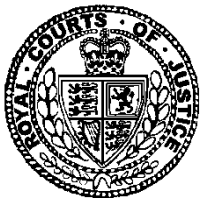
WARNING: The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Accordingly, no matter relating to the complainant shall be included in any publication if it is likely to lead members of the public to identify her as the victim of these offences. This prohibition applies throughout the complainant's lifetime unless waived or lifted in accordance with section 3 of the Act.



Neutral Citation No. [2024] EWCA Crim 1615
IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT BOURNEMOUTH
HIS HONOUR JUDGE PAWSON
T20227098

Case No: 2023 03789/04333
Royal Courts of Justice
Strand, London
WC2A 2LL

Wednesday 18 December 2024

Before:
LADY JUSTICE ANDREWS
LORD JUSTICE STUART-SMITH
MR JUSTICE BRYAN

REX
v
GARY BRIDGER

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR CHARLES BURTON appeared on behalf of the Applicant

J U D G M E N T

LADY JUSTICE ANDREWS:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Accordingly, no matter relating to the complainant shall be included in any publication if it is likely to lead members of the public to identify her as the victim of these offences. This prohibition applies throughout the complainant's lifetime unless waived or lifted in accordance with section 3 of the Act.

2. This is an application for an extension of time of 6 days in which to make renewed applications for leave to appeal against conviction and sentence, following refusal by the single judge.

3. On 4 October 2023, in the Crown Court at Bournemouth following a re-trial before His Honour Judge Pawson and a jury, the applicant was convicted of two counts of rape, two counts of sexual assault and one count of assault by penetration. On 14 November 2023 he was sentenced to an extended sentence of 14 years (12 years' custody and 2 years' extended licence) on count 5 (one of the counts of rape) and to concurrent determinate sentences on each of the remaining counts and on a separate Bail Act offence which he had admitted on 14 November 2023. That offence was committed when the applicant removed his electronic tag and absconded after the jury had retired to deliberate.

4. Mr Burton, who was defence counsel at trial, has come to the court this morning to represent the applicant *pro bono*, in the best traditions of the Bar. The court is most grateful to him for his written and oral submissions.

5. The applicant was sent the notification of the refusal of his applications for leave to appeal on 18 July 2024. On 5 August 2024 his counsel sought an extension of time in which to consider renewing the applications, explaining that a conference had been arranged with the applicant in prison. When he was informed that an extension could not be granted at that juncture but would have to be sought when the renewal form was lodged (if it was lodged out of time), the application was made properly and promptly in accordance with those directions. Given the shortness of the delay, the explanation for it and the absence of any fault on the part of the applicant, we consider that the fair course is for the court to grant the short extension sought and to consider the renewed applications on their merits.

Background

6. The complainant, whom we will call C, was a middle-aged woman who was employed by a company which arranged for carers to assist elderly people. She attended an appointment with the applicant on 7 July 2022 in order to discuss arrangements for a live-in carer for his elderly mother, who was then in hospital. The appointment was at the mother's address. C had expected the applicant's sister (who held a power of attorney) to be in attendance, but when she arrived at the address the applicant was alone. He informed C that his sister was unable to make the appointment. C nevertheless went ahead with the assessment.

7. In the course of the assessment, which took around 2 hours, the applicant took a call from his sister on speaker phone. On C's account of events the applicant appeared to be angry during the assessment. He was making unpleasant comments about his mother, his former partner and his children. C felt uncomfortable about some of the things he was saying in response to her questions. She completed the assessment and left the house, intending to

drive back to the office. As she was walking to her car, he came up behind her and ushered her to a place out of sight to others and began to kiss her. He then forced her back into the house where he forcibly penetrated her vagina digitally and then took her upstairs to the bedroom. Throughout this ordeal she said she was terrified and obeyed his commands. She became concerned that she would not be allowed to leave. When he was unable to get an erection, he swore and said he had forgotten his blue pill. He made her perform oral sex upon him and then raped her anally. After he had ejaculated, he insisted that she took a shower before he allowed her to leave. She was so frightened that she dressed without drying herself.

8. On C's return to her office her colleagues became concerned for her wellbeing. She disclosed that the appointment had not gone well and that the applicant had kissed her, but said nothing more about the incident at that stage. A few days later, after she had told family members what had happened, she reported the matter to the police.

9. The applicant was arrested on 13 July 2022. His defence, consistent with his account in interview, was that the mood had been amicable throughout the assessment. C had not been in a hurry to leave. He first walked her around the garden and then invited her to come back into the house. She did so willingly, and although CCTV footage shows her with his hand on her shoulder, this was not forceful. They began to kiss and then there was entirely consensual sexual intercourse in which she was an enthusiastic participant. She left the house on amicable terms, with the applicant saying that he would wait for her to contact him.

10. The applicant's sister was called as a defence witness. She gave evidence of being party to the telephone conversation during the assessment meeting. She was on speaker phone and she said that the meeting appeared relaxed and amicable. The sister confirmed the applicant's account that she had been unable to attend for unavoidable reasons and had told him to go ahead with the assessment nevertheless.

11. Four grounds of appeal against conviction were advanced. Grounds 1 and 2 criticised the judge's written directions in relation to the proper approach to inconsistency and his summing-up of the complainant's evidence in respect of which inconsistency was relied upon by the defence. In his oral submissions this morning, Mr Burton concentrated more upon Ground 2 and the way in which the judge dealt with the evidence of inconsistency in the summing-up of the facts. Ground 3, which was not pursued by Mr Burton in his oral submissions in the light of the Crown's response, criticised the judge's summing-up of the evidence of the applicant's sister. Ground 4 complains that the judge's response to a note from the jury, sent in the course of the deliberations on 3 October 2023 and asking to be reminded of parts of the complainant's evidence, was inadequate.

12. We agree with the single judge, essentially for the same reasons, that whether considered separately or together, these grounds do not arguably undermine the safety of the applicant's convictions.

13. As to Grounds 1 and 2, we have carefully considered the judge's summing-up, and like the single judge we can find no fault in the way in which he dealt with inconsistencies or in the summing-up of C's evidence. The direction on inconsistencies was in accordance with the standard directions in the Crown Court Compendium, as Mr Burton very fairly accepted. We reject the submissions that were made in the written advice and grounds that the directions that were given favoured the prosecution and that it was inappropriate to have addressed this issue in the context of directions to the jury warning them against making

unwarranted assumptions. On the contrary, it was particularly important in a case of this nature that the jury should have been given appropriate directions to prevent them from falling into the error of making assumptions based on myths and stereotypes in cases involving sexual offending, and that includes making assumptions about the reasons for inconsistencies.

14. As the single judge said when refusing leave, the inconsistencies in C's accounts were either evidence of fabrication or there was some another explanation for them, such as the trauma of reliving the experience or of giving evidence about it. It was entirely a matter for the jury to decide whether there were inconsistencies, how material they were and what the reasons for them were. The judge made it clear that these were matters entirely for them. The direction that was given was balanced and it was fair to both the Crown and the defence.

15. Although Mr Burton in his advice and grounds criticised the judge for an inadequate and inaccurate summing-up of relevant parts of C's evidence, he did not descend into particulars at that stage. However, before us this morning he elaborated upon his submissions in that regard. He submitted that the actual evidence given in relation to the inconsistencies was inadequately summarised and that the point about the inconsistencies and the timing of the various accounts given by C was buried and glided over. He explained that it was a very important part of the defence case that the versions of events that were given in the ABE interview, at the first trial, and then at the second trial differed in material respects - matters on which the complainant was cross-examined and for which she gave different explanations.

16. Mr Burton pointed out that the first time that C changed her account of what happened in relation to certain force that she said was used on her by the applicant was after she was confronted by CCTV footage which indicated that this could not have happened outside of the house as she had originally said. He submitted that it was after overnight reflection that she then said that she must have been mistaken, and that it happened when she was inside the house. There was also a further change in the period between the first and second trials. The court asked Mr Burton whether these were all points that he had made to the jury in his final speech, and he confirmed that they were, but he submitted that the jury might have got the impression from the way in which the judge dealt with the matter that the judge did not think that these were particularly important facets of the defence case because they had not been adequately emphasised.

17. However, when one looks at the directions that were given to the jury, unsurprisingly the judge told them, in the usual way, that factual matters were entirely for them, that if he was making any comments with which they disagreed they should ignore them, and that if he omitted to mention something they thought was important they should take it into account and give it the weight they considered it required. These and the other standard directions provided all the usual safeguards against the jury falling into the error of thinking that the judge's view should in some way prevail over their own views.

