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Neutral citation No. [2023] EWCA Crim 658

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Case No: 2022/01649/B2, 2022/01650/B2

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 26<sup>th</sup> May 2023

**B e f o r e:**

**LORD JUSTICE DINGEMANS**

**MR JUSTICE HILLIARD**

**HIS HONOUR JUDGE BATE**

**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**R E X**

**- v -**

**JENNIFER MBAZIRA**

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**Mr R Keene** appeared on behalf of the Appellant

**Mr O Gibbons** appeared on behalf of the Crown

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**J U D G M E N T**



## **LORD JUSTICE DINGEMANS:**

### **Introduction**

1. The appellant renews her application for an extension of time (43 days) in which to apply for leave to appeal against conviction following refusal by the single judge. If her application is refused, she appeals against sentence by leave of the single judge.

2. On 16<sup>th</sup> March 2022, following a re-trial in the Crown Court at Portsmouth, the appellant, who was then aged 50 years and who had some convictions for fraud and theft when she was in her early 20s, was convicted of an offence of blackmail. On 6<sup>th</sup> May 2022, she was sentenced to three years and six months' imprisonment.

3. The offence of which the appellant was convicted was blackmail of a person to whom we will refer as "LTN". An order was made before trial to prevent the publication of any matter relating to LTN during his lifetime if it was likely to lead to his identification. An appeal against that order was heard and refused by the full court. We therefore confirm that an order under section 46 of the Youth Justice and Criminal Evidence 1999 is in force in relation to these proceedings. No matter may be published which will lead to the identification during his lifetime of LTN as the victim of the offence.

4. The appellant has represented herself on the renewed applications for an extension of time and for leave to appeal against conviction. Mr Keene has represented the appellant on the appeal against sentence, and Mr Gibbons has represented the respondent prosecution. We are very grateful to the appellant, Mr Keene and Mr Gibbons for both their written and oral submissions.

### **The Factual Background**

5. The appellant and LTN had met on Encounters, a dating website, in October 2015. LTN

was a retired successful businessman. He and the appellant commenced a sexual relationship, which continued on and off until February 2018.

6. In June 2018, some four months after the relationship had ended, the appellant contacted LTN again on WhatsApp and requested a loan of £20,000 to assist with a business venture. LTN refused. He said that as they were no longer in a relationship, he considered that it would be imprudent for them to enter into a business relationship. He did, however, offer to give, and did give, a one-off monetary gift of £2,000, which he transferred to the appellant's bank account. We make it clear that that transfer of funds is no part of the criminality alleged in this case.

7. The prosecution case was that the appellant, not content with the gift, began to blackmail LTN a few months later. In November 2018, LTN received the first in a series of communications (four in total), mainly by email, in which the appellant complained of her treatment by LTN during their relationship and asked for increasing amounts of money. The demands were accompanied by threats to publicise embarrassing details of their sexual activity together and other private information about LTN if he did not give her what she was asking for. The appellant threatened to reveal information to LTN's family, to the businesses with which he had been involved and on social media. LTN tried to reason with her, and eventually offered to pay her the £20,000 which had originally been requested, on the condition that she promised to leave him alone and not to reveal any details of their private relationship. He told her, however, that he had found the whole exchange very distressing and it seemed very much to him like blackmail. In her final email to him in January 2019, the appellant told LTN that she was seeking £10 million to enable her to set up a new home, establish a business and fund her son's education. This final email prompted LTN to report the matter to the police.

8. During the trial the prosecution also relied on personal notes made by the appellant. The notes referred to the appellant writing a book, and there were various other notes which contained the first name of LTN and an entry that read "Should blackmail him".

9. The appellant's case was that the demands were reasonable because she was trying to enforce a verbal contract, which they had entered into during their relationship in which they had discussed business matters and future business ventures. The appellant claimed that LTN had agreed to help her set up a fashion business venture and was now going back on that promise. She took legal advice with a view to suing him, and the emails were negotiations in an attempt to avoid court proceedings. It seems that the solicitors who had given her advice had asked for money on account and the appellant had said that she could not afford it. They had advised her that there was no oral contract, but had suggested that there might be some way of exploring a claim for promissory estoppel.

10. The appellant's case at trial was that she was not blackmailing LTN because the details of their relationship would have become public anyway. She also claimed that the relationship had been abusive; that LTN had degraded her; but that it was only now that she had found the courage to stand up for herself. She believed that she was entitled to what he had promised her. She was intending to write a memoir. The note on which the prosecution relied also referred to the first name of her son's father; it was not a reference to LTN.

11. The appellant represented herself during the trial process. She gave evidence in her defence. She relied on previous messages, on the correspondence with the solicitors, and the fact that she had a claim against LTN.

## **Summing up**

12. Prior to his summing up, the judge prepared written directions and a Route to Verdict. The issue for the jury was whether the appellant had made demands with menaces, and, if so, whether the appellant genuinely believed that she had reasonable grounds for making such demands. It is apparent from the jury's verdict that they were sure that the appellant had made demands with menaces and that she did not have reasonable grounds for her belief.

