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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2024] EWCA Crim 889
Case No: 2023/03674/A3

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 10th May 2024

B e f o r e:

LADY JUSTICE WHIPPLE DBE

MRS JUSTICE FARBEY DBE

MR JUSTICE WALL

R E X

- v -

CONNOR GEORGE

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Miss B Rogers appeared on behalf of the Applicant

J U D G M E N T

LADY JUSTICE WHIPPLE:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, 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 the offence. This prohibition applies unless it is waived or lifted in accordance with section 3 of the Act.
2. On 29th September 2023, in the Crown Court at Basildon, the applicant was sentenced by Mr Recorder Caudle to 11 years' imprisonment, comprising ten years' imprisonment following his conviction on a single count of rape, and a consecutive term of one year's imprisonment for a single offence of having a bladed article, to which he had earlier pleaded guilty.
3. The applicant now renews his application for leave to appeal against sentence following refusal by the single judge. We grant leave.

The Facts

4. The appellant and "C1" had been in a relationship for around 18 months but had separated in early 2022. They continued to see each other following the break-up. In the early hours of 5th November 2022, C1 returned to her home with friends after a night out. At approximately six o'clock in the morning the appellant arrived at the address uninvited and in possession of a folding knife, which he used to frighten C1's friends into leaving. A neighbour, hearing the disturbance, went outside and took the knife from him. The appellant then went into C1's address and accused her of sleeping with one of her friends. He grabbed C1 and told her that he wanted oral sex. One of C1's friends who had been at the address telephoned her as they wanted to retrieve their jacket. C1 dropped the jacket out of a window and indicated at that

time that that person should call the police.

5. The appellant pulled off C1's dressing gown, forced her legs apart, and raped her. C1 was distressed and repeatedly asked the appellant to stop. She told him that he was hurting her. C1 managed to activate the video-recording function on her mobile telephone. The camera was covered with clothing but captured an audio recording of the offence. Police arrived and arrested the appellant at the scene. The knife was recovered from the neighbour.

6. In his police interview the appellant admitted possession of the knife but said that he had it for work. He denied having had sexual intercourse with C1. The appellant was then played the audio recording. He initially denied that it was his voice on the recording before changing his account to say that they had engaged in consensual "rough" sex involving role play.

The Litigation History

7. Following the appellant's arrest, C1 gave an Achieving Best Evidence interview in which she addressed her allegations of rape. In a separate, second ABE interview she made other allegations against the appellant, including allegations of sexual violence in the course of their longer relationship.

8. The second ABE interview led to a second indictment being preferred. That second indictment contained two counts: one of assault by penetration and the other of controlling and coercive behaviour. However, for reasons which are not entirely clear to us, and which in our judgment cannot impact on the disposal of this appeal, it appears that on 7th July 2023 the Crown offered no evidence on the two counts that were on the second indictment and formal not guilty verdicts were entered on each of those counts.

9. In the same month, July 2023, the trial on the rape count on the first indictment proceeded. The prosecution relied on C1's first ABE interview as forming the basis of their case. No exploration of the other allegations of violence which had been made by C1 in her second ABE interview were conducted during the course of that trial. The trial focused on the events of the early morning of 5th November. It was in relation to those allegations that the jury then convicted the appellant.

The Sentence

10. In passing sentence, the Recorder referred to the Sentencing Council's guidelines for rape and said that this was a category 2 offence, given the severe psychological harm, some physical harm and pain, degradation and humiliation, and the fact that this was a sustained incident which was not over quickly.

11. As to culpability he said this:

"... I take the view that this is culpability A. It is on the cusp. There was some previous violence. If it is category 2A, and as I say on the cusp, category 2A, the starting point is ten years with a range of nine to 13. If it is category 2B, then the starting point is eight years, with a range of seven to nine. ... I would, therefore, take a starting point of nine years, with a top range of 2B."

12. The Recorder went on to detail the aggravating features: the location of the offence (in C1's own home and in her own bed); and that C1 had since moved home and moved jobs as a result of the offence. He said that the aggravation served to increase the sentence to ten years' imprisonment. There was little mitigation.

13. The Recorder considered the appellant to be dangerous, but concluded that it was not necessary to impose a life sentence or an extended sentence, given the lengthy determinate

sentence he was about to impose. That sentence was one of ten years' imprisonment for the rape, together with the usual consequential orders for sexual offending. He imposed a term of one year's imprisonment, to be served consecutively, for the possession of the bladed article. No issue arises in relation to that latter sentence.

The Grounds of Appeal

14. Miss Bethan Rogers represented the appellant at trial and on this appeal. By her grounds of appeal she submitted on the appellant's behalf that the sentence on count 1 was manifestly excessive. She submitted that the position presented to the Recorder was that the rape fell into category 2B, because there were no culpability factors to place it into category 2A. The Recorder erred in placing the offending into category 2A, which he did on account of previous violence inflicted by the appellant on C1. The appellant had always denied C1's allegations of previous violence. Those allegations had been the subject of further counts on the second indictment to which the appellant had pleaded not guilty, following which the Crown had offered no evidence on 7th July 2023, resulting in the entry of formal verdicts of not guilty on those counts. The effect of the Recorder's sentencing approach was to go behind those not guilty verdicts. That was an error by the Recorder; he should not have elevated the offending to category 2A in the manner that he did; the correct categorisation was 2B.

15. Miss Rogers has pressed these arguments today, and we are grateful to her for her clear and focused submissions and for her explanation of the background.

Discussion

16. In our judgment there is merit in the point that Miss Rogers makes. The appellant had always asserted his innocence to allegations of violence towards C1. Faced with the appellant's denials of wider allegations of sexual violence against C1, it would have been

open to the Recorder to have heard evidence about those and to have made findings on those wider allegations with a view to reaching the appropriate sentence, but the Recorder did not do that.

17. Those previous allegations were reflected in the second indictment on which guilty verdicts had been entered. In our judgment the Recorder was in error when he invoked the previous history between this couple as a basis – and as the sole basis – for elevating the offending from category 2B into category 2A, or on the cusp between those two categories, as he stated. In the context of this case, that was wrong in principle. There were no previous convictions against the appellant for the violence against C1, and the Recorder had heard no evidence in the course of the trial about allegations of previous violence and was not in a position to reach any conclusions about whether there had, or had not been, previous violence.

18. Based on the evidence that was before the Recorder, the appropriate categorisation was category 2B. That is not in any way to diminish the seriousness of this offending. This rape was shocking. The transcript of the recording of the rape on C1's phone makes difficult reading. C1 repeatedly asked the appellant to stop, but he persisted. This was vile, deliberate, humiliating abuse.

19. Nonetheless, the starting point for sentence was eight years' custody in a range of seven to nine years. We agree with the Recorder's analysis of the seriousness of this offending and the presence of aggravating factors. In our judgment this offending warrants a sentence at the top of that category range.

20. We therefore quash the sentence of ten years' imprisonment and instead impose a sentence of nine years' imprisonment for the rape. The other aspects of the sentence will

remain unaltered. The appellant will serve a consecutive term of one year's imprisonment for the possession of a bladed weapon. The total sentence is therefore reduced from 11 to ten years' imprisonment.

21. To that extent this appeal against sentence succeeds.

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

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