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[2021] EWCA Crim 1690

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202000823/B1

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 21 October 2021

MR JUSTICE SPENCER

THE RECORDER OF LIVERPOOL  
HIS HONOUR JUDGE MENARY QC  
(Sitting as a Judge of the CACD)

REGINA  
V  
TIBOR GAZO

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NON-COUNSEL APPLICATION

JUDGMENT

1. MR JUSTICE SPENCER: This is a renewed application for a lengthy extension of time in which to apply for leave to appeal against conviction, following refusal by the single judge.
2. It is a case to which the anonymity provisions of the Sexual Offences (Amendment) Act 1992 apply. There must be no reporting of the case which is likely to lead members of the public to identify the victim of the offences. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
3. On 14 June 2019 in the Crown Court at Leeds, the applicant, now 64 years of age, was convicted by the jury of assault by penetration, contrary to section 2 of the Sexual Offences Act 2003 (count 1) and assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861 (count 2). He was sentenced the same day by the trial judge, His Honour Judge Clark, to a total of eight years' imprisonment. There is no application for leave to appeal against sentence.
4. The applicant requires an extension of time of 231 days if the appeal is to be allowed to proceed. The explanation the applicant has given for the delay is that he is a foreign national who does not speak or read or write in English. It took him time to gain an understanding of the appeal process. He also complains that his solicitor did not come to see him about an appeal and he had no documents.
5. We say at once that this last part of the explanation appears to be untrue. Following waiver of privilege, we have seen a comprehensive negative advice on appeal against conviction and sentence prepared by his trial counsel. We also note that one of the exhibits in the case uploaded to the Digital Case System was the applicant's own curriculum vitae in which he describes his competence as a professional builder and asserts that his English is good.
6. Nevertheless, despite the inordinate delay we have considered whether there is any merit in the proposed appeal. If there is, we shall have to consider whether the extension of time should be granted.
7. The applicant is, we infer, a Slovakian national. These offences took place in 2008. The complainant was a woman aged 22, married with young children. She had come to this country from Poland and had been living here for eight months. She lived for a time at an address in Gipton in Leeds. For three to four months after she left that address she returned from time to time to collect her mail.
8. The applicant had moved into the address some six weeks after the complainant had left. He had been living at the address for two or three weeks at the time of the incident on 21 March 2008 which gave rise to the counts on the indictment.
9. We say at the outset that although the jury were trying the applicant for alleged offences committed 11 years earlier, that was no fault at all of the complainant. She attended the police station the same day to make her complaint of sexual assault and section 47 assault. She gave her account in an ABE video-recorded interview. The reliability of her account was, therefore, unaffected by the delay.
10. It was not until 29 September 2016, eight-and-a-half years after the incident, that the applicant was arrested and interviewed by the police. It is not at all clear what the reason was for the long delay. In his police interview he denied that he had ever lived in Leeds or been to the address in question. Documents found at the property which contradicted this were, he said, fakes. He denied the allegations of assault.
11. On 21 October 2016 the complainant attended an identification procedure. She

- identified the applicant as her attacker.
12. On 10 January 2017 the applicant was interviewed again by the police. He repeated what he had said previously. However, in due course he submitted a defence statement in which he admitted that he had been present at the address and had been involved in an incident with the complainant. We shall return to his account.
  13. The prosecution case was that on the Tuesday prior to the incident the complainant had visited the address and been handed her mail by the applicant, who was then living there. He told her to return the following Friday 21 March to collect other mail that she said she was expecting.
  14. She did return on Friday 21 March. The applicant handed her a letter but as he did so he grabbed her hand and pulled her inside the house. He dragged her upstairs into a bedroom, threw her onto the bed and got on top of her. With one hand he started to strangle her. He put his other hand up her skirt and inserted his fingers into her vagina, telling her "Be quiet or I'll fucking kill you". She reached for a pen on the windowsill and stuck it into his head so that he bled. She also managed to kick him. That was enough to cause him to remove his fingers from her vagina. Significantly a broken pen was subsequently found by the police at the property.
  15. The complainant was then able to slip out of the room, but the applicant followed her down the stairs. In the hallway she took hold of a vase and told him to open the front door or she would kill him. He ran away from the house. She followed him for a distance.
  16. As a result of the attack, she had injuries to her ankle, her finger, her knees, arm, neck and to her chest near her breast. He had bitten her finger whilst she was on the bed. She injured her ankle on the stairs. There was medical evidence from a police doctor of petechial bleeding in her cheeks and on her neck consistent, we infer, with strangulation. There was a red mark on her chest and scratches on her left arm. She was limping.
  17. An intimate examination revealed a recent small graze to the side of her urethra. This was consistent with scratching by a fingernail inserted into her vagina. Blood staining on her fingers contained the applicant's DNA.
  18. There was evidence from neighbours, from her husband and from a police officer, all of whom spoke of her distress when she immediately complained to them of the attack.
  19. The judge admitted as bad character evidence a conviction for an offence of rape the applicant had committed against a female under 16 in 1985 in Slovakia, and other offences of dishonesty and violence committed abroad.
  20. The applicant's case before the jury was very different from the account he had first given to the police and was broadly in accord with what he had said in his defence statement much later. He claimed he had met the complainant in a local park. They had chatted, and she had agreed to come back to the house to have sex with him in return for money. It was simply coincidence, he said, that she had previously lived in the house where he now happened to live. They went to the house together and he asked her to wait in the front room whilst he went upstairs to wash. When he returned he said he found her stealing money from his wallet. He grabbed hold of her and demanded that she return the money. There was a struggle and he slapped her. She stabbed him in the ear with something sharp causing him to bleed. She then left the house.
  21. During the course of his evidence, the applicant changed his account again, suggesting now that the struggle occurred in a different part of the house. He denied that he had run