### **The Sentencing**

13. In passing sentence the judge said that the appellant was a 50 year old woman, she had one adult child and had historic convictions for offences of dishonesty in the 1990s, but had never served a custodial sentence.

14. The judge detailed difficulties with the appellant's representation and the efforts made to assist her at trial. He said that the case against her was overwhelming. The blackmail was explicit in the emails sent to LTN and was corroborated by her own private notes which had been referred to at trial. The judge set out his findings of fact. He said:

"You persuaded yourself that he was fantastically rich based on your internet research and you proceeded to press him for as much as you thought he could give you. You became fixated in the view that you were entitled to financial payback from him due to the time that you had spent together in the relationship. You researched and contacted lawyers to see if you could engage one to bring what was a ludicrous lawsuit against him, and when that came to nothing, as you were told by then you had no claim, you resorted to calculated and cold blackmail and your internet search history revealed that you researched blackmail, extortion and negotiation.

You sent him an email accusing him, quite falsely, of all sorts of domestic and sexual abuse in the relationship and then proceeded to threaten him with its release to his family and business contacts and on to social media. You told him that you had contacted the police. That was untrue. In desperate response and fear of the threat he offered you the £20,000 that you had asked for in June, which was a total capitulation. But even this did not prove enough for you, and sensing weakness you pressed your demands to the hilt, demanding £10 million

on 30<sup>th</sup> January 2019, causing him to contact the police."

15. The judge found that LTN was caused genuine fear that his life would be ruined. LTN was particularly concerned that there would be an effect on his children, who had recently lost their mother (his ex-wife) to cancer.

16. The judge considered the pre-sentence report and found that the appellant maintained her rigid thoughts, beliefs and grievances. She refused to accept the jury's verdict. The judge, however, took into account her disrupted childhood, her separation from her mother, the fact that she had fled Uganda when she was aged 15, and the fact that she had suffered periods of homelessness in the United Kingdom, including during the trial.

17. There are no sentencing guidelines for the offence of blackmail, but the judge considered recent authority. He said that a starting point of four years' custody was appropriate to reflect the sustained nature of the threats and the significant impact on LTN, his business reputation and his family. It was a planned and calculated offence and an element of deterrence had to be factored in. The appellant's previous convictions were too old to act as an aggravating feature but deprived her of the mitigation of good character. The judge took into account the mitigation and the Covid conditions, and reduced the four years by six months and imposed the final sentence of three years and six months' imprisonment. An indefinite restraining order was also imposed.

### **The Proposed Grounds of Appeal against Conviction and the Application for an Extension of Time**

18. The appellant did not bring her proposed appeal against conviction in time. It appears that the delay was caused because the appellant was a litigant in person. She was in prison. She told us this morning that there were delays in obtaining transcripts and she had

difficulties in understanding and navigating the procedures. The appellant also mentioned the effect of the barristers' strike on obtaining representation.

19. Given the reasons for the delay provided by the appellant, we confirm that if the proposed grounds of appeal against conviction are arguable, we would grant leave. We therefore turn to consider whether there are any arguable grounds.

20. The appellant's complaints were set out in her oral submissions this morning; and in her numerous written submissions, which have been less easy to follow. We propose to group the complaints under a series of headings.

### **The First Complaint: Representation**

21. The appellant complains that the judge refused to adjourn the trial to permit her to be represented by counsel of her choosing and that as a result the appellant was unprepared. She had no access to the Digital Case System or to the trial documents. It is apparent from the chronology, which we have carefully considered, that the appellant was represented at her first trial, which was adjourned because the prosecution disclosed some 21,000 pages of documents on the Friday before the trial was due to start on the Monday. The appellant's counsel was unable to deal with those documents. It is also apparent that the appellant was represented in the lead up to the start of the second trial and then for reasons the detail of which we do not know, she no longer had legal representation. The appellant said that she was able to continue with the trial. It is apparent from the transcripts that both the judge and prosecuting counsel fairly gave the appellant every proper assistance. We can see no basis on which the absence of representation could be a ground of appeal. The appellant, as she was entitled to do, decided to represent herself.

### **The Second Complaint: The Indictment**



22. The appellant asserts that the indictment was wrong, was changed and was hidden. It appears that the appellant was charged on the indictment with two counts: blackmail (count 1) and sending a malicious communication (count 2). However, once the jury had convicted on count 1, there was no need to take a verdict on count 2, which was ordered to lie on the file on the usual terms. We can see no error in relation to the indictment which would have rendered the trial either void or voidable.

### **The Third Complaint: The Judge's Rulings**

23. Complaints are made that the judge allowed the prosecution to adduce evidence that had been excluded; that he failed to order disclosure; that he did not accept a submission of no case to answer; and that he prevented the prosecution from reading key emails. So far as we can see from looking at the transcripts – and we should record that the appellant does not accept the authenticity of the transcripts, but there is nothing to suggest that they are anything other than accurate – the judge carefully addressed the issue of the evidence and disclosure. We have transcripts of his rulings on 7<sup>th</sup> March 2022 and 14<sup>th</sup> March 2022. The judge and prosecuting counsel confirm that there were no further relevant documents to be disclosed.

