Neutral Citation Number: [2023] EWCA Crim 333

Case No: 202002415 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT PETERBOROUGH

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/03/2023

Before :

LORD JUSTICE BEAN
MR JUSTICE SOOLE
and
MR JUSTICE CHAMBERLAIN

- -

Between :

MICHAEL WOODCOCK	**Appellant**
- and -	
R	**Respondent**

- -
- -

Michael Procter for the **Appellant**
Jack Talbot for the **Crown**

Hearing date: 09 March 2023
Judgment handed down subject to restriction on publication: 23 March 2023
Judgment approved for publication: 19 August 2024

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JUDGMENT

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Lord Justice Bean : (23 March 2023)

1. The provisions of the Sexual Offences Amendment Act 1992 apply to this case. No matter relating to the complainant shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. The defendant is not entitled to anonymity.

2. The Appellant was born on 20 December 1948. His sister, whom we shall call V, was born on 16 July 1956. In early 2018 V complained to the police that between 1963 and 1969 the Appellant had repeatedly raped her. She was seven years old at the start of the period and 13 at the end of it. He was 14 at the start of the period and 20 at the end of it.

3. The Appellant was charged with five counts of rape. The case was tried at Peterborough Crown Court in July 2021 before HHJ Enright and a jury. The jury could not agree on a verdict on any count and was discharged. A second trial at the same court before the same judge began on 21 June 2022. On 5 July 2022 the Appellant was convicted on all counts by a majority of 10 to 2. He appeals against conviction by leave of the single judge. The grounds of appeal are directed entirely to the summing up.

4. Before going into any detail we should make some preliminary observations. The first is that no complaint is made of any of the judge's directions of law. He gave the directions which are now regarded as standard for cases of this kind, that is allegations of sexual offences committed many years ago.

5. The next point, as Mr Procter for the Appellant accepts, is that brevity in a summing up is not in itself a defect, so long as the summing up is fair and balanced. It has been known for judges, after giving the standard directions of law, simply to read out all the evidence starting with the first witness's evidence in chief, then the cross-examination, then the next witness's evidence in chief and so on. In such a case the trial judge cannot be accused of leaving anything out, but a "notebook summing up" is of little assistance to the jury.

6. What the judge did in the present case was to start with the complainant's ABE interview, then go through some key events chronologically saying very briefly what V (or some other witness for the prosecution) alleged occurred and what the defence's answer to it was, and sometimes making a comment. The chronological section of the summing up took just under 20 minutes.

7. It cannot be said that this was a short and simple case. The trial lasted eight working days. 14 witnesses gave evidence. The rapes were alleged to have begun nearly 60 years before the trial.

8. The summing up in this case had three parts. The first consisted of the judge taking the jury through the sections of law of which he had given them written copies. This lasted from 2.25pm to 2.33pm on 4 July 2022. This was followed by the closing speeches of Mr Talbot for the prosecution and Mr Procter for the defence, which concluded at 4.10pm. In the second section of the summing-up, which lasted the final three minutes of that afternoon session, the judge summarised the complainant's Achieving Best Evidence (ABE) interview. Apart from one minor omission

complained of by Mr Procter but which we regard as insignificant, this was a fair summary of the ABE interview, in which V gave a clear and concise summary of her case. Whether her oral evidence-in-chief and cross-examination at the trial added to this or subtracted from it we do not know. The jury were released for the day at 4.13 pm.

9. The next morning, between 10.07am and 10.25am, the judge completed his summing-up. It is necessary in our view to quote the transcript of this third section in full. The judge said:-

> "So, this family, this small family lived in Whittlesey. You have the family tree and the timeline. You've heard about the parents. Dad worked in a sugar (inaudible) factory in Oundle Road in Peterborough and had a bit of a commute across town to Whittlesey. And mum worked in the Smedley's factory in (inaudible), leaving at 7.20 to catch a bus and coming back before (inaudible). Three children, Anita, who left school when she was 15 and went to college in Wisbech, a very long day to commute, later worked at Peterborough. Michael, seven and a half years older than [V]. The parents were strict, dad beat them with a belt or a slipper, in particular, Michael, it seems.
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> "The younger sister," said Mr Woodcock, "was protected by mum most the time. She was very mischievous and naughty. I got slapped around the head or thumped or hit and so on." Couldn't read or write very well and was the object of some bullying by his dad, which was probably fairly standard at that time, but there you are. You are not psychiatrists and you should not guess in any way. You will have to grapple with the family dynamic. Was there opportunity to cause that inclination? What would cause a young boy to kick over (inaudible) and do this to his sister?
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> As for going to school, she says she walked and later cycled on a small blue bike and the defendant said, "I walked for the most part. I can't recall her ever having a bike." The distance to schools, you have the plans that show the distances to the schools and the walking times, which might need a slight amendment in due course, because it was 14 Plough Road, not 61. "As for 82 Crescent Road, the front door was always locked and used by tradesmen only." The defendant went to Harry Smith nearby and she went to the smaller school on the same campus and later followed him to the big school. As to Plough Road, the front door always locked and used by tradesmen.
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> They moved when she was eight and he was 15 and she went on the bike to school and you have the bike certificate at page – in the jury bundle. At lunchtimes, she said they went home for lunch because the parents wouldn't pay for the school dinners. And Mr Woodcock said, "Dad insisted I stay on the campus. If I could talk mum around, I'd get money for school dinners. But usually, I had a packed lunch made by her and I'd eat that in

the long corridor towards the head's office or on the benches outside." He does not say that she was required to stay on campus.

The defendant said that the lunchbreak was an hour-and-a-quarter and he would eat at lunch and spend time with friends. Roy Hale said the lunchbreak was an hour and three quarters, because of the double dinners routine when the children had to (inaudible) dining room, do you follow me? But if you are eating a packed lunch, you would eat elsewhere. He said he had a memory of the defendant as an older boy sitting beside him at the table because the children sat according to age, it seems. But he fully accepted that there were times when the defendant was not with him. And in any event, if you were having a packed lunch, the defendant says, you would be elsewhere.

The key to the house. The parents had a key and the key was hidden in the garden (inaudible). Mr Woodcock says he would drop the key off with the neighbour always and there it stayed until the end of the day. Anita, now 76 and somewhat frail said she recalled a key on a string in the garden at Plough Road but accepted that when cross-examined and asked last year, she couldn't recall that and remembered (inaudible). I suppose what goes for the eldest child may not go for the younger children if that's the way their family works. Families are shifted as children get older but these are matters for you and not for me.

The shed is shown in the jury bundle at tab 7. "That's the shed," said [V]. "I remember the dust and the oily smell and bad breath and he raped me there on the floor." He said, "The shed was crammed with bikes, tools and other stuff so no one could ever lie down if they could get in. I think Peter Brown said he went to the shed once many years later and he found it crammed."

So, the defendant leaves school in December '64 aged 14 and goes to work at the garage, where he remains for five and a half years. The garage is shown in the plans as not too far away. And on the first day, he said, "My dad allowed me to come home on the pushbike but after that, dad insisted I walk." But in fact, he said, "I would have dinner by the stove with my mates and I was on call for credit customers at the pay pump, so I never went home."

Asked of babysitting, she said rapes also took place when he babysat her. He said, "I never babysat her. I spent all my spare time at Roy's farm, evenings, weekends and holidays." And he was accused by prosecution counsel of telling the evidence to fit the facts, which he denied. Roy in fact did not agree that he spent that much time on the farm, although he was a regular visitor. This is one for you to make your minds up about.

As to being adults, [V] said, "He lived in the same house, but had no relationship to speak of. It was cold." And the defendant said, "Me and [V] had a normal relationship. She had her friends and I had mine." So, the defendant married at 22 and she was a bridesmaid at his wedding, which he says that, "She wouldn't have done that if she'd been raped by me as a child." That's for you to consider. And [V] married also and splits up and said, "My parents wouldn't have me back, so I went to stay with my brother for a few weeks till I got myself straight. And it was because I had nowhere else to go that I went there." The defendant says, "Her parents would have her back but she'd cried on his shoulder and decided to come to his, where she stayed for three to four months." So, a direct conflict of testimony there. He also suggests she stole a roll of cloth from the house and forged his name on a document. These matters come from Carol, his wife, who did not give evidence before us.

As to middle age, [V] goes abroad for many years and she returns from time to time to see mum and other family and some family go to see her, (inaudible) and so on but not (inaudible). She did go and stay with the defendant and Carol once (inaudible) 80th surprise birthday for her mum, (inaudible). She had nowhere else to go for various reasons, "I went to stay with him" but said, "My daughter remained with me throughout." And the defendant suggests that if she had been raped as a child, she would not have gone to his house ever again. A matter for you to evaluate.

There are then the Florida photographs, which show a family holiday. In fact, she stays not in the same villa as the rest but somewhere a little distance away. And there is a photograph of Michael Woodcock, which the defence rely upon, although you have to look at the photograph with care and consider the body language in that photograph. So, [V] comes back in 2009, it is part of the financial crash and the defendant's counsel suggest that (inaudible). She goes to Manchester and the defence suggest, well, maybe they are (inaudible) a bit of money as the years go by.

In any event, [V] tells her mother in about 2012 what took place, she said, "because mum asked me why I'm so off with him all the time and cold. I said, 'I'm going to tell you.' And I told her. My mum called my sister. My sister called – when my mum told my sister, my sister called me and I told her I'd do it when I felt strong enough. I never told anyone about this before, not my husband or anyone. He'd be humiliated. My sister rang me the next day to talk about it. It wasn't brought up by me again anyway, although sometimes my sister would prompt me to tell Fahren." Anita recalls things slightly – rather differently. She recalls going to the house and seeing them both upset and her sister saying, "I'm not going to (inaudible)." [V]

said that the will was changed in due course but it wasn't discussed with her and didn't know about it. In any event, after this disclosure, Travers and his partner, Nicola were told by nan and Travers goes round to [V]'s (inaudible) and said, "Did this happen?" And she said, "Yes, it happened. I put it in my heart in a little box and wanted to keep it private." And so, the news begins to spread throughout the family and Elizabeth spoke to her mother then and understood it took place in a small bedroom. Was that said? Because if it does, you may think it undermines the testimony of [V]. If it wasn't said, it's just a misunderstanding and it's neither here nor there. So, Mr Woodcock says, "Well, I didn't know she told mum this and I remained on good terms with mum till the end, taking her out when I could, despite my health problems." [V's husband] put it rather differently, "Michael and his mother had no relationship. He only came (inaudible) with his family, just said nothing."

So, people are beginning to take sides (inaudible) as this story develops. [V's husband] said, "Me and Carol used to wonder why Michael and [V] were so cold with each other and I said, 'What's going on between them?' And Carol could throw no light on this." But as you see, it fractured the family and here's a point for you, do people take sides based on tribal loyalties or because of exactly what they know and weigh it up accordingly, do you follow me? These are matters for you and not for me.

Gillian Woodcock gave – she's the ex of Mr Woodcock (inaudible) and that [V] took a full part in all family activities and got on well with Michael. (inaudible). And Peter Brown also talked about [V] being part of a family unit on the family holiday. But when he was questioned, the question was, "You don't actually know [V], do you?" And he replied, "Well, I know who she is." (inaudible).

So, nan became very frail and [V] and her husband invested money in Plough Road and went to live with her and make the alterations. And you can see that in the photographs that the building was altered. And the will is changed in 2014 and it seems very clear that nan Woodcock changed her will when she learned of the allegations against Michael. And [V] said, "I did not know the contents of the will." So, the defendant suggests she and her husband were in financial difficulty, made this false allegation against him and got the will changed is the suggestion that is put to you. And they also point out that Anita said she thought [V] knew the will had been changed.

In any event, we come to mum's funeral in January '17, which passes of uneventfully. And then the next step is in February of that year when the defendant goes to a meeting and learns he's been cut out of the will (inaudible) £10,000, he'd have been

very angry and left. And the defendant said, “I was unaware the reason I had been cut out. I was angry.” And is this a significant event? So, the Crown say – well, put it this way, if you – if your mum dies and you find you have been cut out of the will, would you be beating down the door to find out why? The prosecution are saying that he made no enquiry of his sister because he knew. Whether (inaudible) from that point is a matter for you.

The Christmas card arrived on the 23rd of December ’17 and [V] said, “I got it (inaudible) and I rang 101.” Let’s look at that at tab 14, please, as to what she does say. It’s one for you to consider as to what – as to whether she’s made full disclosure or not and why. And towards the end of page 1, she’s talking to a stranger. It’s difficult to unburden yourself to a stranger (inaudible). If you think there’s force in that point, you (inaudible). She raises the question of the will as a possibility for the letter – the card being sent and says, “There’s a lot of history (inaudible).” OK. And that’s as much she said, a hint of a sexual allegation.

In any event, she said, “I got the card. I felt like I was a child again in his control. It took me all the way back to being a child. It’s hard to tell my husband, to find the words to tell him (inaudible).” And [V’s husband] said, who is now in a wheelchair, has some difficulty remembering he lived in Plough Road. Do you remember that? Couldn’t find the – the word. He said he remembered that day. “She didn’t want to tell me, she felt even more upset. She did not go into much detail, he said her raped her numerous times from the age of seven to about 13.”

And so, [V] said, “I spoke to PC Holland by phone on the 1st of January and told him about the abuse and when PC Holland came to (inaudible), I told him about it.” PC Holland said, “I went round on the 2nd of January about a Christmas card, which she said had come from Michael Woodcock. She made the rape allegation (inaudible) but I can’t remember her mentioning it the day before.” No prizes for PC Holland, I’m afraid. He lost his notebook. And he had a bodycam with him but he didn’t turn it on. All you’ve got to do is that. So, there you are. And the defendant said, “Yes, I sent a Christmas card (inaudible). I told her forcefully, I was very, very upset.” And those – he accepted the things he said were designed to hurt her, including that rather curious sexual slur about being a whore.

So, there it is. The defence suggest this is probably all about [V] making money out of the defendant essentially and safeguarding her position. She’s got the house, she’s changed the look. If that is so or may be so, you will find the defendant not guilty, for sure, yes. But if you reject that analysis, then

> what are you left with? So, that's as much as I wish to say about the – the evidence. Any matters of fact or law that counsel desire to correct?
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> MR TALBOT: No, your Honour no."

10. Counsel told us, and we accept, that the judge was speaking both quickly and quietly. This is the probable explanation for the unusually large number of words which were inaudible to the transcriber, and may perhaps have been similarly inaudible to members of the jury. None of the omissions from the transcript, however, is critical to the merits of the appeal so far as we are aware.

11. Although neither Mr Talbot nor Mr Proctor suggested any corrections of fact or law the judge himself raised a point with counsel about "walking distance". After this, with an admonition to the jury not to discuss the case when any of them was on a comfort break or food break, he had the jury bailiffs sworn and the jury retired. At 2pm they sent a note asking for a copy of V's ABE interview, which the judge rightly declined to provide. At 3.15pm, having had a note whose contents he did not disclose (no doubt because it indicated the division of opinion on the jury) he gave a majority direction, and at 3.33pm the jury returned verdicts of guilty on all counts by a majority of 10 to 2.

12. With the leave of the single judge Mr Woodcock appeals against conviction on the ground that "the learned judge's summing up was not adequate or properly balanced as between prosecution and defence". Firstly, it is said that the summing up was too brief in the particular circumstances of this case. Secondly, complaint is made of seven specific defects in the summing up. It is argued that the judge failed to summarise "important defence points" accurately or in a balanced way.

13. Before coming to the issues raised by the grounds of appeal we should mention two preliminary points made in the Respondent's Notice which we consider to have no merit. The first is that when the same judge summed up that same case at the Appellant's first trial in 2021 the summing up was of very similar length. We cannot see that this assists the argument: since the jury at the first trial was discharged, the first summing-up was never the subject of scrutiny in this court. The second is that "no complaint was made about the brevity of the factual summing up upon its conclusion". But we do not see what Mr Procter could sensibly have said at that stage. It is one thing for counsel to say at the end of a summing up that the judge has made a factual error, or (for example) inadvertently omitted the evidence of one particular witness or the evidence on one discrete topic; but quite another thing for counsel to be expected to take a general objection, even in the absence of the jury, that the summing up was too brief or unbalanced or failed to give a proper statement of the defence case.

14. Putting these two points aside, the Respondent's Notice makes the over-arching submission, supported by Mr Talbot in oral argument, that:-

> "The real issues in the case were made clear in the summing up: the conflicting accounts of the complainant and the applicant and what others had said about the intervening years. The judge pointed to inconsistencies between the complainant and her sister and summarised the defence case that the complainant had lied for financial gain. The judge directed the

> jury that the hearsay account of the late mother could not be challenged by the defence, about his good character and the impact upon the defence of the lengthy delay between the offences and disclosure. Ultimately the summing up was balanced. The rapes took place in the 1960s. Essentially it was the complainant's word against that of her brother. After her evidence, she sat in court listening to the rest of the trial. By dint of the convictions on each and every count, the jury must have been sure that her account was truthful."

15. As in many cases of this kind, there was a head on conflict between V and the Appellant and one of them must have been lying. The overall question for the jury could be said to be whether they were sure that the complainant was the one telling the truth, but Mr Talbot for the prosecution rightly does not suggest that this would have allowed the trial judge to say nothing at all about the evidence of fact. Trial judges need not, indeed should not, go into every detail of the evidence, but juries must be reminded of at least the main points raised by either side, including those which the defence say undermine the credibility of the complainant.

16. What the summing up should have done, if it was indeed to summarise the evidence of 14 witnesses over a period of nearly 60 years at the end of an eight day trial, was at the very least to include the principal points by the prosecution in support of the complainant's credibility and the principal points made by the defence which it is said harmed the complainant's credibility; and to so without inappropriate comments.

17. Our principal concern – not our only concern – about the summing up is that it presents a clear and coherent account of the prosecution case but does not do the same to the defence case. A proper summing up, in our view, would have included a passage on these lines:

> "The prosecution argue that V's police interview, and her evidence in the witness box, give a credible account of the rapes committed by the defendant on his sister all those years ago. They say that he had the opportunity to commit the offences firstly at lunchtimes on weekdays when he would come home from work and from school, and secondly, on the regular occasions when he would babysit her. Mr Talbot also argues that had the defendant had not done these terrible things he would have been far more indignant and angry on discovering in February 2017 that their mother had changed her will so that his share of the inheritance on her death was reduced to £10,000 and V's share was correspondingly increased.
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> The defence, on the other hand, say that Mr Woodcock has been consistent in his denial that he ever raped his sister, and that there is no independent evidence to support the allegations which were first made so many years later. The defendant did not have the opportunities to commit rape which V alleges, either at lunchtime or as a babysitter. Mr Procter asks: if V had indeed been raped by her brother, why would she have agreed to be a bridesmaid at his wedding? Why would she have come

to stay with him and his wife (whether for a period of days or weeks). Why would she and her husband and children have gone on holiday with him and his family to Florida in 2003? The defence say that V first made the allegations to her mother in order to persuade her to change her will and followed this up by making the allegations to the police at the start of 2018. It is for you to decide whether any of these points is valid, and if so whether they cause you to have doubts about whether V has been telling the truth."

