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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301835/B2

Neutral Citation Number: [2024] EWCA Crim 581

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 10 May 2024

Before:

LORD JUSTICE LEWIS

MR JUSTICE GOSS

HER HONOUR JUDGE MORELAND
(Sitting as a Judge of the CACD)

REX

V

ROBERT JAMES BARNETT

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NON-COUNSEL APPLICATION

J U D G M E N T

LORD JUSTICE LEWIS:

1. On 16 January 2023, in the Crown Court at Durham, the applicant, Robert James Barnett (now aged 58), was convicted of one offence of rape. His application for leave to appeal against conviction was refused by the single judge. He renews that application today.
2. The facts and background can be stated shortly. The complainant was a 19-year-old woman, who was a neighbour of the applicant. On 19 September, there was a party in the complainant's home and the applicant attended. The complainant became very drunk and was lying asleep in the living room. At some stage, the applicant took the complainant to her bedroom. The prosecution case was that the applicant then took off the complainant's clothes, fondled her breasts and then got on top of her and placed his penis in her vagina. The applicant's case was that he had only helped her to get upstairs and removed her clothing because she had vomited on them.
3. At a first trial, the applicant was found guilty of sexual assault, namely fondling the complainant's breasts. The jury could not agree on a verdict on the charge of rape. There was a retrial. The judge made it clear in his directions that the central issue for the jury was whether they were sure that the applicant had penetrated the complainant's vagina with his penis.
4. The prosecution case was that the complainant had drunk a great deal of alcohol. They alleged that the applicant then isolated the complainant in the bedroom, stripped her, sexually assaulted her and then raped her. The key evidence on which they relied was that of the complainant, whose recollection was of waking up, lying in bed naked, with the applicant on top of her. He had her arms pinned to the bed. She managed however to push him off, put on her pyjamas and run from the house. The prosecution relied upon a number of additional strands of evidence but it is not necessary to repeat them here.

There were significant inconsistencies in the applicant's account of what had happened and, in addition, the jury were entitled to draw inferences that the applicant did not mention in his police interview matters that he later relied upon in court. As we have said, the applicant's case was that he was simply a good Samaritan, who took the complainant to her bedroom because she was drunk, took her clothes off because she had vomited and soiled them and he said he had not raped her or engaged in any kind of sexual activity.

5. There was also one other piece of evidence which is the subject matter of this application. The judge allowed the prosecution to adduce evidence of his conviction for sexual assault from the first trial. The applicant contends that this evidence should not have been admitted as it was so prejudicial as to be unfair for that evidence to be placed before the jury.
6. First, in our judgment, the judge was entitled to admit the evidence of the conviction for sexual assault, either because it concerned facts to do with the offence or on the basis that it was bad character evidence going to the issue of whether, as the applicant said, he was simply a good Samaritan seeking to help the complainant or whether, as the prosecution alleged, he was someone who was sexually interested in the complainant. The judge was entitled to consider that the probative value of the conviction, on that issue, outweighed any prejudicial effect.
7. Secondly, it is said that the judge wrongly directed the jury about the conviction for sexual assault. The applicant continued to assert that he was not guilty of that offence. Under section 74 of the Police and Criminal Evidence Act 1984, where an offender has been convicted of an offence, he is to be taken to have committed that offence unless the contrary is proved.

8. The judge made it clear that the issue for the jury was whether, notwithstanding the fact that they had been convicted of sexual assault, they were sure that the applicant had penetrated the complainant's vagina with his penis. He said they must not be unduly prejudiced by the conviction, and just because he was guilty of that offence, did not automatically mean that he was guilty of rape. The judge directed the jury that they could not convict the appellant of the offence of rape wholly or mainly on the basis of the conviction for sexual assault. The judge explained the use that the jury might make of the evidence, namely that it might assist them in deciding if the applicant was, as he said, a good Samaritan seeking to assist the complainant or whether, as the prosecution said, he was someone who was sexually interested in the complainant. The judge went on to say that the applicant disputed that he was guilty of sexual assault. The judge said that, when a defendant disputed a previous conviction, it was up to him to persuade a jury, that it was more likely than not that he was in fact innocent. He said he would rarely be enough to persuade a jury of this by simply asserting "I didn't do it". Particular criticism is made of that last sentence of the judge's direction.
9. We do not consider that there is any error in the direction given. The judge correctly directed the jury as to the use which they could put the evidence of the sexual assault to. He correctly directed the jury as to the effect of section 74 of the 1984 Act. The directions he gave are consistent with those which were approved by this Court in R v C [2010] EWCA Crim 2971. The last sentence of the judge's direction, whilst perhaps unnecessary, does not begin to establish any arguable ground that there had been a material misdirection in this case, still less that there is any arguable ground that the conviction is unsafe. For those reasons, we would refuse this application for leave to appeal against conviction.

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

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