24. So far as the refusal of the submission of no case to answer is concerned, there was plainly evidence on which the jury could convict the appellant of blackmail, and the count was properly left for their consideration.

25. So far as the reading of emails is concerned, there is nothing to suggest that there was anything other than a full and fair trial. Having read through the transcript of the summing up, it is apparent that all the points for and against the prosecution and all the points for and against the appellant were made.

### **The Fourth Complaint: Perjury**

26. The appellant says that all the prosecution witnesses committed perjury. Indeed, in her submissions to us this morning the appellant concentrated on this aspect of her grounds of appeal. The appellant complains that five prosecution witnesses all made false statements and committed perjury.

27. It is apparent that the appellant does not accept that those statements made against her were true, but that was an issue for the jury who must have been sure that LTN's evidence was true. There is nothing to indicate that there was any false evidence given or indeed any intention to mislead the court.

#### **The Fifth Complaint: Unfair Cross-Examination**

28. From what we have seen of the transcripts – and indeed from what we have seen from the summing up – prosecuting counsel acted perfectly properly throughout and fairly put all the points on which the prosecution relied to the appellant.

#### **The Sixth Complaint: Defects in the Summing Up**

29. The appellant asserts that the prosecution case was not properly reflected in summing up. We do not see that in the summing up. She also asserts that the defence case was not fairly identified. From page 8 onwards of the summing up, the defence case is fairly summarised. We have already addressed her assertion that there were failures of disclosure.

30. We have carefully considered all of the proposed grounds of appeal against conviction which the appellant has addressed in a number of different documents. But we can identify no arguable grounds of appeal against conviction.

31. For that reason we refuse the renewed application for an extension of time and we refuse the application for leave to appeal against conviction.

## **The Appeal against Sentence**

32. On behalf of the appellant, Mr Keene submits that the judge took too high a starting point in circumstances where there is no sentencing guideline; that he gave too much weight to the aggravating factors; and that insufficient regard was paid to matters of mitigation. Accordingly, it is said that the sentence imposed is manifestly excessive.

33. In his oral submission this morning, Mr Keene pointed out to us the delay; the fact that the appellant was of effective good character, because her previous offending was in her early 20s and she was aged 50 by the time of the trial; and that some of the trial judge's findings against her were too harsh and did not depend on the judge's assessment of the appellant during the trial and were matters which we could correct.

34. On behalf of the respondent, Mr Gibbons pointed out that this was high culpability offending because it was persistent and planned, as evidenced by the internet research; it had continued from November 2018 to January 2019; and that real harm had been caused to LTN. Mr Gibbons confirmed (because the failure to read it was a particular complaint made by the appellant) that he had, in fact, read out the Victim Personal Statement made by LTN before sentence. He submitted that there was limited mitigation.

35. There is no sentencing guideline for the offence of blackmail. We have considered *Attorney General's Reference No 84 of 2015* [2015] EWCA Crim 2314, which itself referred to other decisions of the Court of Appeal Criminal Division, including: *R v Hadju* [1989] 1 Cr App R(S) 29; *R v O'Sullivan* [2021] EWCA Crim 248, [2021] 2 Cr App R(S) 28; and *R v Burgan* [2020] EWCA Crim 1186, [2021] 1 Cr App R(S) 39.

36. In sentencing, the court will have regard to the unlawful demand, the sums claimed and

the measures which accompany the demand, together with the harm caused and the time over which the unlawful conduct has persisted, thereby addressing the matters of culpability and harm. At [22] of *Attorney General's Reference No 84 of 2015*, the court there said that there was an uncontroversial proposition that for offences of this nature the starting point is in the region of four to five years' custody. In that case, the court took four years. That was the blackmail by a man of a woman with whom he had a relationship, after she refused to leave her husband. The woman had then paid £500 and a further smaller sum after pawning her jewellery and taking money from her children's accounts.

37. It is fair to point out that in *R v O'Sullivan*, the court did not interfere with a three year starting point, although it was said that many courts might have taken a starting point of three and a half years. In that case, a male posed as a woman. He obtained an intimate photograph, blackmailed the sender and obtained a total of £2,870. However, in that case there were some extraordinary mitigating features: the money had been paid back; the offender was an NHS volunteer; and there were family issues.

38. We have looked carefully at the circumstances of this case: the unlawful demands; the measures which were used; the effect on LTN; and the sums which were involved. We consider that the judge was entitled to take a starting point of four years' custody, based on his assessment of the evidence. We can see no basis on which we can interfere with his assessment of the evidence because it was based on the facts before him, and his findings were consistent with the evidence which he had heard. There was no irrationality in his findings. The reduction of six months for mitigation was sufficient, given the findings that the judge had made. In all those circumstances we are unable to say that this sentence was manifestly excessive.

39. For all the reasons we have set out, we refuse the renewed applications for an extension

of time and for leave to appeal against conviction, and we dismiss the appeal against sentence.

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

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