

[2020] EWCA Crim 571

No: 201903715/B3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 24 April 2020

(VIRTUAL COURT)
B e f o r e:
LADY JUSTICE CARR DBE

MR JUSTICE GOOSE

RECORDER OF WESTMINSTER
(HER HONOUR JUDGE DEBORAH TAYLOR)

(Sitting as a Judge of the CACD)
R E G I N A

v

JOHN WILLIAM DICKINSON

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd, Lower Ground, 18-22
Furnival Street, London EC4A 1JS, Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

NON-COUNSEL APPLICATION

J U D G M E N T

1. LADY JUSTICE CARR: On 12 September 2019, in Cambridge Crown Court, the applicant, who is now 67 years old, was convicted of indecent assault on a male, contrary to section 15(1) of the Sexual Offences Act 1956, indecency with a child, contrary to section 1(1) of the Indecency with Children Act 1960, and indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956. He has yet to be sentenced. He is remanded in custody but also subject to recall on a life sentence imposed for an offence of murder committed in 1980. This is his renewed application for leave to appeal conviction.
2. The provisions of the Sexual Offences (Amendment) Act 1992 apply: 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 prohibition applies unless waived or lifted in accordance with section 3 of the Act.
3. We summarise the facts shortly. The case concerned allegations of historic sexual offending committed by the applicant against his adopted children between February 1975 and September 1977. The applicant had met his wife Marion Little in February 1975 and they married 7 weeks later. They soon adopted the complainants (whom we shall identify as "AB" and "CD"). Their biological daughter was born in July 1976.
4. AB gave evidence of multiple occasions of penile penetration of and ejaculation into her mouth (when she was around 4 years old) and of multiple occasions (when she was around 5 years old) when the applicant told her to insert her hand and arm into his anus. When she was around 6 years old she said that he tied her up with a skipping rope and penetrated her vagina with an object.
5. CD stated that when he was around 2 or 3 years old the applicant made him sit on top of his lap; he said that he was anally penetrated with an object. He also recalled the applicant asking him and his sister to put gloves on which had some sort of jelly or lubricant on. The applicant then told them to put their hand into his anus. CD subsequently disclosed what was happening to his mother and the applicant subsequently left the family home.
6. The allegations were reported to the police in 1978 and 2007 but no action was taken at these times. The allegations were reported again in 2017 and were then investigated.
7. The defence case was that the applicant had not committed the offences as alleged or at all. He did not give evidence at trial but relied upon his prepared statement from his police interview in which he denied the allegations. His case was that the accounts from AB and CD were either mistaken as to the identity of the perpetrator, with reference being made to the possibility that a lodger at the time or even the applicant's father might have been responsible. Alternatively, the complaints were malicious, having been motivated by contact with a third party and as a reaction to the applicant's conviction for murder.

8. The issue on this application relates to the Judge's decision to admit what he treated as bad character evidence. The prosecution sought to admit evidence from a previous partner of the applicant, namely Michelle Roberts, as bad character evidence under section 101(1)(d) of the Criminal Justice Act 2003. Ms Roberts had provided statements in which she stated that during her relationship with the applicant in 1979 he had asked her to cover her hand with a plastic bag and insert it into his anus and also to insert a candle into his anus. When she refused he struck her arm. She also stated that he asked to tie her up.
9. It was submitted on behalf of the prosecution that in the particular circumstances of this case the evidence was relevant and demonstrated that in the late 1970s the applicant had a propensity to commit offences of the kind with which he was charged. This was, it was said, extreme activity which went well beyond an interest in anal stimulation during sex.
10. The defence submitted that the behaviour was not bad character falling within the scope of the relevant provisions of the Criminal Justice Act 2003. It could not be said that the evidence was relevant to the issues in the case and, in any event, the evidence should be excluded on the basis of excessive prejudice to the applicant's case.

11. Grounds of Appeal

12. For the applicant it is submitted that the Judge erred in finding, as he did, that the sexual behaviour alleged by the applicant's previous partner was admissible as bad character evidence. It was neither reprehensible nor criminal behaviour as required by section 98 of the Criminal Justice Act 2003 and should have been subject to the usual tests of relevance and prejudice. It is submitted that the evidence was not relevant to any of the issues in the case or, alternatively, the evidence should have been excluded under section 78 of the Police and Criminal Evidence Act 1984. The applicant accepted a general interest in anal stimulation during sexual intercourse. Further, it is submitted that the Judge erred in directing the jury in relation to the evidence and in giving the usual bad character propensity direction.
13. In our judgment, the relevant evidence of Michelle Roberts was not bad character evidence within the meaning of section 98 of the Criminal Justice Act 2003. There was the suggestion of minor violence but that was irrelevant in the context of the case where violence was not alleged. The Judge appeared at least at one stage to have been of the same view but nevertheless decided to treat the evidence as bad character evidence in an attempt to assist the applicant. He should not have done so.
14. But matters do not end there. On this basis the question was simply one of relevance and fairness under section 78 of the Police and Criminal Evidence Act 1984. The evidence was clearly relevant to issues in the case and so admissible. Whilst the applicant accepted that his relationship with his wife involved anal sex (which one of the children might have witnessed), he denied that he had committed the offences on AB and CD. He challenged that anal stimulation involves inserting a fist covered by a plastic bag or glove and lubrication. It was also not accepted on his behalf that tying up was part of his sexual interest.

15. The evidence of Michelle Roberts, reasonably contemporaneous in 1979, in addition to that of Marion Little, went to the central issue of whether AB and CD were or were not mistaken as to what happened in the 1970s. Her evidence as to the applicant repeatedly asking for her to do that which AB and CD recounted, albeit in an adult relationship, showed, if the jury accepted it, that it was an important interest of his at the time. The evidence was also relevant to the defence suggestion that the complaints were motivated by revenge for the murder committed by the applicant, contaminated by contact with a third party, since there had been no such contact with Michelle Roberts.
16. Had the Judge not approached the evidence of bad character it is clear that the Judge, who was well placed at trial to judge the question of fairness, would both have admitted it as relevant and not have excluded it under section 78 of the Police and Criminal Evidence Act 1984. He would have been fully entitled to proceed in this way. Thus there was no material prejudice to the applicant.
17. This conclusion is not altered by the fact that the Judge effectively gave a bad character ruling (although we note that he was careful never to mention it before the jury as a "bad character" ruling). The summing-up was full and fair. The issues were made clear before the jury and the relevant direction was in very cautious terms, stating that if the jury were sure that Michelle Roberts' evidence was true, this might provide some support for the evidence of AB and CD, alongside the "health warning" that the jury should not convict the applicant wholly or even mainly because of it.
18. In the context of an overall fair summing-up and where the evidence was properly admissible in a case with strong evidence against the applicant, it is not arguable that these convictions are unsafe. The renewed application is accordingly dismissed.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk