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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

CASE NO 202103134/B1  
NCN [2022] EWCA Crim 1115



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 21 July 2022

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)  
(LORD JUSTICE HOLROYDE)

MR JUSTICE JAY

MR JUSTICE BENNATHAN

REGINA  
v  
ANDREW GRIGGS

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MR M MAGARIAN appeared on behalf of the Applicant.

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**J U D G M E N T**

1. THE VICE-PRESIDENT: On 28 October 2019, at the conclusion of his trial in the Crown Court at Maidstone before Spencer J and a jury, this applicant, Andrew Griggs, was convicted of the murder in May 1999 of his wife. As was done at the trial, we shall refer to her as "Debbie". He was subsequently sentenced to life imprisonment with a minimum term of 20 years less the appropriate number of days in respect of the periods when he had been remanded in custody or on bail subject to a qualifying curfew. His trial lawyers advised that there were no grounds of appeal. Subsequently, after protracted attempts to obtain legal advice and representation elsewhere, the applicant applied for an extension of time of 678 days to apply for leave to appeal against conviction. That application was refused on the papers by the single judge. It is now renewed to the Full Court.
2. The grounds of appeal substantially relate to evidence adduced at trial concerning an alleged sexual relationship between the applicant and the complainant, aged 15 at the material time, to whom we shall refer to as "LC". In the Crown Court a reporting direction was made pursuant to section 46 of the Youth Justice and Criminal Evidence Act 1999. It provides that no matter relating to LC shall, during her lifetime, be included in any publication if it is likely to lead members of the public to identify her as being a witness in the proceedings. Without prejudice to the generality of the preceding clause, the following matters shall not be included in any publication during her lifetime, if their inclusion is likely to have the result mentioned: her name, her address, the fact that she was [related to] of the deceased and the defendant, any still or moving image of her. We confirm that that direction remains in force. It extends to any report of the present proceedings.
3. An explanation has been given for the unusually long extension of time which would be needed. It is apparent that the applicant's present wife has been active in pursuing matters on his behalf, and we acknowledge the practical difficulties she has encountered. Before considering further whether the explanation is sufficient, we think it best to focus first on the merits of the proposed grounds of appeal.
4. For present purposes, the facts can be briefly summarised. Debbie was last spoken to or seen alive by any person other than the applicant on the evening of 5 May 1999. She was then aged 34. She and the applicant had three young children and she was pregnant with a fourth. The couple were the joint owners of a freezer business. There had been marital difficulties between them, and in March the applicant had moved out of the family home and commenced divorce proceedings. Within a short time however, there had been some degree of reconciliation and the couple resumed cohabitation in the family home. Debbie suspected the applicant of being engaged in a sexual relationship with LC. At that time, both he and LC denied that that was so.
5. On 6 May 1999 Debbie was expected to make a planned visit to the zoo with her oldest child and to attend a party. Failure to fulfil those plans would have been uncharacteristic. On that day, however, the applicant reported to the police that she was missing. He said that she had left home between 11.00 pm and midnight the previous night, driving away in her car. Despite police investigation, she has not been seen since that time and her body has never been found.
6. The car was found some days later, not far from the matrimonial home. The boot lining was missing and a smear of blood was found on the inside of the boot which matched Debbie's DNA.

