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IN THE COURT OF APPEAL

CRIMINAL DIVISION

2022 EWCA 144 Crim

CASE NO 20201824/B5



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 27 January 2022

Before:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION  
(LORD JUSTICE FULFORD)  
MRS JUSTICE JEFFORD DBE  
MR JUSTICE LAVENDER

REGINA  
V  
JAY LEWIS PERRY

Computer Aided Transcript of Epiq Europe Ltd,  
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NON-COUNSEL APPLICATION

J U D G M E N T

1. MRS JUSTICE JEFFORD: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person 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 that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. On 10 March 2020 in the Crown Court at Birmingham, the applicant, then aged 22 and now aged 23, was convicted following a trial of four offences forming counts 1, 2, 4 and 5 on the indictment. He had previously pleaded guilty on 2 March 2020 to two offences of criminal damage and assault occasioning actual bodily harm (counts 3 and 6).
3. On 14 April 2020 he was sentenced by the trial judge as follows. On count 1, engaging in controlling and coercive behaviour in an intimate or family relationship, contrary to section 76(1) and (11) of the Serious Crime Act 2015, he was sentenced to 30 months' imprisonment. On count 2, assault by penetration, contrary to section 2 of the Sexual Offences Act 2013, he was sentenced to five years and six months' imprisonment. On count 4, assault by beating, the sentence was one of 28 days' imprisonment. On count 6, rape, contrary to section 1 of the Sexual Offences Act 2003, he received an extended sentence of 11 years, comprising a custodial term of eight years and a three-year extended licence period. On count 3, criminal damage, he was sentenced to 14 days' imprisonment. On count 6, assault occasioning actual bodily harm, he was sentenced to 20 months' imprisonment. All the periods of imprisonment were ordered to run concurrently. A restraining order was also imposed.
4. On 13 July 2020 the applicant sought leave to appeal against conviction and an extension of time of 96 days in which to do so. The extension of time was refused by the single

judge and the applicant now renews his application for an extension of time. As we will explain, he requires a further extension of time in order to do so.

### The offences

5. The complainant was in a relationship with the applicant for four years from 2014. The prosecution case was that during that relationship the applicant's behaviour was controlling. He would check the complainant's phone, stop her going out to socialise if he was at home, lock her indoors and not allow her to have a key to the address. Those matters gave rise to count 1.
6. The applicant was physically violent towards the complainant and forced her to engage in sexual activity. He repeatedly accused her of infidelity. He would check her underwear and inspect her genitalia, digitally penetrating her vagina to see if "someone else had been inside her".
7. The prosecution case was that these things came to a head on the evening of 21 January 2018 and into the following day. On 21 January 2018 the applicant accused the complainant of sleeping with someone else. He checked her underwear and digitally penetrated her vagina. Those incidents were the basis of count 2.
8. The complainant went to bed. She was woken by the applicant pulling her from the bed. He had checked her phone and demanded to know who one of the contacts was. He refused to accept it was one of her work colleagues. He verbally abused her and stamped on her phone causing damage (count 3).
9. The argument continued. The applicant deliberately threw the television remote control at the complainant and it hit her in the face (count 4).
10. He then grabbed her by the shoulders, pushed her over the edge of the bed, pulled down her pyjama bottoms and penetrated her vagina with his penis (count 5).

11. The complainant left the applicant and moved into a friend's house. On 26 January 2018 the applicant went to the house and demanded to speak to her. She went outside with him and told him that their relationship was over. He punched her twice to the face, knocking her to the ground. She sustained permanent injury to her eye. That gave rise to count 6.
12. The applicant was arrested and interviewed on 13 February 2018 and exercised in the main his right to silence, making no comment in response to the majority of questions asked. At the end of the interview he made a single comment, namely "I have never raped her, I have never laid a hand on her, that's it."
13. At trial, and to prove the case, the prosecution relied on the following:
  - (i) The complainant's evidence.
  - (ii) Evidence from the applicant's phone which showed frequent communications from him to the complainant at all times of the day and night after the relationship had ended. In those messages, he made admissions that he had punched her and damaged her phone, that he knew that she was scared of him and that he had been controlling of her.
  - (iii) The evidence of the complainant's aunt, whom the complainant had told about the rape and who gave evidence which corroborated the injuries the complainant described.
  - (iv) The guilty plea entered by the applicant in April 2018 to the charge of intimidating a witness. The applicant had contacted the complainant on a new phone using the name "John" and sent her many threatening messages, including threats to set her on fire if she was with another man. This was further relied on as evidence of coercive and controlling behaviour and as evidence of propensity to commit offences of the type charged. Directions of

law were given to the jury in this respect.

