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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 1317



No. 202300398 B3

Royal Courts of Justice

Friday, 27 October 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE MORRIS
HER HONOUR JUDGE DE BERTODANO

REX
V
OSMAN SAEED

**REPORTING RESTRICTIONS APPLY:
The Sexual Offences (Amendment) Act 1992**

Transcript prepared from digital audio by
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J U D G M E N T

MR JUSTICE MORRIS:

- 1 The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. 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 that offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.
- 2 This is a renewed application for leave to appeal against conviction and for an extension in time in which to so apply, the applications having been refused by the single judge.
- 3 On 9 November 2019, in the Crown Court at Snaresbrook, the applicant was convicted of five offences and on 13 March 2020 he was sentenced for those offences as follows: on Count 1, for false imprisonment, no separate penalty; on Count 2, sexual assault, 5 years' imprisonment; on Count 3, common assault, no separate penalty; on Count 4, sexual assault, 12 months' imprisonment consecutive; and on Count 5, sexual assault, 12 months' imprisonment consecutive. The total sentence was, therefore, 7 years' imprisonment.
- 4 The applicant seeks an extension of time of 1,148 days in which to apply for leave to appeal. The reasons given for the delay are the COVID pandemic, his mental and physical health, obtaining trial papers and taking further advice without any form of funding.

The Facts

- 5 The case involves three complainants. As regards Counts 1 to 3, on around 20 February 2018, the first complainant met the applicant in a branch of Costa Coffee. They got speaking and she agreed for the applicant to take photos of her. She thought she was going to the applicant's studio but it turned out to be his flat. They drunk some alcohol and the applicant asked the first complainant whether she was frightened of him and then undid the buttons on her shirt. The applicant did not want to let her go and there was a struggle. He threw her on the ground. The applicant went somewhere and returned with two tablets, put them in the first complainant's mouth and forced her to swallow them. She tried to get up but the applicant was lying on her, so she could not get up. She remembers the word "rape" being mentioned by the applicant and it sounded as if it was a threat. The applicant's neighbour heard a commotion taking place in the flat, including someone saying, "You are hurting me." It was he who called the police.
- 6 As regards Count 4, the second complainant arranged to meet the applicant in November 2012. She went to his address and it was set up like a photo studio. The applicant told her that he took topless pictures and she agreed and removed her clothes. The applicant told the second complainant that all models drink in shoots to make them relaxed and he wanted her to drink so that she was relaxed. She did not want to drink, but the applicant said she was posing badly, so they went to a shop to buy alcohol because the applicant said that she had to drink. She had two or three glasses of wine. The second complainant was drinking in the living room and the photo shoot continued and something happened at one point. There was then a gap in her memory and she remembered being in the bedroom and she was on the bed in just her knickers; prior to that, she had had her skirt on. The applicant was taking photos of her in just her knickers. At some stage, the applicant was lying on top of her while she was on her front. He was touching or massaging her and saying he would kiss and lick her nipples and body. The second complainant came to her senses, got up, got dressed and left.
- 7 As regards Count 5, in November 2014 the third complainant was working as a model and was contacted for a photo shoot. She went to the applicant's home and he made her what

she thought was a Jack Daniels and Coke. She thought she had two or three drinks when she passed out. When she woke up she did not have her shoes on and the applicant was fully naked and leaning over her, kissing her feet and moving upwards. She knew that she had to leave and she left the property. The applicant was completely naked and followed her onto the street. Two male teenagers were in the street and when the applicant saw them he stopped chasing the third complainant.

- 8 The prosecution case was that applicant sexually assaulted each of the complainants and also falsely imprisoned and assaulted the first complainant. To prove the case the prosecution relied on, first, the evidence of the circumstances surrounding the offending towards the first complainant, including the delay by the applicant in allowing officers entry to his flat; the distress of the first complainant and the fact that the applicant was heard to have said, "I'll let you go now." As regards events concerning the first complainant there was also the evidence of two neighbours, first, Mr Maroy, who shared a kitchen wall with the applicant, heard him talking to a female and heard someone say, "You're hurting me," and crying; and secondly the evidence of another neighbour who heard a girl screaming, "Get off me, get off me," from inside the applicant's flat, as well as hearing crying and whimpering which lasted for approximately an hour.
- 9 The prosecution also relied on the evidence of each of the complainants and the evidence that each of the complainants was not aware of the complaints made by the other two. They also relied on the evidence of the third complainant's friend, who had been meant to be meeting the third complainant for dinner, but the third complainant had not attended. When she had spoken to the third complainant on the phone she was very distressed and told her she was running away from something. When the third complainant arrived at her house (that is the friend's) she was shocked and frightened and told her that she had been sexually assaulted. Finally, the prosecution relied on the evidence of the husband of that friend. He had gone to collect the third complainant and she had told him what had happened.
- 10 The defence case was that the accusations against the applicant were totally false. There were significant differences made in the allegations made against the applicant by each of the complainants and each had significantly underestimated the amount that they had had to drink. He had been interested in photography from a young age and had become a professional photographer. The purpose of meeting the complainants was to take pictures of them. The applicant gave evidence and gave a full account at interview which was consistent throughout.
- 11 In the course of the trial the judge made two rulings. First, the judge refused a defence application that Count 5 should be stayed as an abuse of process due to the loss of evidence in relation to the complaint made by the third complainant in 2014. The judge ruled that the issue of lost evidence was capable of resolution and that the applicant would not be at a disadvantage and would likely benefit from the passage of time and the lack of DNA evidence. Secondly, the defence had submitted that evidence from each of the complainants that their degree of intoxication could not be explained merely by the amount of alcohol and their views that their drinks had been spiked should be excluded from the jury. No drug had ever been detected by any scientist and the views of the complainants were speculative. The judge ruled that the jury could reach the conclusion from the totality of the evidence that the drinks were spiked and it would be for them to apply their judgment to that question. That evidence was not unfair and could not properly be described as prejudicial. In his summing-up, the judge gave specific directions relating to cross-admissibility and the effect of delay and a loss of DNA material.

The Grounds of Appeal

12 In his grounds of appeal the applicant makes eight points; they can be summarised as follows:

- 1) The judge should have discharged the jury following a note from one of them about being mugged by an Asian man on the tube. Since the applicant is Asian, prejudice was caused to other members of the jury.
- 2) The judge erred in allowing cross-admissibility, despite an application by the defence to exclude it.
- 3) The judge erred in failing to stay Count 5 due to a loss of forensic evidence. This caused prejudice to the jury regarding other counts.
- 4) The judge failed to exclude unsubstantiated comments that the applicant had spiked the complainants' drinks. This, too, caused prejudice to the jury.
- 5) The judge summarised the case in favour of the prosecution.
- 6) The judge favoured the prosecution, which led to the applicant's conviction.
- 7) The judge was not impartial.
- 8) The verdicts are unsafe.

There is also before us a detailed Respondent's Notice.

The Single Judge

13 The single judge, in refusing leave to appeal and an extension of time, gave the following reasons:

"I have considered the papers in your case and your grounds of appeal.

There is unacceptable lengthy delay in this case which has not been explained. Trial counsel would have advised on whether there were grounds of appeal and of the relevant time limits. You have adduced no evidence of mental health difficulties. I would not, however, have refused leave if you had identified a good, arguable point. Your grounds, in my judgment, fall far short of being arguable.

Taking your grounds in the appropriate sequence:

Discharge of the juror

The judge conducted a fair and searching enquiry of the juror in question. It is clear from her answers that she was an entirely fair-minded individual. Her former partner is, as it happens, of Asian origin.

Cross-admissibility

The judge gave the standard direction tailored to the facts of your case. The direction is there more to safeguard you than to make it easier to convict. However, if the jury were sure that one allegation was true, that could assist them in relation to other allegations.

Refusing the stay

Forensic evidence in relation to one of the complaints had been destroyed because the view was formed at the time that there was insufficient evidence to justify proceedings. The judge applied standard principles in determining whether these proceedings should be stayed under the second limb of this jurisdiction. In my view, his conclusion cannot be faulted.

Unsubstantiated allegations that drinks were spiked

This was precisely what two of the complainants were alleging. Either they drank copious amounts of alcohol or their drinks were spiked by you. Be that as it may, the evidence was admissible under s.98 of the CJA 03.

Unfair/biased judge

There is no merit in these points. HHJ Zeidman QC gave a fair and balanced summing-up.

Convictions unsafe

They were not.”

- 14 In response, in renewing his applications, the applicant has provided a letter from the prison Mental Health Team in support of his claim that his mental health was a reason for the delay in making his application. The letter explains that since February 2022 he has been treated for chronic insomnia and, more recently, since March of this year, for anxiety.

Discussion

- 15 We have considered in detail each of the grounds of appeal and the underlying material, including, in particular, the judge’s rulings on abuse of process and on exclusion of the evidence of “spiked drinks”, his legal directions on cross-admissibility and on delay and the summing-up more generally. We conclude that none of the grounds raises an arguable basis for leave to appeal. We agree with the reasoning of the single judge. As regards the note from the juror, the judge carried out a full and proper inquiry. As regards cross-admissibility, the judge’s direction to the jury, given to them orally and in writing, cannot be faulted. As regards refusing to stay Count 5, the judge’s ruling properly applied the correct approach to the facts and the jury were subsequently given clear and robust directions on delay and on the effect of the loss of DNA material. As regards the complainants’ evidence suggesting spiking of drinks, the judge’s careful ruling correctly applied both s.98 of the Criminal Justice Act 2003 and s.78 of the Police and Criminal Evidence Act 1984. He was not arguably wrong not to exclude the evidence. As regards the remaining four grounds, there is no material upon which it could be concluded that the summary was unfair, nor that the convictions are unsafe. The applicant has not identified any specific error in the summing-up. Finally, there is no adequate justification for the very substantial delay - in the

region of 3 years - , in the making of this application. In particular, the medical evidence recently submitted by the applicant does not explain the delay.

Disposed

- 16 For these reasons, the applicant's grounds of appeal raise no arguable basis for concluding that his conviction was unsafe. We refuse the applicant's application for leave to appeal and for an extension of time in which to apply.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.