18. Accordingly, having read the summing-up in some detail and having reminded ourselves of how the judge dealt with these matters, we are not persuaded that it is arguable that he dealt with the complainant’s evidence in an inappropriate way or that there was any real danger that the jury would fall into the kind of error that Mr Burton submitted they may have done. Certainly there is nothing in this point which gives rise to any concern that the conviction might be unsafe.

19. We point out as well (although this is not intended as a criticism of Mr Burton) that he did not complain to the judge at the end of his summing-up that he should have said something more or raise it even as an observation with the judge. As the Crown pointed out in the Respondent's Notice, there were a number of occasions during the course of the summing-up of the complainant's evidence where the judge did refer very clearly to the inconsistencies or potential inconsistencies which had been highlighted by the defence, whilst reminding the jury that it was a matter for them to decide whether any inconsistencies were important and how if at all they impacted on their assessment of C's reliability. That did not neutralise the inconsistencies, as Mr Burton alleges; it left the jury to carry out their function. We therefore refuse leave on Grounds 1 and 2.

20. Ground 3 was very sensibly not pursued. The sister's evidence was peripheral and understandably did not occupy a great deal of time in the summing-up. She was not present at the house; she could not say whether the sexual activity which admittedly took place was or was not consensual. The most she could speak about was an impression she had formed of the situation in the house from the other end of the phone at a time before any sexual activity took place.

21. It was alleged initially that she gave important evidence supporting the applicant's evidence about the reasons why he had not cancelled the appointment when he realised that the sister could not be present, but the fact that the appointment went ahead without the sister and the reasons why that came about had no real bearing on the prosecution or the defence case. Moreover, as the single judge pointed out, the sister's evidence was dealt with at the end of the trial judge's summing-up, and not long afterwards the judge invited counsel to identify if there was anything they wanted to raise. At that stage there were no concerns raised on the applicant's behalf that the jury should have been given further details of the sister's evidence. It should not be overlooked, as we have already mentioned, that they would have had the benefit of hearing a closing speech from Mr Burton, which would no doubt have highlighted all of the matters that he wished them to take into account and done so with a degree of force.

22. Ground 4 relates to a note from the jury. As one might expect, the judge had detailed discussions with counsel as to the appropriate response to the specific jury question which asked to be reminded of what C had said in her police interview about sexual activity in the bedroom and oral sex. It is accepted very fairly by Mr Burton, both in the advice and grounds and today before us, that the jury were directed in accordance with what was agreed following those discussions. They were correctly informed that C had made no mention at all of oral sex in her police interview. They were reminded of relevant passages in her cross-examination in which the applicant's case on this topic was put to her and she denied his account of events. After those directions had been given, with a degree of diffidence, Mr Burton somewhat apologetically raised with the judge the question of whether, in fairness, having been reminded of the complainant's evidence, the jury ought also to have been reminded of his client's evidence in relation to these matters. The judge refused to do that at the time. We consider that that was a matter which fell squarely within the ambit of judicial discretion and did not produce any unfairness. The jury had copies of the applicant's interviews and they were sufficiently reminded of his case on these particular matters by having the cross-examination of C drawn to their attention. We conclude, in common with the single judge, that the judge's response to the note was proportionate and fair.

23. For all of those reasons, none of the grounds is sufficiently arguable for us to give leave. We are satisfied that the conviction is safe and we therefore refuse this renewed application for leave to appeal against conviction.

The Appeal against Sentence

24. Two grounds of appeal are advanced, namely that the custodial term of the sentence (12 years) was manifestly excessive and that an extended sentence was wrong in principle. Neither is arguable with any real prospect of success. The judge had the benefit of presiding over the trial and seeing and hearing the detail of the evidence. He formed the view that the applicant was a misogynist and a bully, and (I paraphrase) that he put C through a sustained and terrifying ordeal. He had the benefit of a very full sentencing note from the Crown, which we have read. It identified three Category 2 features and submitted that the extreme impact of their combination could elevate the case into Category 1. In the event, the judge treated the two rapes as each falling within Category 2B, with a starting point of 8 years and a range of 7 to 9. However, those indicative sentences are for a single offence, whereas here the judge was sentencing for two rapes, an assault by penetration and assaults by touching the breast and kissing. We reject the submission that there was any double-counting by virtue of the fact that the judge referred to the multiplicity of offences that were committed during the sustained assault. As the single judge remarked, the fact that C was violated orally, vaginally and anally properly amounted to an additional feature to be taken into account beyond the mere fact of a sustained assault. The judge made it clear that he was going to reflect the total criminality in the sentence passed for the most serious of the offences. That was entirely in accordance with the totality guidance and he was entitled to take the approach that he did. Again, Mr Burton very fairly accepted that this was appropriate sentencing.

