IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202201617/B1

[2023] EWCA CRIM 315

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 1 March 2023

Before:

LADY JUSTICE SIMLER DBE

MR JUSTICE GOOSE

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

REX
V
GARY CHRISTOPHER PIGGOTT

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NON-COUNSEL APPLICATION

J U D G M E N T

LADY JUSTICE SIMLER:

Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. 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 likely to lead members of the public to identify that person as a victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 7 April 2022, following a trial in the Crown Court at Worcester before HHJ Cartwright and a jury, the applicant, Gary Piggott, was convicted of two counts of assault of a child under 13 by penetration (those were counts 1 and 2), three counts of sexual assault of a child under 13 and one count of causing a child under 13 to engage in sexual activity. The applicant was sentenced to concurrent sentences on each count with concurrent special custodial sentences of nine and a half years on counts 1 and 2, comprising terms of eight and a half years and an extension period of one year.

3. He was represented at trial by solicitors, Thomas Horton LLP, and counsel, Mr Naill Skinner, and now renews his applications for an extension of time of 19 days in which to seek leave to appeal against conviction and for leave following refusal by the single judge. He relies, in relation to the extension of time, on difficulties in adding his solicitor's telephone number to his contact list while at HMP Hewell; on the fact that his solicitors were, in his view, "very unhelpful" in providing him with assistance; and on the fact that he was moved in the course of that period to another prison. An application for leave to appeal against sentence was also refused by the single judge but that application has not been renewed.

The Facts

4. The case concerned alleged sexual offending against a 12-year-old boy (to whom we shall refer as "C1") by the applicant at C1's home address on the nights of 29 and 30 May 2020. In short, having been invited to stay at a friend's house on the evening of 29 May 2020, the applicant entered C1's bedroom on numerous occasions and committed a series of sexual assaults on him.

5. The victim gave an ABE video recorded interview on 31 May 2020. In that interview he said that on the evening of 29 May 2020 he was in his bedroom which he shared with his younger brother. During the course of the evening the applicant entered the bedroom on a number of occasions. He said that the applicant had touched his bottom and inserted his finger into his anus on two separate occasions. The applicant touched his penis over his clothing and on one occasion got onto the bed, again touching his penis before pulling his trousers down and touching his penis skin to skin. He also said that the applicant put his penis into the applicant's mouth and that he had sucked it on two separate occasions and also that he kissed him on the lips. At one point he said that the applicant told him: "Don't tell anyone. Promise me".

6. On 31 May 2020 penile swabs were taken from C1 and examined for traces of DNA. At trial, an admission was made in relation to the DNA evidence in the following terms:

> "The summary of the forensic scientist's findings is as follows: No saliva/DNA attributable to Gary Piggott was detected within the result obtained from the cellular fraction of [C1's] penile swabs. This may be because Gary Piggott did not touch or suck [C1's] penis. However, it is also possible that he did, but without the transfer of detectable levels of Gary Piggott's DNA onto [C1's] penis, or that any that may have been deposited has subsequently been removed from [C1's] penis by actions such as washing or wiping.
>
> Therefore, overall in my view the scientific findings do not assist in addressing whether or not Gary Piggott touched/sucked [C1's] penis, as alleged."

7. In his Defence case statement the applicant denied all counts on the indictment. He said

that on the relevant date he attended a party and thereafter went to C1's mother address at her invitation. He stayed there for a while socialising and drinking. He was not drunk. She invited him to stay the night, which he did, sleeping on the sofa in the lounge and then leaving the following morning at around 5.30 am because he was unable to sleep comfortably. He said that during the night, at approximately 3.00 am, C1 came into the lounge. He was wearing pants and did not say anything. The applicant ushered him back to his bedroom, put a blanket over him and left him in his bedroom. The applicant denied that he had touched C1 inappropriately in any way. At trial the applicant gave evidence in his own defence and maintained those denials.

8. The judge gave a full good character direction to the jury in relation to the applicant. The jury were also told that the fact that the applicant had given evidence in his defence was a positive feature of the case and that they should take it into account when considering their verdicts.

The Application for leave to appeal against conviction

9. The applicant's grounds of appeal against conviction are as follows:

(i) grounds 1, 2 and 4 concern the information provided to the jury regarding the DNA evidence, which is said to have been misleading because the time and date of the swabs being taken was incorrect and an incorrect date was given in the summing-up. Further, the fact that there was no positive DNA evidence in the case, despite the copious samples taken, was an answer to the case. Had the crime been committed there would have been evidence of it. The fact that C1's DNA was not found on the applicant's own person was vital evidence but was not presented to the jury. Compounding this point, in interviews C1 stated that he ejaculated so there should have been DNA evidence matching his account.

(ii) Ground 3 contends that the jury should have heard character evidence that the applicant baby-sat for other people and that he was a loving uncle with five nieces. In other words,

his representation was inadequate because of the absence of character witness statements.

(iii) Ground 5 is in summary a challenge to the fact that C1's mother did not report the allegations to the police.

(iv) Ground 6 is that the victim incorrectly identified the applicant as his mother's boyfriend's brother. The applicant contends that his admissions that he took C1 back up to bed and co-operated with the police are both indicative of his innocence. The applicant also comments that C1 thought the attack might have been a dream.

(v) Ground 7 is that there were inconsistencies between the original complaint made by C1's friend's mother and C1's two interviews. In the original complaint he said that the applicant had an erection, but that was not mentioned by C1 in his ABE interview.

(vi) Ground 8 is that during the trial C1 was represented as being autistic but this was never proved and that therefore misled the jury.

(vii) Ground 9 is that C1 did not like his mother's boyfriend, and this may explain the allegation against the applicant.

(viii) Ground 10 is that the police led C1 in his interview, inappropriately influencing his answers to questions.

10. In view of the criticisms made of trial counsel and solicitors the applicant was invited to and waived privilege. Detailed responses were provided by both. In his response, dated 8 July 2022, counsel refuted criticisms made of him by the applicant. We do not record all points made by him, but significantly, he dealt with the allegations relating to the DNA evidence. He explained that the DNA evidence was presented to the jury by way of pre-agreed facts and the summary of the forensic scientist's findings to which we have already referred. Counsel says that he submitted to the jury that the findings in fact supported the applicant's assertions that no sexual activity had taken place. However, he had also explained to the applicant in conference prior to the trial, and during the trial, that

the absence of any DNA results did not mean that C1 was lying. Rather, it was just another feature of the case. Moreover, so far as the dating error is concerned, it was an error in the applicant's favour. He also explains that the jury were told that the applicant was a working man of good character and popular within his community. They were not told about baby-sitting because counsel was not aware of this and nor were his solicitors. In any event, counsel questioned whether this would have made any difference. The case was about what C1 said that the applicant had done to him on one occasion and there was no suggestion that the applicant had behaved inappropriately on any other occasion towards any other children.

11. So far as character witnesses are concerned, during the pre-trial conference on 1 April 2022, counsel says that the applicant told him there were no defence witnesses and that he did not think it necessary to call any character witnesses. He was well aware that the judge would give a full good character direction and that is indeed what happened. Consequently, no defence witnesses were required to attend trial and no statements were taken from anyone. The applicant agreed that the case was essentially one person's word against another.

12. So far as inconsistencies in C1's accounts are concerned, they were highlighted to the jury. All interviews were edited where appropriate and agreed with the applicant. Counsel has expressed his surprise at concerns raised by the applicant about the representation he received at trial because, during the course of the trial, the applicant and all others involved had agreed that the trial could not have gone any better.

13. The response from solicitors is dated 12 July 2022 and is to similar effect regarding the conduct of the trial and refuting criticisms made about the representation received. Solicitors also set out a chronology of their contact with the applicant and his family, making clear that there was no lack of communication with either the applicant or his

family.

14. We have also been provided with and read the Respondent's Notice in this case, together with the applicant's comments on that document received on 12 September 2022.

15. Having read and considered all the material available in this case, we have concluded that there is no arguable merit in any of the proposed grounds of appeal and there is no arguable basis for concluding that any of the convictions are unsafe. We cannot improve on the reasons given by the single judge, who said the following:

> "1. Grounds 1, 2 and 4 (DNA evidence):
> You suggest that the information regarding DNA samples was not given to the jury correctly. It was: your barrister agreed 'admissions' with the prosecution which accurately reflected the DNA evidence, save for one error about the date on which the swabs were taken (on the Saturday evening rather than sometime on the Sunday) which the judge identified. However, the judge explained that this did not prejudice you: in fact, this operated to your advantage, because the absence of any DNA on the samples would have been more significant if the samples had been taken closer to the alleged crime.
>
> Crucially, the admissions explain that the DNA evidence was neutral or inconclusive. Your barrister advised you, correctly, that the absence of DNA evidence did not mean that the complainant was lying it was just one aspect of the evidence.
>
> However your barrister argued to the jury that they supported your case that no sexual activity had taken place.
> The judge carefully directed the jury that they should not speculate about this evidence as they were not experts.
>
> 2. Ground 3 (character evidence): You had plenty of opportunity to provide your legal team with the names of potential defence witnesses and your barrister says in terms that you said that there were none, accepting that it was the complainant's word against yours. He was not aware of any evidence of you babysitting. In any event, evidence that you had, for example, babysat for other children would be unlikely to have significantly influenced the jury, given the clear evidence that you had sexually abused this particular child. The judge also ensured that the jury was given a full direction about your good character. The jury was told that you were a SJ working man and popular with members of your community.

> 3. Grounds 5, 6, 7, 8, 9 and 10 (the complainant).
> You note that the complainant had said he had been alone a lot leading up to the date of the allegation and had said he had been unable to tell if he felt hungry, thirsty and sad. You also refer to the fact that he does not get on with his mother's boyfriend and matters of that nature. However these have little or no relevance to the nature of the complaints he made against you.
> The fact that he has autism was not relevant to the key issues for the jury to decide.
> He was asked few if any leading questions. He said the room was lit from the television.
> The complainant may have been incorrect when he said that you were his mother's boyfriend's brother, but again this is not significant. No other adults were said to be in the house other than you and the complainant's mother when the offences occurred.
> He was asked by the police whether he thought what he had described was a dream and he said "no". He also made this clear in his answers in cross-examination.
> Generally, the inconsistencies in the complainant's account were highlighted to the jury.
> It is correct that the initial complaint did not come from the complainant's mother but this was not a case of any delay in the reporting."

16. Ultimately, this was a case involving a stark conflict in the evidence. One person was not telling the truth. The jury heard all the evidence and concluded that person was the applicant. Their verdicts were unarguably safe. The applicant was professionally represented by an experienced defence team. The team has responded comprehensively to the criticisms made of them and we are satisfied that the conduct of this trial was not arguably inadequate. Indeed, it is of note that after seven and a half hours' deliberation the jury returned majority verdicts in this case indicating that two members of that jury were not satisfied by the Crown's case.

17. In the result, the application is refused for all these reasons. Since no purpose would therefore be served in extending time, it is unnecessary to consider that application.

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

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