18. It is right to say, as Mr Talbot emphasised, that the judge briefly mentioned each of the main defence points in the course of the factual summing up, but they are interwoven with the narrative and sometimes a rapid change of subject. Even if the jury did hear every word of the summing up, which is doubtful, it must have been hard for them to take in those points as they shot past with lightning speed.

19. There are three passages that cause us particular concern. The first is at page 7H of the transcript. After referring to the evidence that the defendant's and V's parents were strict and that their father used to beat them with a belt or slipper, the judge says:

> "You are not psychiatrists and you should not guess in any way. You will have to grapple with the family dynamic. Was there opportunity to cause that inclination? What would cause a young boy to kick over [inaudible] and do this to his sister?"

20. The judge was quite right to remind the jury that they were not psychiatrists. It would have acceptable to say "you will have to grapple with the family dynamic" in the general context of evaluating the evidence of the complainant and the defendant and other witnesses. But it was inappropriate to invite the jury to ask themselves whether the defendant had been turned into a sexual predator by the sadism of his father.

21. The next passage of particular concern is at 9H:-

> "There are then the Florida photographs, which show a family holiday. In fact, she stays not in the same villa as the rest but somewhere a little distance away. And there is a photograph of Michael Woodcock, which the defence rely upon, although you have to look at the photograph with care and consider the body language in that photograph."
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> [The judge then moved forward six years to 2009].

22. This description of the evidence of the holiday appears to us to be seriously unfair. A fair account of the parties' respective positions on this issue would have been something like this:-

> "The defence rely on the fact that in 2003 the two families went on holiday to Florida together, as photographs put before you confirm. The prosecution accept that they did so, but say that they were housed in separate villas. They also point to what they say is the body language shown in one of the photographs. It is for you to say whether it is possible to deduce anything of significance from what is said to be the body language of

anyone in the photograph and whether it detracts from what the defence say is the significance of the joint family holiday."

23. The third passage of particular concern is at 12B:

> "The defence suggest this is probably all about [V] making money out of the defendant essentially and safeguarding her position. She's got the house, she's changed the look. If that is so or may be so, you will find the defendant not guilty, for sure, yes. *But if you reject that analysis, then what are you left with?*"
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> [emphasis added]

24. This was the note on which the jury were sent out to deliberate. It seems to us to be an indication to the jury that if they did not accept that V was making up the allegations for financial gain (or may have been doing so) then, in the judge's view (and not just in the prosecution's submission), there was no substance in the defence.

25. Mr Procter made some other criticisms of points of detail in the summing up. Some of these we regard as immaterial, others of only marginal significance. It is not necessary to enumerate them in the light of the view we have formed of the overall picture.

26. This summing up was not of the entirely one-sided kind regularly in use by some judges decades ago. Nevertheless, after anxious consideration, we have come to the conclusion that it was indeed unbalanced. It did not give the jury the assistance to which they were entitled at the end of a serious and difficult case; it did not coherently set out the points which the defence argued tended to undermine the credibility of the complainant; and each of the three passages to which we have just referred was unfair to the defendant.

27. There was plainly a case to answer against the Appellant, but it was not a case of such overwhelming strength that verdicts of guilty were inevitable. This is reinforced by the fact that a previous jury had failed to agree, and the second jury reached its verdicts by a 10 to 2 majority. The serious inadequacies of the summing up cannot simply be brushed aside. The conviction was accordingly unsafe. The appeal will be allowed and the conviction quashed.

Footnote (added 19 August 2024)

28. Following the handing down of the above judgment the court ordered a retrial. The usual order was made prohibiting publication until the proceedings were concluded. The court has recently been informed that the retrial took place at the Crown Court at Cambridge before His Honour Judge Bishop and a jury and that on 1 May 2024 the appellant was acquitted on all counts. The judgment may now be published without restrictions. The anonymity order referred to in paragraph 1 of the judgment remains in force.