25. The trial judge conscientiously explained how it was that he moved up to 12 years by reference to the aggravating and mitigating factors which he identified. He was entitled to include in the aggravating features the efforts made to conceal evidence by forcing C to shower, the ejaculation, his assessment that there was some degree of premeditation as evidenced by the applicant's remark about forgetting his blue pill, and (to a degree) the harm that was caused not only to the complainant but to her wider family, some of whom had given evidence of complaint.

26. The judge was best placed to assess the impact on the victim that this offending had caused and he had the benefit, of course, of a victim personal statement. Since he was factoring all the criminality into the sentences passed for the rapes, he was also entitled to take into account (although it must have been a very minor part of the assessment) the impact on the complainant of the absconding. It is unclear to what extent he regarded that as carrying much weight, but in any event, we have to look at the 12-year tariff in the round and not dwell on particular features of the aggravating factors.

27. As to mitigation, the judge did take into consideration a letter from the applicant's children, the absence of similar convictions, the fact that he was of previous good character, and his age of 66 years, which he mentioned at the start of his sentencing remarks. In agreement with the single judge, we find he was entitled to afford these factors very little weight in mitigation for offending of this nature. Indeed, the guideline makes it plain that for offending of this type, good character or even exemplary conduct should not normally be

afforded much weight.

28. There is also force in the Crown's observation in the Respondent's Notice that the judge was entitled to factor in his own evaluation that the applicant had lied throughout his evidence and his assessment that he was "a calculating, lustful and selfish bully". We would add that he was also entitled to place some weight (though perhaps not very much) on the absence of any remorse. This was on any view very serious offending against a stranger, a woman who was merely trying to carry out her job, which brought her into contact with strangers in strange surroundings and rendered her vulnerable to this kind of attack. The incident was prolonged and C plainly feared for her life. She suffered significant psychological harm (on the judge's assessment) and the judge was entitled to take it into account as an aggravating feature, as again Mr Burton very fairly accepted. The fact that it fell short of severe harm did not preclude that approach.

29. Mr Burton's overarching argument was that even if the judge was justified in moving outside the category range, 12 years was simply far too long. In our judgment 12 years is not excessive for offending of this nature, let alone manifestly excessive.

30. So far as dangerousness is concerned, Mr Burton's main point was not so much about the finding of dangerousness but about the passing of the extended sentence. He submitted to us that, given the applicant's age (of 66) and the fact that the offending behaviour appeared to be all part and parcel of a single aberration in circumstances where the applicant was suffering from a degree of stress due to the break-up of his marriage and his mother's hospitalisation, the judge ought to have taken the view, standing back and looking at matters in the round, that (notwithstanding the views of the pre-sentence report's author) he was unlikely to commit similar offences, and that in any event a determinate sentence would be sufficient to mark a proportionate response in sentencing terms.

31. The finding of dangerousness was based on the offending itself. It was, in our view, fully justified. The judge's remarks were tailored to the facts of the offending and the offender sufficiently to comply with the guidance in ***R*** v ***Ayo*** [2022] EWCA Crim 1271. The nature of the offences and the circumstances in which they were committed were enough in themselves to demonstrate the high risk of danger that this applicant posed to women who might have the misfortune to cross his path in circumstances where he had the opportunity to be alone with them.

32. The judge specifically referred to the fact that there was an assessment by the author of the pre-sentence report of a low risk of reconviction but a medium risk of reoffending and a very high risk of serious harm to female members of the public. He agreed with the probation officer's assessment of the applicant that he was complex and controlling. The judge was entitled to form the view that a determinate sentence would not adequately address the risk that the applicant posed to the public and therefore to pass an extended sentence. Another judge may have formed the view that in the light of his age, in particular, a lengthy determinate term of imprisonment would suffice to address the risk he posed, but that was not the view of this judge, who had the advantage of observing the applicant closely over the course of the trial. The judge considered, and he explained, that the risk would be appropriately addressed by extending the licence period by 2 years. That was a matter of judicial discretion, and it cannot be said to be wrong in principle.

33. For these reasons, despite Mr Burton's efforts to persuade us to the contrary, we refuse leave to appeal against sentence. Both these renewed applications are therefore refused.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk