IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1409
CASE NO 202301326/B2-202301327/B2

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 7 November 2023

Before:

LORD JUSTICE MALES

MR JUSTICE SAINI

MRS JUSTICE STEYN DBE

REX

V

NORBERT STARI

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SEAN SULLIVAN appeared on behalf of the Applicant.
CAROLINE BRAY appeared on behalf of the Crown.

J U D G M E N T
(Approved)

LORD JUSTICE MALES:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed or an allegation that an offence has been committed is made against a person, no matter relating to that person shall, during their lifetime, be included in any publication if it is likely to lead members of the public to identify them as the victim of that offence. The prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 19 May 2022, in the Crown Court at Northampton, before His Honour Judge Herbert KC, the applicant, Norbert Stari (then aged 38), was convicted of controlling or coercive behaviour in an intimate or family relationship, contrary to section 76 of the Serious Crime Act 2015. He was acquitted of three counts of rape. On 14 July 2022, the applicant was sentenced to 30 months' imprisonment. A restraining order was imposed.

3. The applicant now applies for leave to appeal against conviction and sentence, and an extension of time in which to do so (308 days for conviction and 252 days for sentence). These applications have been referred to the full court by the single judge.

4. The proposed appeal against conviction is concerned with the jurisdiction of the English court to try this offence when some elements of the controlling or coercive behaviour took place or had effect outside the jurisdiction.

The Facts

5. The applicant and his former partner (to whom we will refer as "ET") had been in a relationship and had two children together. ET had also an older child from a previous relationship. In April 2017, ET called the police and reported that the applicant had assaulted her and had, on previous occasions, raped her. She had told the applicant that

she wished to end their relationship. At the time, no prosecution resulted from this contact with the police, and the relationship continued on an on-and-off basis. ET later alleged that the applicant forced her to continue the relationship and would control her through emotional blackmail, humiliation and verbal and physical abuse, including spitting at her. Family Court proceedings had been instituted in relation to their children.

6. In January 2018, the applicant, ET and the children, travelled together to Serbia for a 3-week holiday. Later that month the applicant returned to the UK leaving ET and the children in Serbia. The two younger children had travelled on a single-use travel document and required their birth certificates in order for ET to apply for their passports. Messages were exchanged in which the applicant put pressure on ET to withdraw her allegation of rape in the Family Court proceedings. He threatened that the children might come to harm or suffer an accident.

7. The applicant travelled to Serbia in May 2018 but returned to the UK without giving the children their passports. According to ET, he physically snatched the passports from her and returned to the UK. In June 2018, ET returned to the UK alone and secured undertakings in the Family Court relating to the return of the children's passports.

8. The applicant went to Serbia in July 2018 and saw ET. Again, he failed to provide the passports. ET eventually managed to get the passports from a solicitor in Serbia and, in August 2018, returned to the UK with her children. On her return, she lived in a flat which she had previously shared with the applicant. He was not supposed to live there but moved back in. At one point his mother also stayed in the flat. ET later alleged that he spat in her face following a disagreement over childcare. The relationship finally ended in November 2018, when the applicant moved out of the flat.

9. The prosecution case was that the applicant was repeatedly violent toward ET when they

were in the UK, between February 2017 and November 2018, as well as repeatedly threatening her with violence. He threatened to assault her during this period. She feared that violence would be used against her on at least two occasions. The applicant was controlling towards her in ways that included ensuring that she was forced to remain in Serbia for many months, while he returned to the UK without her. It was alleged that the applicant used his control of the children's passports in an attempt to make her drop her allegations against him in the family proceedings.

10. The defence case was one of denial. The applicant denied that he had behaved in a controlling and coercive way towards ET during the indictment period. He denied that he was violent toward her, save for one incident when he took hold of her hair because she had attacked him - that was on 23 April 2017. He accepted that they had arguments, but he denied that he had threatened her with violence on any occasion or indeed given her any reason to fear him. He said the only reason ET and the children remained in Serbia until August 2018 was because ET had wanted to remain there so her eldest daughter could remain in the Serbian school until the end of the summer. The only reason he did not allow her to have the children's passports until July 2018 was because he feared she might take the children to another country.

The Offence

11. Section 76 of the Serious Crime Act 2015 provides as follows:

> "(1) A person (A) commits an offence if—
> (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
> (b) at the time of the behaviour, A and B are personally connected,
> (c) the behaviour has a serious effect on B, and
> (d) A knows or ought to know that the behaviour will have a serious effect on

B. …
(4) A's behaviour has a 'serious effect' on B if—
(a) it causes B to fear, on at least two occasions, that violence will be used against B, or
(b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities."

12. It can be seen, therefore, that the elements of the offence include not only the controlling or coercive behaviour in which a person engages, but also the serious effect on the victim of the offence. That effect may take one or both of the two forms specified in subsection (4).

The Indictment

13. The particulars of the offence of controlling or coercive behaviour alleged in the indictment were as follows:

> "NORBERT STARI between the 1st day of February 2017 and the 30th day of November 2018 at a time when he was personally connected to [ET], namely that it caused [ET] to fear, on at least two occasions, that violence will be used against her and that he deliberately left her and her children stranded in Serbia for a period of months, at a time when he knew or ought to have known that the behaviour will have a serious effect on [ET]."

14. Thus, the serious effect on ET alleged in the indictment included both fear of violence and serious alarm or distress having a substantial adverse effect on her day-to-day activities. The latter form of serious effect related to her being stranded with the children in Serbia without the passports which would have enabled them all to return.

15. Mr Sean Sullivan, for the applicant, makes the point that, because these two forms of serious effect in the indictment were alternatives, it is not possible to say whether the jury convicted on the basis that ET was caused to fear violence on at least two occasions or on the basis of the stranding allegation or indeed both. It may be therefore, he submits, that the jury's verdict is dependent on the stranding allegations only.

The proposed appeal against conviction

16. The proposed ground of appeal against conviction is that the particulars of the offence included behaviour which was outside the jurisdiction, ie the alleged stranding of ET and her children in Serbia. Section 74 and schedule 3 of the Domestic Abuse Act 2021 provide that the offence of coercive or controlling behaviour applies to behaviour occurring in a country outside the United Kingdom, provided that two conditions are satisfied. Those conditions are that the behaviour would constitute an offence under section 76 of the Serious Crime Act 2015, if it occurred in England and Wales and that the defendant is either a United Kingdom national or is habitually resistant in England and Wales. However, those provisions only came into force on 29 June 2021, after the behaviour which is relevant in this case and therefore have no application here.

17. Mr Sullivan submits, therefore, that the Crown Court had no jurisdiction to deal with an allegation that the applicant subjected ET to controlling or coercive behaviour in Serbia. He relies on the civil case of Lawal v Adeyinka [2021] EWHC 2486 (QB), in which the claimant sought an interim injunction, under section 3(3) of the Protection from Harassment Act 1997, to restrain the defendant from pursuing conduct amounting to harassment. The alleged harassment was contained within publications made at a time when the claimant (a Nigerian resident) was and proposed to remain in Nigeria.

18. The Deputy Judge, Mr Richard Spearman KC, held that the Protection from Harassment Act was limited to matters occurring within the jurisdiction. He stated as follows:

> "19. In my judgment, in common with other criminal legislation save perhaps legislation which is subject to some form of express extension which may appear in some statutes, the criminal remedies provided by the legislation in this instance and, by the same token, the civil remedies which arise on the basis of the pursuit

> of the relevant course of conduct, are all concerned with matters occurring within this jurisdiction. Furthermore, there can be no alarm or distress or other consequences of similar seriousness, and, therefore, no civil cause of action arising from the conduct complained of, unless the victim has learnt of the conduct.
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> 20. In this instance, the Broadcasts complained of may have been devised within this jurisdiction. They may have been disseminated from this jurisdiction, both to others in this jurisdiction and internationally, including to Nigeria. But, in my judgment, whether the course of conduct complained of is actionable has to take account of where it had an effect upon the claimant.
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> 21. In this case, the relevant knowledge of the claimant and the relevant effect upon her is all something which has occurred and, on the materials before me, is going to continue to occur, in Nigeria and, in my judgment, that does not and will not give rise to a criminal offence in this jurisdiction, and nor does it or will it give rise to a civil cause of action in this jurisdiction. This is because the concept of harassment is all to do with the effect upon the victim and the course of the conduct complained of being one which causes alarm or distress or the like to the victim. In this case, the claimant is not affected by the acts or Broadcasts complained of until they come to her attention, and all that has occurred and on the materials before me seems likely to occur, in my judgment, outside this jurisdiction in Nigeria".

19. Mr Sullivan submits that, in the same way, the allegation that the applicant deliberately left ET and her children stranded in Serbia for a period of months is inherently an allegation of behaviour taking place outside of the jurisdiction. Moreover, like harassment, controlling or coercive behaviour is all to do with the effect upon the victim. Here, the serious effect on ET caused by that behaviour, ie serious alarm or distress, as a result of being forced to remain in Serbia, must necessarily have been an effect which occurred while ET was in Serbia with her children. Mr Sullivan submits that it would not accord with international comity for the applicant to be prosecuted for that conduct in this jurisdiction.

20. Mr Sullivan acknowledges that the judge directed the jury not to take account of behaviour alleged to have taken place in Serbia but submits that this was concerned with an allegation

of an assault on ET by the applicant in Serbia which, in the event, was relied upon as bad character at the trial and did not itself form part of the allegation of controlling or coercive behaviour.

21. For the prosecution, Ms Caroline Bray submits that the offence included assaults and behaviour within the United Kingdom as well as the applicant's forced stranding of ET and their children in Serbia. Much of the conduct concerned with the stranding, including the sending of abusive messages and pressure to drop the family proceedings, occurred while the applicant was in the United Kingdom. Moreover, although this conduct had its principal effect on ET while she was in Serbia, that was not the only effect. In addition, ET lost her employment in the UK, her children were unable to attend their schools here, they were kept away from their home here and ET had to travel to this country, leaving her children behind, in order to try to force the return of their passports, all of which had a significant financial effect on her. We are told that she spent some £6,000 on legal fees to the solicitors instructed in the family proceedings, and that she remains in debt here as a result.

22. Ms Bray submits therefore, that the offence was committed substantially in the UK and that the Crown Court had jurisdiction in accordance with the principles established by R v Smith (Wallace Duncan) (No 4) [2004] EWCA Crim 631; [2004] QB 1418, discussed in Archbold (2024), paragraphs 2-36 to 2-38 and Blackstone (2024), paragraph A8.5.

Decision

23. We are grateful to both counsel for their clear and focused submissions. We accept that the indictment in this case alleges conduct which occurred and had its effect on the victim in Serbia, as well as in the United Kingdom. Although the behaviour which caused ET to

fear that violence would be used against her took place primarily in the United Kingdom, there was in fact also evidence that the applicant had assaulted her while they were in Serbia. However, that did not form part of the conduct on which the prosecution relied as forming part of the offence and the judge dealt with it by directing the jury not to take it into account when deciding whether and to what extent the applicant had behaved in a controlling or coercive way toward ET because it had taken place out of the jurisdiction. He directed the jury that this particular incident could only be relevant as evidence of bad character and gave a bad character direction about which no complaint is made.

24. However, much of the evidence concerned with the withholding of children's passports and the pressure put on ET as a result to withdraw her allegations against the applicant, was evidence of conduct in Serbia which had an effect on ET while she was there, and it is, at any rate, possible that this was the basis on which the jury convicted. That said, we accept Ms Bray's submission that this element of the case was not exclusively concerned with events in Serbia. Thus, the conduct in which the applicant engaged, including the sending of messages and making of telephone calls refusing to return the passports, the making of threats and the refusal to comply with orders made by the Family Court, all took place while the applicant was in the United Kingdom and, as we have explained, had some effect on ET's position with the UK as well as the alarm and distress caused to her while she was in Serbia.

25. Leaving aside particularly statutory provision, such as now contained in section 74 and schedule 3 of the Domestic Abuse Act 2021 which, as we have said, does not apply to the events in issue here, the basis of English criminal jurisdiction is territorial. However, it is now well established that in general the Crown Court has jurisdiction to try a defendant, if a substantial measure of the activities constituting the crime took place in England, even

though some elements occurred abroad. That principle was established by the decision of this Court in R v Smith (Wallace Duncan) (No 4) and has been often followed since, as discussed in the paragraphs of Archbold and Blackstone to which we have referred.

26. Most recently, the principle was applied in R v Laskowski [2023] EWCA Crim 494; [2023] 3 WLR 495, a case of offering to supply a controlled of Class A drug. This Court held that although the appellant was, as a matter of fact in the Netherlands when he made the offer to supply, the Crown Court had jurisdiction, because a substantial measure of the activities constituting the crime charged took place in the United Kingdom.

27. The judgment of the Court was given by Lord Justice Holroyde who set out the following approach:

> "18 Was it nonetheless an offence which the courts of this country had jurisdiction to try? The starting point is the general principle of interpretation that there is a presumption against the extraterritorial application of a criminal statute. That presumption may however be displaced by the express terms of a statute or by necessary implication; and in relation to the latter, the mischief against which the statute is aimed, and the public interest, are important considerations."

28. After referring to a number of cases, including Treacy v DPP [1971] 1 AC 537, R v Smith (Wallace Duncan (No 4) and R v Sheppard and Whittle [2010] EWCA Crim 65; [2010] 2 Cr App R 26, the Court concluded that the "substantial measure" principle was applicable to the offence of offering to supply controlled drugs. For this purpose, the Court considered the purpose of the statute and the mischief at which it was aimed:

> "25. We are therefore satisfied that it is necessary and appropriate, in circumstances such as arise in this case, to consider the purpose of the statute concerned and the mischief at which it is aimed. The purpose of the 1971 Act is the control of dangerous or harmful drugs, and the mischief at which it is aimed is, or includes, the supply and possession of such drugs in the United Kingdom. The

> supply of drugs inevitably involves a chain of transmission by which controlled drugs pass from their source to a user in the United Kingdom. The purpose of the statute is not achieved, and the mischief at which it is aimed is not met, if the courts of this country are denied jurisdiction at one stage of that chain of transmission. As Lord Thomas CJ said in R v Martin [2014] EWCA Crim , [2015] 1 WLR 588 –
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> > "the word 'supply' is a broad term. It does not by any stretch of the imagination result in a confinement to the expressions 'actual delivery' or 'past supply'. It refers to the entire process of supply."

29. In our judgment, the principle that the Crown Court will have jurisdiction, if a substantial measure of the activities constituting the crime takes place in England, sets out the *prima facie* position where the statute does not deal expressly or by necessary implication with its territorial application, but it remains necessary to consider whether the principle accords with the purpose of the statutory provision in question, in the light of the mischief at which that provision is aimed. That was the approach followed in R v Laskowski by reference to the offence of offering to supply a controlled drug. We apply the same approach to the offence in issue here.

30. The statutory provision in this case is section 76 of the Serious Crime Act. That provision is directed at abusive behaviour which takes place between parties who are in a relationship, over what may be an extended period of time. Hence the language "repeatedly or continuously engages". That requires the Court to consider the course of the parties' relationship over whatever is the relevant period. If the relationship is between parties who are habitually resident in this country, it is in accordance with the purpose of section 76 for such conduct to be criminal, notwithstanding that some elements of it may have occurred outside the jurisdiction. A man is not allowed to abuse his partner merely because they are on holiday abroad. The section is concerned with relationships which have their closest connection with this jurisdiction.

31. In our judgment, therefore, the substantial measure principle should be applied to an offence under section 76 of the Serious Crime Act. We do not find the decision in Lawal v Adeyinka of any relevance in this case although, on its facts, the Deputy Judge was no doubt right not to grant an interim injunction. It is apparent however that the Smith (Wallace Duncan) line of authorities was not cited to him in that case.

32. Mr Sullivan submitted that it is a separate and independent requirement that a prosecution here should not infringe principles of international comity. We do not accept that submission. Where a substantial measure of the activities constituting the crime takes place here, so that the test in the authorities is satisfied, even though some elements take place abroad, it does not infringe international comity for the offence to be prosecuted here.

33. Mr Sullivan submitted also that the substantial measure principle should not apply where significant and substantial parts of the offence take place abroad, which he says is what happened here. We do not accept this as a gloss on the test which, as set out in the authorities, is clear. The application of that test will require an evaluation of all the facts and circumstances to do with the offence and the striking of a balance, but the test remains whether a substantial measure of the activities constituting the crime took place in this jurisdiction.

34. It is beside the point that Parliament may have considered it necessary to enact section 74 and schedule 3 of the Domestic Abuse Act 2021. That may indicate that Parliament considered that, without that further enactment, the offence of coercive or controlling behaviour would not apply to conduct occurring outside the United Kingdom. Be that as it may, however, in relation to behaviour occurring before that further provision was enacted, the territorial application of section 76 of the Serious Crime Act 2015 falls to be

determined in accordance with the common law principle of substantial measure.

35. On the facts of the present case, the abusive relationship occurred over a period of 22 months, between February 2017 and November 2018. The withholding of the children's passports and the abusive and threatening behaviour which accompanied it was only one part of the conduct alleged against the applicant over that period. However, even if we focus only on that element of the allegations against the applicant, as Mr Sullivan submits that we should, it is apparent that much of the abusive conduct occurred here and that it had an effect on ET here, as well as an effect in Serbia.

36. Overall, this was a relationship between parties habitually resident and closely connected with this country and there is, in our judgment, no doubt that a substantial measure of the activities which constituted the crime charged took place in the United Kingdom. Indeed, it would be ironic if the applicant's abusive conduct in preventing ET and her children from returning to the country in which they lived, as ET was desperate to do, enabled him to avoid criminal responsibility for his behaviour.

37. For these reasons, although we are prepared to grant the necessary extension of time and to grant permission to appeal, the appeal against conviction will be dismissed.

Sentence

38. We turn to the application for leave to appeal against the sentence of 30 months' imprisonment. We can deal with this shortly. The only proposed ground of appeal is that the judge was wrong to take account of behaviour that occurred in Serbia outside the jurisdiction of the court. When sentencing the applicant, the judge referred to the fact that the applicant's controlling conduct had forced ET and her children to remain in Serbia for approximately 8 months. In addition, he described the assault in Serbia, which fell outside

the jurisdiction of the Court, as an aggravating factor.

39. The maximum sentence for this offence is 5 years' imprisonment. As we have explained, those parts of coercive control which related to the stranding of ET and her children in Serbia were properly tried as forming part of the course of conduct which constituted controlling or coercive behaviour. That being so, the judge was entitled to take it into account when passing sentence. He was entitled also to determine for himself the factual basis on which he would pass sentence. It is apparent that he did so accepting both forms of conduct alleged against the applicant.

40. Mr Sullivan realistically accepted that the application for leave to appeal against sentence would stand or fall with the appeal against conviction. He was right to do so. We accept the submission on behalf of the prosecution that, having regard to the violence used by the applicant against ET, as found by the judge, the sentence of 30 months' imprisonment cannot be regarded as manifestly excessive. Accordingly, we refuse the application for leave to appeal against sentence.

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

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