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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202300366/A4
NCN: [2023] EWCA Crim 715



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 24 May 2023

Before:

LORD JUSTICE COULSON

MRS JUSTICE FARBEY DBE

MR JUSTICE CONSTABLE

REX

V
GIRMAY ANDES

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NON-COUNSEL APPLICATION

J U D G M E N T

MRS JUSTICE FARBEY:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, no matter relating to any victim of the offences 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 a sexual offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. On 9 August 2022, having pleaded guilty before Greater Manchester Magistrates' Court, the applicant (then aged 27) was committed for sentence pursuant to section 14 of the Sentencing Act 2020 for two offences of sexual assault. On 13 January 2023 in the Crown Court at Manchester before HHJ Field KC and a jury, the applicant (then aged 28) was convicted of one offence of rape.
3. On 20 January 2023 Judge Field sentenced the applicant to 8 years' imprisonment for the rape offence and concurrent sentences of 6 months' imprisonment for each offence of sexual assault. The total sentence was therefore 8 years' imprisonment. Appropriate ancillary orders were made.
4. The applicant renews his application for leave to appeal against sentence after refusal by the single judge.

The Facts

5. In the early hours of 16 March 2021 C1 and C2 were walking along a public road. The applicant approached them from a bus stop. He appeared to be drunk. The applicant engaged C1 and C2 in conversation, telling C2 that she was beautiful and that she had "nice big breasts". He then tried to persuade C1 and C2 to go back to his home. He put his arm round each woman's waist, touched C2's hip and stepped in their path to try to stop them walking away. C2 was wearing a dressing gown and the applicant tried to pull it open to look at her breasts, telling her: "Your boobs are beautiful". C1 and C2 managed to walk away from the applicant having been in his company for about 20 minutes. They met another female and walked along with her for a while before encountering the applicant again. C2 then called the police. Shortly afterwards, C1 and C2 saw some police officers and spoke to them. The applicant was told to move on, which he did.
6. C1 and C2 continued walking. They met the applicant for a third time near a car park. The applicant approached them and again started talking to them. The applicant put his arm over C2's shoulder and touched her breasts, saying: "This is my girlfriend". C2 froze and then called the police again. Officers attended and arrested the applicant nearby. These events constituted the two offences of sexual assault.
7. We turn to the rape. C3 was 15 years old when the offence occurred on 14 July 2022. At the time C3 was a "looked after child" and resided at a residential facility for "looked after" children. On 13 July 2022, C3 was feeling down and needed a break from the home so she got on the 11.30 pm train to Manchester to meet her friend. The girls went to Piccadilly

Gardens where they sat down and drank some of the vodka they had brought with them. A few hours later, C3 and her friends were sitting in Piccadilly Gardens with some males they had met earlier. At around 5.00 am the applicant appeared and introduced himself as "Gerry". He asked C3 the time and then engaged in conversation. He said that he had been robbed. C3 said she wanted to get a bus to go to a branch of Asda in Ashton. Her friend did not want to go so C3 started walking over to the bus on her own. The applicant followed her. He told C3 that she was beautiful and then started kissing her. C3 was slightly intoxicated but not drunk. C3 kissed the applicant back. The applicant then asked C3 if she wanted cigarettes, which she did, so they started walking to a shop together. On the way C3 received a call on her mobile phone from her friend but the applicant took C3's phone and ended the call. He refused to give it back even though C3's friend repeatedly called it.

8. When they got to the shop it was closed. The applicant said that they could go back to his home where he had some weed. C3 agreed and they got into a taxi. The applicant had difficulty in telling the driver where he lived. He provided the driver with the wrong postcode and began arguing with the driver which C3 videoed on her phone. The applicant told the driver that C3 was his sister. Eventually they found the applicant's address. He went in to get the money for the driver, leaving C3 in the car. C3 asked the driver to call the police if the applicant did not return within 5 minutes. However, he did return. The applicant and C3 went into the applicant's house. The applicant immediately locked the door. They went upstairs to the bedroom and, once inside, the applicant bolted the door.
9. C3 started to panic. Her phone was almost dead, so she plugged it in to charge and asked the applicant for his Wifi password, saying that she needed to text her mum to let her know she was okay. The applicant gave C3 the password and went to the toilet. C3 took the opportunity to video the applicant's room. The applicant returned and told C3 to sit on his bed, which she did. He then instructed C3 to take off her shoes, so she did. The applicant then pulled off C3's pants. C3 allowed the applicant to do this as she was in shock as to what was happening. The applicant kissed C3, leaned her back onto the bed and digitally penetrated her vagina. The applicant then inserted his penis into C3's vagina. C3 remained frozen. At some point C3 told the applicant to stop but he refused saying: "No babe, we're good". The applicant then turned C3 over and resumed vaginal sex with her. The applicant then produced a substance which he said was better than weed and tried to get C3 to put it against her gum, but she refused. The applicant took the drug himself and quickly passed out, having tried to get C3 to have a shower. C3 retrieved her phone but had no credit left to make a call. She texted her former carer and told her that she was locked in a man's house and did not know what to do. She provided her location and her former carer said she would call the police. C3 also sent an email to her current carer who was on duty that night. Her current carer also contacted the police.
10. C3 then woke the applicant up and told him that she had to go as her mother had tracked the address and had called the police. The applicant agreed and so they left the house and went round the corner. The applicant gave C3 a £20 note and told her to get out of the area. He then offered to buy C3 some cigarettes and they walked to the shop. The shop was not open, so the applicant told C3 to hide by some wheelie bins in case the police drove by and saw her. The police phoned C3 while she was on her way home on a bus. Officers told her that

they were at the applicant's house and told C3 to get off at the next stop where they picked her up.

Sentencing Remarks

11. At the sentencing hearing both the prosecution and the defence suggested that the rape offence was a category 3B offence under the sentencing guideline for rape. The starting point for a category 3B offence is 5 years' imprisonment and the category range is 4 to 7 years' imprisonment.
12. The judge disagreed with the parties. In his clear and careful sentencing remarks, the judge observed that the rape of C3 was not an opportunistic offence. The applicant took a series of steps to isolate her from her friend and take her to his home, where she believed she was stuck. C3 was young, immature, and obviously vulnerable.
13. The judge considered the sentencing guideline. In relation to the harm caused by the offence he considered whether C3 was "particularly vulnerable due to personal circumstances" under the guideline. The judge had seen and heard C3 in her video recorded interview and in her recorded cross-examination. She was only 15 years old. She was a "looked after" child. Although she had been in the company of her friend at one point, she was essentially on her own, in a very dangerous part of Central Manchester, in the early hours of the morning. She had been drinking. Taking all those factors into account, the judge concluded that C3 was "particularly vulnerable". The level of harm was therefore category 2.
14. In relation to culpability, the offence was level B as none of the level A factors were present. The starting point for a category 2B offence was 8 years' custody with a category range of 7 to 9 years. The aggravating and mitigating factors cancelled each other out. The sentence was therefore 8 years. As for the two sexual assaults, the judge imposed concurrent sentences, as we have mentioned.

Grounds of Appeal

15. In his written grounds of appeal, the applicant submits that the decision of the judge to treat the rape offence as a category 2B offence, and to take a starting point of 8 years' imprisonment, was wrong. The evidence did not allow for a finding that C3 was a particularly vulnerable victim. It is submitted that the offence was a category 3B offence and that the starting point should have been one of 5 years' imprisonment.

Discussion

16. Taken on their own and in isolation from each other, the various factors which the judge set out in his sentencing remarks may not have made C3 particularly vulnerable. However, the judge was entitled to assess and determine her vulnerability by considering the evidence in the round. He was entitled to conclude that each of the various factors contributed to C3's overall vulnerability and that, when considered cumulatively, they made her particularly vulnerable under the guideline. He was not bound by the parties' views of the matter but was

entitled to apply his own analysis in reaching a just and proportionate sentence. We see no arguable error in his approach.

17. The only question for this Court on appeal would be whether the overall sentence was manifestly excessive or wrong in principle. The applicant lured an isolated 15-year-old girl in a devious and sustained plan in order to rape her. The seriousness of the offence meant that the applicant could expect a severe sentence. The judge was not sentencing him for the rape alone. The applicant could expect a further upwards adjustment to reflect the seriousness of his overall offending that included the two offences of sexual assault.
18. We agree with the single judge that the overall sentence of 8 years' imprisonment for all three offences cannot arguably be said to be manifestly excessive or wrong in principle. Accordingly, this renewed application is refused.

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

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