 on the stairwell of a block of flats.

13. To prove its case, the prosecution relied on the following evidence. In relation to the alleged offending against C2, the evidence of C2 in her ABE video recording and live cross-examination, a 999 call made by C2, the evidence of PC Lenehan (which was read) who described the distressed state of C2 as the first officer on the scene, and the evidence of Laura Bentley (which was read) a forensic scientist who confirmed that upon examination of C2 there was a finding of semen consistent with vaginal intercourse and the evidence of PC Kelly, who gave evidence of the arrest and interviews with the applicant.

14. In relation to C3, the prosecution relied upon the evidence of C3 in her ABE video recording and live cross-examination, the evidence of “W1” (a friend of C3), which was read, and in which she described the first account given and the evidence of “W2” (the sister of C3), which was read, and in which she described the first account given to her.

15. In relation to C1, the prosecution relied upon the evidence of C1 in her ABE recording and live cross-examination, a 999 call (which was played) from a third party in which C1 could be heard sobbing in the background, Body Worn Video evidence (which was played) showing C1’s presentation upon the arrival of the police, CCTV evidence (which was played) from the local authority showing the applicant’s approach to the building, where he engaged with sexual acts with C1, messages sent from C1 to her boyfriend following her encounter with the applicant, the evidence of “W3”, a friend of C1 who described the first account given to her by C1, and the evidence of “W4”, a friend of C1, who described the first account given to her by C1.

16. Amongst other matters, the prosecution also relied upon the live evidence of another witness, “W5”, as bad character evidence from a rape acquittal in 2016, a 999 call, (a record made by the 999 call operator) and bad character evidence of the applicant’s four convictions for exposure from 2010 as well as a timeline of the allegations.

17. The defence case was one of denial. The applicant did not give evidence in his own defence at trial. In relation to C1 and Counts 5 and 6 (the oral rape and causing or inciting a child to engage in sexual activity in the stairwell of the flats), the applicant

accepted that upon arrest he said, “We didn’t have sex, we just had oral”. In the interview that followed he was asked a series of questions, none of which he gave an answer to. In relation to C2 and Count 1 (the rape in the electrical cupboard), in interview the applicant described how and why he and C2 went to the location where they had sex, engaged, he said, in consensual kissing and how it was C2 who instigated the removal of clothing and sexual intercourse.

18. In relation to C3 and Count 4 (the sexual assault in the street), in interview and after initially not recalling the encounter with C3, he stated that he did recall it and gave an account of meeting her inside a shop, walking along with her the short distance into St Peter’s Road and how they engaged in mutually consensual kissing. He went on to describe how complainant 3 touched his bottom, opened his pants, took out his penis and they had consensually rubbed against one another. He said it was all over in a short time and they went their separate ways.

19. The issue for the jury was to judge whether the complainants gave honest accounts of what they say the applicant did to them.

20. Turning to the rulings made by the judge. In relation to the bad character evidence concerning the convictions for exposure, Counsel for the defence submitted that the convictions for exposure were offences of a very different nature to those alleged. Absent particulars with details of the circumstances of the offences, they could not amount to evidence going to an issue in this case, namely, a propensity to act in a way alleged in the Counts on the indictment. The defence further submitted the fact that four

exposure offences post-dated Counts 1 and 2 and pre-dated the remaining Counts by 7 and 11 years, demonstrated that the exposure offences could not be evidence of relevant propensity.

21. In relation to the single previous allegation of rape in 2016, resulting in an acquittal, the defence submitted that whilst the evidence of the alleged rape bore some similarity to the allegations in the current indictment, this was insufficient to be evidence of propensity as it could not make it more likely that the applicant committed the offences on the indictment.

22. The judge ruled that the exposure convictions were capable of being evidence of the applicant's propensity to perform sexual acts on or towards lone women for his own sexual gratification and without their consent. That was a central issue in the current trial in respect of each complainant. It was an important issue in this trial where it is alleged the applicant's sexual conduct was with complainants he had either never met before or with whom, in the past, he had only minimal social contact. The judge acknowledged that the age of the exposure offences and also the applicant's age at the time (17 and 18), but given the serious alleged offences of rape and sexual assault on the indictment were in 2010, 2017 and 2022, and an exposure offences were 13 years ago, there was no argument for excluding the evidence.