14. The defence case was that the applicant had not engaged in controlling or coercive behaviour. In his defence statement he said he had encouraged the complainant to go out and socialise, but that she suffered from anxiety and preferred to spend time with his family, including his grandmother and his stepmother. The complainant visited her own family, usually alone, on a weekly basis.
15. His case was that the digital penetration (count 2) did not happen. He accepted that they had engaged in consensual sexual activity of this nature during the relationship. The applicant denied that he had thrown the television remote control at all and said that any injury was caused by the dog jumping up in play.
16. In relation to count 5 (the rape) the applicant accepted that he and the complainant had engaged in consensual sexual intercourse on the morning before the argument had started. He said he had not engaged in any sexual activity with her after the argument.
17. The applicant gave evidence during his trial. He could not explain why the, on his case, false allegations had been made against him. He denied all the allegations made against him. He said he had relied on the advice of his legal representative following his arrest in giving no comment answers in interview.
18. The defence called evidence from the applicant's family members: his grandmother, an aunt, his mother and his stepmother, the last of these being the person with whom the complainant went to stay after the events of 21/22 January 2018.
19. In summary, these witnesses said that they had not seen any violence directed towards the complainant or any injuries and that the relationship appeared to them to be loving, happy and supportive.

The appeal

20. At trial the central issue for the jury was therefore whether they were sure that the offending complained of had taken place. The applicant was convicted unanimously on all counts to which he had pleaded not guilty. The applicant was represented at trial and we infer that he sought advice on appeal and received negative advice. His application for permission to appeal made in person was received by the Court of Appeal Office on 13 July 2020. In it he said that he had been waiting for his barrister to put in an appeal "and they said they won't put one in for me or represent me". The applicant relied on those matters, the fact that he had transferred prisons and the 2020 lockdown as his reasons for delay in appealing.

21. He advanced four grounds of appeal which we summarise as follows:

- (i) There was, as he put it, "something going on with the jury". He alleged that before the jury went out to consider their verdicts, one of the police officers nodded his head at the juror who became the foreman and that before the jury returned their verdicts the same officer had been seen walking down the road with the same juror.
- (ii) He said that his barrister had not cross-examined anyone and put across his side of the story. The only evidence the jury heard was evidence that made him look bad.
- (iii) He said there was no evidence and seemed to suggest that the jury had asked the judge for evidence. He said he had been found guilty on hearsay and found guilty of a crime he would never commit.
- (iv) He complained that he was under investigation for three years but that the police did not speak to his, that is, the defence, witnesses.

22. In refusing the extension of time, the single judge said that the reasons advanced by the

applicant were no justification for the considerable delay in making the application. The applicant would have known about his right of appeal and counsel's negative advice within the 28 day time limit but did nothing for another three months. We entirely agree and that is sufficient to dispose of this renewed application.

23. The single judge nonetheless considered the grounds of appeal and was satisfied that there was no merit in them in any event. We also agree.
24. As to the first ground, no issue was raised at trial about the integrity of the jury. The officer in the case present in court, a DC Sharp has confirmed that he had no contact or communication with any member of the jury. The jury were all told that they should raise any issue of concern and no one did. The verdicts were unanimous.
25. The second ground of appeal is hopeless. We have read the transcripts of the summing-up and it is clear that the Crown's witnesses were properly cross-examined, that the applicant's case and version of events was put, and that issues going to the complainant's credibility and the credibility of her version of events were explored and put before the jury. For example, it was put to her that she was responsible for Facebook messages to herself that had been relied upon by the prosecution as being from the applicant. She was asked about the occasion after she and the applicant had split up when they had pizza together.
26. The jury were given clear and proper directions as to how they should approach the evidence that had been given, including that they should decide the case on all of the evidence called by both sides. The applicant has raised no issue about the content or accuracy of the summing-up of the facts. Further, the applicant himself gave evidence and appropriate directions were given to the jury in this respect. Other witnesses were also called for the defence.

27. The third ground of appeal is similarly hopeless. There was clear evidence against the applicant which was put before the jury and was not hearsay. To the extent that any evidence was hearsay, no objection was taken to its admissibility. Proper directions were given as to how the jury should approach the evidence of the complainant. The Respondent's Notice explains that the jury requested a timeline of events which was agreed between the prosecution and the defence and which we have seen. If this is what the applicant intends to refer to as the evidence requested by the jury, then firstly it should be understood that this was a timeline of events which showed which events were agreed or not agreed and what events were asserted by what witnesses. Secondly, it should be understood that it drew together the evidence that had been given and it was not either hearsay or some new evidence.
28. As to the fourth ground, the police were under no obligation to visit the defendant's witnesses. The defence statement did not identify any witnesses who should be interviewed. The defence statement did make reference to his grandmother, his mother and his stepmother. All of these potential witnesses were spoken to by the police but refused to give statements. The applicant called as defence witnesses those witnesses whose evidence he wanted to rely on.
29. In our view the single judge was wholly right to refuse the extension of time sought and to indicate that he would have refused leave in any event.
30. Before the applicant could pursue the application before us, he would require a yet further extension of time of 160 days in which to make that application. Notification of the single judge's refusal was sent by email to the Governor of Her Majesty's Prison Isle of Wight on 20 November 2020. In May 2021 the applicant wrote to the Court of Appeal Office saying that he had not heard anything about his application. A further copy of the



refusal was sent to him on 10 June 2021 and he made the present application on 12 July 2021. It is unnecessary for us to examine exactly what may have happened as we have formed the view that the appeal has no merit and there is no reason to grant any extension of time in order to renew the application for an extension of time and/or the application for leave.

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

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