7. In 2002, following the sale of the freezer business, a letter was found in the shop which provided clear evidence of a sexual relationship between the applicant and LC. LC then admitted that relationship to the police, saying that it had not initially been consensual. The applicant continued to deny the relationship, although he admitted having had consensual relationships with adult women during the marriage.
8. In March 2007 the applicant successfully applied for a declaration that Debbie was dead. He subsequently remarried.
9. In 2019 the applicant was charged with Debbie's murder. The prosecution alleged that he had murdered her at their home, and had transported the body in her car to an unknown location where he disposed of it. The defence case was that he had not murdered his wife, if indeed she was dead. The applicant suggested that she may have committed suicide. He denied any financial motive to kill her. He denied any sexual relationship with LC and claimed to know nothing about the letter found in 2002. He complained that the long delay before he was charged had prejudiced his defence. He relied on the fact that no body had been found; there was no other direct evidence that Debbie was dead; nothing had been found in the home to indicate a killing there; no witness claimed to have seen him moving her body or returning on foot to the house after his alleged removal of the body; there was no evidence that the car boot had been cleaned and it was possible that the blood dated back to an occasion when Debbie had cut her hand.
10. The prosecution presented a circumstantial case which included the following strands, as they were summarised by the judge in a ruling on admissibility to which we shall shortly refer:

"(1)The defendant claims that the deceased walked out of the family home late on the evening of Wednesday 5th May never to be seen again. The defendant has given inconsistent accounts as to the detail of that evening, including the time of her departure and the amount of money she allegedly took with her.

(2) It is inherently improbable that she would have left her three sons (then aged 6, 3 and 18 months) without a word. She was devoted to them.

(3) She was five months pregnant when she disappeared. The defendant had challenged her as to the paternity of the child, although he admitted to the police that this was, in effect, something he said out of spite in retaliation for the allegations she was making that he was having an affair with [LC].

(4) There was a recent history of matrimonial discord, with counter-allegations of violence and threats of violence. The defendant had obtained an ex parte non-molestation injunction in the county court against his wife. At the subsequent inter partes hearing cross-undertakings were accepted, the defendant agreeing not to return to the matrimonial home. There had subsequently

been a reconciliation but relations remained very strained.

(5) The defendant had taken steps to set up a new bank account for the joint business in his sole name, apparently without her knowledge.

(6) In conversation with friends and strangers the defendant frequently took the opportunity to disparage the deceased and blame her for the breakdown of their relationship.

(7) In one such conversation he told a business contact ... that the deceased wanted to leave him and take half the shop. He said that he wished she was dead.

(8) Although the defendant told the police and others that the deceased had left with a substantial sum in cash which he gave her, she did not take her purse. It was found in the baby's changing bag, containing £120 in notes.

(9) The deceased's white Peugeot was seen by a neighbour across the road pulling out of the driveway of the family home at around 4 am on Thursday 6th May, several hours later than the time the defendant said she had driven away from the house.

(10) Only four hours later, at around 8.15 am that morning, the deceased's white Peugeot was seen parked in a residential street 15 minutes' walk from the family home.

(11) The white Peugeot was still parked there a week later when it was recovered by the police. The car was unlocked. Although there was a push chair/buggy in the boot, the boot lining and carpet were missing. A smear of blood matching the deceased's DNA was found inside the boot on the raised metal wing panel."

11. In addition, the prosecution proposed to call LC as a witness. There was no objection to her giving evidence relating to the circumstances of Debbie's disappearance, including the fact that LC had washed the applicant's jeans and other family clothing the day after Debbie disappeared. The defence did, however, object to LC also giving evidence that she was at that time engaged in a sexual relationship with the applicant.
12. The judge ruled that the contentious part of LC's evidence was admissible. He did so in short form in order to enable the case to be opened to the jury, and delivered his written reasons, typically detailed and thorough, a few days later. He held that the evidence "had to do with the alleged facts of the offence", and so was excluded by section 98 of the Criminal Justice Act 2003 from the definition of bad character evidence. It was relevant, said the judge, to the applicant's motive to kill and to his credibility, and was an important part of the relevant background of the marital difficulties before and at the time of Debbie's disappearance. Section 78 of the Police and Criminal Evidence Act 1984

- did not require the evidence to be excluded on grounds of fairness.
13. In the alternative, the judge held that, if this was evidence of bad character within the statutory definition, it was admissible pursuant to section 101(1)(d) of the 2003 Act, being relevant to the important issues of the applicant's motive to kill and the credibility of his account to the police of her disappearance. In the further alternative, it was admissible pursuant to section 101(1)(c) as important explanatory evidence in relation to the breakdown of the marriage. Section 101(3) did not require its exclusion.
  14. The judge having given that ruling, the trial proceeded. LC gave her evidence. So too, in due course, did the applicant. The jury convicted as we have stated.
  15. In his written and oral grounds of appeal Mr Magarian QC argues that the conviction is unsafe for a number of reasons. Summarising his detailed submissions, he makes the following points.
  16. First, he submits that the judge was wrong to admit the evidence of a sexual relationship between the applicant and LC. That evidence did not have a sufficient nexus to the alleged facts of the murder to be admissible as an exception to the rules governing bad character evidence and it did not meet the criteria for admission through either of the gateways mentioned by the judge. Even if it were admissible, Mr Magarian submits it should plainly have been excluded because of its overwhelmingly prejudicial effect. In that regard, Mr Magarian refers to the opprobrium which would inevitably attach to the applicant if the jury were told that he had been having a criminal sexual relationship with a child. The applicant would also be placed in the position of having in effect to defend himself on a charge of rape whilst primarily defending himself on a charge of murder.
  17. Secondly, it is submitted that the judge's direction as to the applicant's good character was deficient in that it failed to give the benefit of that direction to the applicant in respect of the alleged relationship with LC.
  18. Thirdly, it is submitted that the judge, who was not of course obliged to remind the jury of everything that had been said in evidence, should not have referred in his summing-up to LC's assertion that the applicant was "a paedophile".
  19. Fourthly, it is submitted that the judge's direction as to circumstantial evidence was unfair. It wrongly implied that there was a huge amount of evidence against the applicant, wrongly referred to the applicant's own evidence in terms which implied it was no more than a strand of the circumstantial evidence, and failed correctly to direct the jury to consider whether other evidence weakened or destroyed the prosecution case.
  20. Fifthly, it is submitted that the judge at one point invited the jury to enter into speculation as to what may have happened between the couple in the days leading up to Debbie's disappearance.
  21. Lastly, Mr Magarian submits that there must in any event be a lurking doubt as to the guilt of the applicant. In this regard, he makes a number of submissions as to what he suggests was the paucity of evidence in support of the prosecution case.
  22. The submissions which we have very briefly summarised were thoroughly amplified by Mr Magarian in his oral submissions. In particular, in relation to his first ground of appeal he made clear that an important second part of that ground was that if the evidence was to be admitted, the judge should have given, but failed to give, a most clear and specific warning to the jury not to be prejudiced against the applicant by the evidence of his conduct with LC.
  23. We are grateful to Mr Magarian for the help he has given the court in his written and oral

submissions. We are also grateful to the prosecution for the written submissions contained in a Respondent's Notice. Having reflected on all the submissions, our views are as follows.

24. We consider first the judge's ruling as to admissibility. It was rightly accepted by the defence at trial that the jury should hear evidence showing that Debbie suspected the applicant of being involved in a sexual relationship with LC, of necessity a criminal relationship, which he denied. The evidence of LC herself which, if accepted by the jury, showed that the suspicion was well-founded was, in our view, of obvious and inescapable relevance. It was an important part of the circumstances leading up to Debbie's disappearance. If true, it provided what the jury would be entitled to regard as a clear motive for the applicant to have killed his wife, and it shed light on the explanations which he put forward to the police when he first reported her missing.
25. The line between bad character evidence, and evidence which has to do with alleged facts of the offence charged, can be a fine one. The judge was right to consider the issue from both sides of that line. It is well established that evidence showing a motive is capable of being evidence which has to do with the facts of the offence. There must be a nexus between the evidence concerned and the offence charged, and one way in which that may be established is by showing a connection in time: see R v McNeill [2007] EWCA Crim 2927 and R v Sule [2012] EWCA Crim 1130). Here, as the judge said in his ruling, a temporal nexus clearly was present: both Debbie's suspicion and the sexual relationship were continuing at the time of her disappearance. In those circumstances, notwithstanding Mr Magarian's submissions, the judge was in our view correct in the first part of his ruling.
26. But even if he had been wrong about that, the evidence would clearly have been admissible as bad character evidence through either of the gateways he identified. In particular, it was important explanatory evidence as to the circumstances in which the marital difficulties had arisen and continued. As the judge said in his written ruling:

"The jury will hear that in her affidavit in reply to the defendant's application for an injunction the deceased set out her suspicions about his relationship with the complainant. They will hear evidence that he consistently denied such a relationship. The jury are entitled to know the true position, because without that knowledge they will have an incomplete and imperfect understanding of the real circumstances which obtained in the weeks leading up to the deceased's disappearance, and the real dynamics of the disintegrating relationship between husband and wife and all the tensions that were likely to be released. In short, it is a crucial part of the circumstantial evidence as a whole, without which the jury would be unfairly deprived of the full picture."

27. We would add that it was all the more important in the context of the case in which the applicant admitted only adulterous affairs with adults, not in themselves capable of attracting any criminal sanction. If the applicant's evidence in that regard was true, it would mean that Debbie's suspicions about LC were unfounded. That, in our view, is important in the context of a case in which the applicant was suggesting that one possible

- explanation for his wife's disappearance was that she had committed suicide.
28. We therefore have no doubt that the judge was correct to rule the evidence admissible. As to whether it should have been excluded on grounds of fairness, by whichever route it was admitted, we see no basis on which the judge's evaluation could be challenged. The seriousness for the applicant of criminal sexual activity being revealed was central to the allegation that it provided the motive for murder. As to the directions given to the jury, the jury could, in our view, be expected to follow the judge's conventional and general direction to set emotion aside and to assess the evidence dispassionately.
  29. As to the good character direction, this too was given in conventional terms and, in our view, was appropriate and sufficient. It correctly directed the jury as to the relevance of the good character in relation to the applicant's credibility, which would include the credibility of his evidence relating to LC; and it correctly directed the jury as to relevance in relation to the likelihood that the applicant committed the offence charged. It does not appear that trial counsel found any reason to object to the direction at the time.
  30. As to the detailed criticism made of certain parts of the summing-up, we see no basis on which the jury could be criticised for what was an accurate summary of the evidence of LC. Although objection is taken to the emotive language which she used, she was, after all, describing a sexual relationship which began when she was well under the age of consent.
  31. Nor do we see any basis for the fourth and fifth grounds of appeal. The judge gave a conventional and correct direction as to circumstantial evidence. He rightly identified the various strands on which the prosecution relied. Indeed, he would have been open to criticism had he failed to do so. We cannot accept that he may have misled the jury into thinking that the applicant's own evidence was merely one such strand. The judge correctly directed the jury against speculation, and he identified evidence which the jury could properly regard as providing a safe foundation for inferences to be drawn as to the state of the couple's relationship. Again, we note that counsel conducting the trial on the applicant's behalf found no basis for objecting at the time.
  32. By section 2 of the Criminal Appeal Act 1968, this Court "shall allow an appeal against conviction if they think that the conviction is unsafe" and in any other case "shall dismiss" the appeal. It is unnecessary in this renewed application to explore the scope of the suggested "lurking doubt" gloss on that statutory test. The question for the court at this stage is whether there is any arguable ground on which it could be said that the conviction is unsafe. For the reasons which we have given, which are essentially the same as those given by the single judge, we are satisfied that there is not.
  33. It follows that no purpose would be served by granting an extension of time, even if we were satisfied that one was appropriate, because an appeal would be bound to fail. Accordingly, and notwithstanding Mr Magarian's diligence on the applicant's behalf, this renewed application fails and must be refused.

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