23. In respect of the previous rape acquittal, the judge considered the applicant's case in respect of the complainant in the 2016 matter and each of the complainants on the indictment was identical, namely that the complainant consented and had instigated the

sexual contact. The judge determined that the evidence relating to the 2010 convictions for exposure and the 2016 evidence had the potential to be important probative evidence in the case and it would be for the jury to make the final assessment on it, having been given appropriate directions as to whether it showed a propensity to act as alleged.

24. There was also a defence application that the judge should recuse herself, as a result of the words she had allegedly used when addressing the issue of the applicant's acquittal in 2016. The defence maintained that the judge had said that, had the evidence of the applicant's exposure convictions been adduced, the verdict would have been different. The defence submitted that the judge predetermined guilt in the case, took an active dislike to the applicant and was seeking evidence to ensure guilty verdicts. Having regard to the DART's recording, the judge ruled that what she had said was that it may have been different, and that was the true position. The judge found there was no support for the recusal application, and she refused the same.

25. There was also an application by the Crown to re-open its case, which was acceded to by the judge. Counsel for the defence submitted, upon the Crown's application to re-open their case to call DC Mussington to give evidence that the exposure convictions involved masturbation, that this was wholly irrelevant, unnecessary and prejudicial and demonstrated that these convictions should not have been admitted. The defence further submitted that the application should be made and considered in writing. The judge disagreed and ruled that the Crown would be permitted to re-open their case and to recall DC Mussington. The judge emphasised that the jury had the evidence from the applicant's own mouth that he was masturbating when he exposed himself and that they

could consider that evidence. The judge invited the parties to agree the format of the evidence either by an addition to the Agreed Facts or as part of some additional evidence from the officer. The judge considered that this evidence did not prejudice the defence case in anyway unless it was something that would cause the applicant to change his mind about getting evidence. If that was the case the judge invited further submissions.

26. There was also an application on behalf of the defence to discharge the jury. Counsel for the defence submitted that they had not received the proposed legal directions in advance of them being given to the jury and drew attention to a particular paragraph (paragraph 34) in which the judge referred to one of the exposure offences having taken place in “a public park” which had not been introduced into evidence. The defence submitted this was so inflammatory and caused such prejudice that the jury should be discharged. The judge refused to discharge the jury, indicating that she would direct the jury to amend their written directions at paragraph 34 to replace “when in a public park” with ‘when in public’. She apologised to the defence that they had not seen the legal directions advanced but did not consider that to be a reason to discharge the jury.

27. Following the applicant’s convictions on 11 April 2023, the applicant was sentenced by the judge on 23 June 2023. At the time of sentence, the judge had before her Victim Personal Statements from each of the complainants. The defendant was aged 30 at conviction and 31 at sentence. He had six convictions for 11 offences spanning from 2010 to 2015. His relevant convictions included the four convictions for exposure in 2010, and a breach of sexual offending notification requirements in 2015. The applicant described his personal circumstances prior to incarceration as being “single”, living with

a family member, with casual and sporadic employment and no mental health history.

28. The judge had the benefit of a Pre-Sentence Report. The author rehearsed the details of the offences and the fact that the applicant maintained his innocence. It was noted that the applicant accepted over the years that he had been sexually preoccupied and sex had been a significant feature in his life, with the author concluding that his attitude displayed both male privilege and a sense of entitlement as he acted on his own sexual desires to meet his own sexual needs. The applicant maintained all three incidents were consensual and the rationale for why these females would have made the allegations were that he was a womaniser and that they wanted to be in a relationship with him.

29. In respect of an assessment of dangerousness, as these offences were specified offences and fell within Schedule 18 of the Sentencing Act 2020, the author noted that the applicant also satisfied the previous conviction condition, as he had a previous conviction for an offence listed in Schedule 14 of the Sentencing Act 2020. The starting point for considering an extended sentence was to assess whether the applicant satisfied the test for dangerousness. In relation to dangerousness, the author assessed the applicant as posing a high risk of serious sexual harm to adult females and teenage girls and found he had an established pattern of behaviour that involved sexual violation to gratify his own needs, with a need for power and control being evident in his behaviour and with him acting with little thought for his victims.

30. Turning to the judge's sentence of the applicant, in respect of Count 1 (the rape of C2 in the electrical cupboard), the judge set out the facts of the case and referred to the fear C2

felt that she would not be believed, being borne out by CPS declining to prosecute in 2010. The judge rejected the defence submission that this was not a well-planned offence (considering it to be a well-planned offence), planned when the applicant made the arrangement to meet the complainant before he met her. The judge found the applicant took her to a location he knew, where she would be isolated and unable to escape. The judge determined that the applicant intended to have sex with the complainant, whether she wanted it or not. The aggravating feature was that the applicant ejaculated and then, in mitigation for this offence, was the applicant's age at the time. The judge considered that Count 1 was a Category 3A offence under the Sexual Offences Guideline, with a starting point for an adult offender of 7 years' imprisonment, with a range of 6 to 9 years. The applicant was 17 years when he committed this offence, although fast approaching his 18th birthday. In determining sentence, she confirmed that she would take into account the applicant's age at the time and would adjust the sentence as appropriate, passing a concurrent sentence of 5 years' imprisonment.

31. In respect of Count 4, the sexual assault of C3 in the street, the judge noted that by the time the appellant attacked C3, he was 24 years old and had recently been acquitted of a charge of rape (such acquittal being before the jury as bad character evidence). The judge outlined the facts of the case and the details revealed by C3 in her Victim Personal Statement. The judge determined that the use of force and restraint made these factors under the Sentencing Council Guidelines Category 1 harm. However, there were no other Category 1 or 2 factors and she treated the offending as a Category 2 offence with Culpability B. The judge did not consider that the aggravating factors justified treating the offending as Culpability A. Category 2B had a starting point of 12 months'

imprisonment with a range of a high-level community order to 2 years' imprisonment. The aggravating factors were that the applicant targeted a particularly vulnerable victim, a lone female at night, as she was walking home. The applicant also ejaculated and made attempts to contact the complainant after she had escaped from him. The judge highlighted that the applicant had previous convictions by this time for sexual offences and in her view, there were no mitigating factors. The judge passed a concurrent sentence of 18 months' imprisonment.

32. In relation to Counts 5 and 6 (the oral rape of C1, a 15-year-old girl, and associated engagement in sexual activity with a child), at the time of this offending the applicant was 30 years old. The judge referred to the facts of this offending and the contents of C1's Victim Personal Statement. She categorised the offending as Category 2 harm, C1 being *particularly vulnerable*, young, inexperienced and alone at night, with Category B Culpability (whilst there was some planning by the applicant, the judge did not consider that there was a significant degree of planning or aggravating features suggestive of Category A Culpability. The starting point for a Category 2B offence was 8 years' imprisonment, with a range of 7 to 9 years' imprisonment. She identified there were a number of aggravating factors, including the targeting of C1, disparity in ages and previous sexual convictions. There were no mitigating factors.

33. In relation to Count 6 (causing or inciting a child to engage in sexual activity) the judge rejected the defence argument that this offence absorbed within the culpability of Count 5 and considered that this was a separate and distinct offence which degraded C1 and was without thought to the effects upon her. This was a Category 2B offence, with a starting

point of 6 months' imprisonment and a range of high-level community order to 12 months' imprisonment. The aggravating factors were as for Count 5 and there were no mitigating factors.

34. The learned judge treated Count 5 as the most serious offence and passed a sentence on Count 5 to reflect the totality of the applicant's offending across all counts, with concurrent sentences on all other counts (an appropriate approach as defence counsel accepts). The judge considered the appropriate sentence on Count 5 would, in such circumstance, be one greater than the top of the Sentencing Guideline range (for that single offence).

35. In considering the issue of dangerousness, the judge reflected on the contents of the Pre-Sentence Report, rejected the submission by the defence that the applicant's request for help, when examined by a psychiatrist in 2012, was a mitigating factor based on the fact that the applicant did nothing to seek help in the ensuing 12 years, which undermined that submission. The judge referred to the exposure offences in 2010, which resulted in imprisonment but did nothing to deter the applicant's predatory behaviour. The judge highlighted the evidence of the rape complainant from the alleged rape in 2016, which she considered was wholly credible, and she took her evidence as further evidence of the applicant's sexually predatory behaviour. All of the offences for which the applicant fell to be sentenced were specified offences under Schedule 18 of the Sentencing Act 2020, and the judge was in no doubt that the applicant presented a significant risk to members of the public of serious harm by the commission of further specified offences and found the applicant *dangerous*.

36. The judge also considered that the risk that the applicant presented could only be adequately addressed by the imposition of an extended sentence. The judge accordingly passed an extended sentence of 17 years on Count 5, comprising a custodial term of 14 years, with an extended licence period of 3 years, passing concurrent sentences on all other Counts of the lengths we have already identified.

37. The grounds of appeal against conviction, as refused by the single judge and renewed before us, are as follows:

(1) The judge was wrong to admit bad character evidence in the form of the 2016 acquittal for rape. The applicant refers to the case summary from the time of acquittal and the arguments against submission advanced at trial. It is submitted this was a single acquittal in relation to which considerable key evidence was missing, including the Video-Recorded Interview and the Jury Bundle. It is submitted that such evidence would have an overwhelming prejudicial effect and impact upon the jury, given what the jury would be considering on the face of the Indictment, and in such circumstances it ought not to have been admitted.

(2) The judge was wrong to admit bad character evidence in the form of the four convictions for exposure. They were a long time ago. They were only limited details of the convictions. They were unrelated in terms of facts and issue to the matters on the indictment and they ought not to have been admitted.

(3) The judge erred in allowing the Crown to re-open its case (on 10 April 2023, at the

close of all the evidence and during discussion regarding legal directions) by calling DC Mussington, Officer in the Case, to give evidence that the exposure convictions involved masturbation, and in rejecting the applicant's submission that the application should be made in writing. The defence submits that the evidence was irrelevant, unnecessary and prejudicial, and relies upon such submissions under this ground and also in relation to Ground 2.

(4) The judge erred in giving Legal Directions to the jury that had not been seen by Counsel. Whilst initial Legal Directions were sent to Counsel and the applicant made observations on these, the judge stated that some of the corrections might be adopted but that she would not allow the defence to review any further and final version that will be given to the jury and Legal Directions were then given to the jury that had not been seen by Counsel.

(5) The judge misdirected the jury in terms of delay and the applicant not giving evidence. The Crown closed their case on 8 April 2023. The applicant was due to give evidence on 9 April 2023. Taking instructions but pending a signed endorsement, the judge and Crown were forewarned by email about half-an-hour before the court was due to sit and the applicant called, that the applicant would not give evidence. The judge commented, "No one was expecting that" and stated "I'll have to redraft my legal directions - these will have to be done again ...". The jury were sent home. During the trial the applicant relied upon the lack of available evidence for charges relating to 2010, 2016 (the bad character) and 2017. The defence submitted that the applicant's failure to give evidence in its trial should not

prejudice impact of delay/missing evidence. It is submitted that the direction given by the judge as to delay to the jury, in the context of the applicant not giving evidence, was inadequate. The judge directed the jury at paragraphs 24 and 25 as follows:

“24. As the defendant has chosen not to give evidence, there is no evidence from him that he has been prejudiced in presenting his case by the absence of any material from 2010, 2016 or 2017, or as a result of any limitations in his memory. Nevertheless, bear in mind that the passage of time may have put the defendant at a disadvantage in ways that have not been specifically identified.

25. If you find there is any prejudice to the defence case by the delay, take that into account in the defendant’s favour when you are deciding whether or not the prosecution has made you sure of guilt.”

(6) The judge should have discharged the jury following a misdirection as to the exposure evidence. The judge initially directed the jury, giving them additional facts regarding the exposure offences that were not heard in evidence. The judge referred to one of the exposure offences having taken place in a public park, which had not been introduced into evidence. The defence submitted that this was so inflammatory and that it caused such prejudice that the jury should be discharged. It is said the judge was wrong not to discharge the jury, and in his approach of directing them to cross through the evidence that had not been heard.

(7) The judge misdirected the jury in relation to bad character, the 2016 acquittal for rape and the exposure convictions. There was no evidence before the jury as to whether the exposure convictions were before the 2016 case or not. The applicant submits this amounts to a fundamental misunderstanding of the application of bad character

evidence and supports the applicant's submission that the judge should not have admitted any of the bad character evidence.

(9) (sic) The judge misdirected the jury with regards to cross-admissibility. In this regard, the Crown failed to raise with each complainant the usual supplementary question that is asked in multiple complainant cases. The defence cross-examined each complainant and the Officer in the Case (DC Mussington) as to what was told to each complainant in order to persuade them to come to court and give their evidence. Each stated they had been told or had assumed that the applicant was on remand for serious sexual offences similar to their own or worse. The applicant submits that the judge shifted the burden of proof when directing the jury in regard to cross-admissibility.

(10) The judge failed adequately to direct the jury on the elements of reasonable belief in consent. The applicant had stated that each complainant had consented enthusiastically. The applicant was never asked specific questions regarding his reasonable belief, as it was plain that he was stating he believed that they were consenting. Evidence from each complainant was that each had met the applicant, flirted, gone freely with him to a secluded spot, but each denied that the penetration, touching etc was consensual. The judge failed to adequately direct the jury on the element of reasonable belief in consent.

(11) There were inaccuracies in the factual summing-up, it being submitted the judge failed adequately to draw the jury's attention to matters that supported the applicant's

case and his defence and/or stress (it is said sometimes incorrectly) matters the Crown relied upon.

(12) In circumstances in which all applications by the defence were refused, whilst all applications made by the Crown were successful, it is said that the judge adopted an unfair approach to the applications that were before her.

38. Ms Selva, who appears on behalf of the applicant before us, accepts that no one point is “an Exocet missile”, but she submits that the cumulative effect of the grounds is such that the convictions are unsafe.

39. In relation to the grounds of appeal against sentence, which were refused by the single judge, and which are now also renewed before us, the applicant submits that the total sentence passed was manifestly excessive. First, it is submitted that the term of 14 years imposed for Count 5 was too high. Whilst it is accepted it was appropriate for the judge to treat Count 5 as the lead offence and pass a sentence on that Count to reflect the totality of the offending, it is submitted that an uplift of 9 years (from the starting point for that offence) was not just or proportionate in the circumstances and facts of the case. Secondly, whilst it is accepted that the applicant posed a significant risk, as assessed by the Probation Service, it is submitted that the risk on release could have been adequately managed in the community by licence requirements, and the learned judge was wrong to impose an extended sentence with a result that the sentence passed was manifestly excessive for this further reason.

40. The prosecution has lodged a Respondent's Notice and Grounds of Opposition to which we have had regard.

41. We are most grateful to Ms Selva for the quality of her written and oral submissions on behalf of the applicant.

42. Nevertheless, and turning first to the proposed grounds of appeal against conviction, and having formed our own independent view, having carefully considered the submissions made before us, we share the view expressed by the single judge (Mr Justice Picken) that there is no merit in any of them, and we are grateful to adopt the reasons given by the single judge, with which we agree:

“1. Eleven proposed grounds of appeal are raised on your behalf. There is no merit in any of them.

2. First, as to your acquittal in 2016, I am quite clear that the judge was right to allow evidence concerning this to go before the jury at your trial. The similarities between the acquittal and the offences for which you were standing trial are striking. They include the targeting of the 2016 complainant and the 2022 complainant, having watched the 2016 complainant return from a shop and enter a block of flats and in relation to the 2022 complainant having watched her on the balcony of a block of flats. The location of the 2016 incident (the stairwell of a block of flats) matched the location of the incident, involving the 2022 complainant, and indeed the 2010 complainant was attacked in an electricity cupboard in a block of flats. There were also other similarities: engaging the complainants in conversation; moving them to a secluded area; becoming physical once they attempted to leave; and in the case of the 2016 complainant making contact which you also did in respect of the 2022 complainant and the 2017 complainant.

3. As to the point concerning the video recorded interview transcript, it is not suggested that the evidence given by the 2016 complainant at the first trial differed from the evidence given by

her in the more recent trial. The submission that ‘considerable key evidence was missing’ is simply not borne out.

4. As to the suggestion that the judge should have recused herself because she stated that ‘if the exposure convictions had been in evidence, the jury would likely ... convicted’, it appears from the recording that what the judge actually said regarding the convictions for indecent exposure was that ‘maybe had that evidence been adduced the verdict might have been different’. The judge was not here saying that there would have been a conviction but mainly alluding to the possibility which was obviously a possibility.

5. Nor, lastly, in relation to the first ground, is there any merit in the suggestion (if made) that the judge erred in the exercise of her statutory discretion.

6. Turning to the second proposed appeal again, I see no merit in this. The judge was entitled to take the view that your previous convictions for indecent exposure demonstrated a propensity to target lone females in public and subject them to a sexual act. The fact that those other offences did not involve physical contact does not matter.

7. As to the timing of the bad character application/the application for the judge to recuse herself, the former was made on 28 March 2023 whilst the latter was made on 4 April 2023. It follows that there is no point here to be made.

8. The judge mentioning about the masturbation having taken place in a public park was a mistake which was corrected. No harm done.

9. As to the third ground of appeal again, there is no merit in this at all. There was an error on the part of the prosecution in that the officer did not mention masturbation. This was allowed to be corrected on a very narrow basis. Nothing turns on it. Indeed, if the defence had allowed the matter to be included in the agreed facts, then, there would have been less prominence to the point than having a witness attend to give evidence.

10. As to the fourth ground of appeal, the suggestion that there were ‘unseen legal directions given to the jury’ makes no sense. There was a technical glitch that is all. The judge provided her draft and her submissions from both sides, indicating that where appropriate she would amend her directions in accordance with

those submissions. That she chose not to hear further submissions was a matter for her. It was not a decision directed at the defence specifically.

11. This brings me to the fifth ground of appeal concerning delay. The decision which you made not to give evidence. There is nothing at this point either. In fact, the direction given by the judge (as set out in the respondent's notice at paragraph 5) was, if anything, generous to you.

12. As to the sixth ground of appeal concerning an alleged misdirection relating to bad character and exposure convictions, this has been addressed already. There is nothing in the point.

13. The seventh ground of appeal is also hopeless. The dates of the relevant offences and conviction were in evidence, and the judge reminded the jury of what the defence had to say concerning that offending, which was that the offences were very different in nature, there was no physical contact, and they took place many years ago.

14. As to the next ground, the ninth ground of appeal, the various complainants were not known to each other. There is nothing in this point as a result.

15. This brings me to the tenth ground of appeal concerning the alleged misdirection concerning reasonable belief. It is accepted on your behalf that your barrister did not cross-examine on this issue, but, in any event, the judge directed the jury that 'all four elements of the offence must be proved' and so there is no prejudice here.

16. As to the eleventh ground of appeal, there was no bias in the judge's summing-up, and nor, as far as I can discern, were there any inaccuracies of any consequence.

17. As to the final ground of appeal, the suggestion that all applications made on your behalf were refused whilst all applications made by the prosecution were successful, I note from the respondent's notice that that simply is not the case."

43. Accordingly, the renewed application for leave to appeal against conviction is refused.

44. Turning to the renewed application for leave to appeal sentence, like the single judge

before us, we are satisfied, having considered the matter independently, that there is no merit in your proposed grounds. Once again, we gratefully adopt his reasons, with which we are in total agreement:

“1. There is no merit in either of the two proposed grounds.

2. As to the first, it is accepted on your behalf that the judge was right to approach Count 5 on the basis that this was the lead offence and to impose an uplift in respect of that offence, whilst making the other sentences concurrent. The submission made is that an uplift of nine years was not just and proportionate. I do not agree. The judge explained in detail the facts relating to each of the offences. It is apparent from what she set out that you are (as, indeed, is accepted on your behalf) a very dangerous man who has committed appalling sex attacks over the course of a considerable number of years. The judge was fully justified in imposing the sentence which she did in view of those circumstances.

3. As to the second ground, it is, as I say, accepted on your behalf that you are dangerous. The only issue is as to whether the judge was right to impose an extended sentence. Plainly, she was right to do just this. Again, the facts speak for themselves, and I consider it not merely right, but also important, that the extended sentence provisions apply in a case such as yours. The fact that the judge ‘chose a low term of three years, when assessing risk and the extended part of the sentence’ (paragraph 13 of the Advice) is nothing to the point.”

45. Accordingly, the renewed application for leave to appeal against sentence is also refused.

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

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