away. After the incident he had returned to live in Halifax, he said, as there was no work for him in Leeds.

22. The jury were faced with a stark conflict of evidence. As the judge correctly directed the jury, the issue was whether they were sure the incident occurred as the complainant alleged. If they were not sure they must acquit the applicant.
23. In grounds of the applicant's own composition, he complains that there was no proper explanation for the eight year delay between the complainant's allegation and his arrest. That delay made it impossible, he says, for him to retrieve any evidence and prove his innocence. He complains that his trial lawyers failed to represent him and advise him properly. He claims, wrongly, that his advocate was a solicitor rather than a barrister. In fact, as counsel explained in his observations following waiver of privilege, he had previously been a solicitor but had transferred to the Bar some years earlier and had explained this to the applicant. The applicant complains that the Slovakian interpreter provided for him at trial was very poor. He complains that the jury's verdicts were contrary to the evidence. He maintains his assertion that the complainant came to the flat willingly and assaulted him with the intention of robbing him.
24. In further correspondence with the Registrar, the applicant disputed the relevance of the identification evidence as the complainant admitted that she had seen him at the park some weeks prior to the incident and she had attended the address voluntarily. He disputes the relevance of the DNA evidence bearing in mind that it was common ground that she had stabbed him. He disputes that the medical evidence supported her claim that he had penetrated her vagina.
25. We have read carefully all the applicant's various documents in translation, although we note that at least one of the letters dated 29 September 2020 was written not in Slovakian but in English. On 22 July 2020 the Criminal Appeal Office received a signed but incomplete Form A notice of abandonment but the document was treated as equivocal. In a telephone call to the office the applicant confirmed that he wished to proceed with his appeal against conviction and also an appeal against sentence. He has never lodged an appeal against sentence in proper form.
26. In concluding that there was no merit in the proposed appeal against conviction and therefore refusing the extension of time, the single judge addressed all the grounds of appeal raised by the applicant. There was, the single judge said, no basis to doubt the competence of the applicant's representation at trial. The jury had been faced with starkly conflicting accounts from the complainant and the applicant. The complainant had been properly cross-examined through the TV link. By their verdicts the jury were sure that it was the complainant not the applicant who was telling the truth. Her account was strengthened by a range of other matters, including the applicant's lies to the police in interview and his eventual change of story in the face of evidence of his DNA in the blood on her hand.
27. We respectfully agree with the single judge in all these reasons. We agree that there was ample evidence to support the convictions and that there is no arguable ground of appeal arising from delay in the prosecution, or in respect of the medical evidence, or otherwise. We also agree with the single judge's conclusion that there can be no arguable challenge to the fairness of the trial process. We note from counsel's waiver response that there was no complaint at the time about the quality or adequacy of the interpreter. The judge's legal directions to the jury were accurate and clear. His summing-up of the facts

was full and fair.

28. We are quite satisfied that there can be no arguable complaint that these convictions are unsafe or that the trial was in any way unfair.
29. Accordingly, we refuse the renewed application for leave to appeal against conviction and consequently we also refuse the lengthy extension of time which would be required to bring such an appeal.

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