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IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT SNARESBROOK
HHJ DEL FABBRO 20207074

CASE NO: 2022 00104/00852 B1
**[2024] EWCA Crim 1393**

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 1 November 2024

Before:
LORD JUSTICE WARBY
MR JUSTICE GOOSE
HIS HONOUR JUDGE FLEWITT KC

REX
v
JOHN EDWARD BANCROFT

(1992 Sexual Offences Act applies)

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
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MS CAROLINE GOODWIN KC appeared on behalf of the Applicant
MS CHARLOTTE NEWELL KC appeared on behalf of the Crown

**J U D G M E N T**
(Approved)

LORD JUSTICE WARBY:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. That means that each of the complainants to whom we shall refer is entitled to lifetime anonymity. Nothing must be published that would be likely to lead members of the public to identify her as one of the complainants in this case. We shall anonymise the judgment accordingly.
2. The applicant does not benefit from anonymity. He is John Edward Bancroft, who is now aged 71.

**Introduction**

3. On 13 December 2021, after a trial in the Crown Court at Snaresbrook, the applicant was convicted by the jury of two counts of oral rape and two counts of vaginal rape (counts 1 to 4 on the indictment) and one count of meeting a child following sexual grooming (count 5). He had earlier pleaded guilty to a further 30 offences charged on the same indictment. He did so in two tranches: fifteen at the time of arraignment and a further fifteen on the fifth day of his trial, 5 November 2021.
4. On 22 February 2022 the applicant was sentenced by the trial judge, His Honour Judge Del Fabbro, for all 35 offences. The judge took counts 1 to 4 as the lead offences. On each he imposed an extended determinate sentence of 25 years, comprising a custodial term of 22 years and an extended licence period of 3 years. These were concurrent with one another. On each of the other counts the judge passed concurrent custodial sentences ranging from 6 months to 6 years.
5. Applications for leave to appeal against conviction and sentence were settled by the applicant's trial counsel, Ms Ellis KC, and refused by the single judge. They were renewed, together with an application for leave to amend to add two further grounds of appeal against conviction out of time. Ms Ellis having fallen ill, the renewed application and amendment application were prepared and presented by Ms Goodwin KC, who did not appear at the

trial.

6. On 21 June 2024 those applications came before this court for hearing. We concluded that the case was not ripe for determination because, although Ms Ellis had been spoken to, the *McCook* procedure had not been fully operated as is required in such a case (see *James* [2018] EWCA Crim 285; [2018] 1 WLR 2749 at [38]). The hearing was therefore adjourned, with directions for the completion of the *McCook* procedure and any appropriate waiver of privilege and for further submissions and evidence to be filed by or on behalf of the applicant and the Crown. This is that adjourned hearing, which has been conducted with the benefit of further submissions and a note from Ms Ellis KC. Ms Goodwin has represented the applicant. For the Crown we have heard submissions from Ms Newell KC, who prosecuted the case at trial and settled the Respondent's Notice and Addendum Respondent's Notice following the hearing in June.

**Background**

7. The applicant was charged on an indictment containing 38 counts against him, and two against a co-accused, who was his brother-in-law. The prosecution case was that over a period of many months the applicant had sexually exploited vulnerable and sexually inexperienced young females or attempted to do so. He had principally targeted teenage girls through a chat app called MyLOL using multiple fake identities. Using the app he had offered so-called "sugar-daddy" arrangements by which he would pay for regular sexual services, including oral and vaginal sex. On receipt of a positive response, he would move the communication to email or WhatsApp and seek to establish in-person contact. In some instances he sought to bring third parties into the sexual encounters, including the co-accused.

8. The offending admitted by the applicant upon arraignment was separate but related. It consisted of one count of assault occasioning actual bodily harm (count 14), six counts of distributing indecent photographs of children, seven counts of taking indecent photographs

of children and one count of possessing indecent photographs of children. This offending took place between 1 November 2016 and 2nd June 2017 and involved three named girls aged between 15 and 17.

9. The offending admitted by the applicant on 5 November 2021 consisted of five counts of paying for the sexual services of a child between November 2016 and April 2017, nine counts of attempting to cause or incite the sexual exploitation of a child within the period from September 2016 and the end of May 2017, and one count of attempted sexual communication with a child on 31 May 2017. These counts related to the applicant's dealings with five named individuals and another ten who were using pseudonyms on social media. Three other counts were left to lie on the file.
10. The two counts against the co-defendant alleged inciting child sexual exploitation and related to two of the named individuals.
11. The five counts which the applicant contested throughout his trial involved allegations of actual or attempted sexual activity with two other named young females to whom we shall refer as C1 and C2.
12. C1 said that she was a virgin who had met the applicant online when she was aged 18 and then entered into a relationship with him which lasted a number of months. The allegation was that C1 had been groomed and ultimately coerced by the applicant into penetrative sexual activity which involved vaginal and oral sex on more than one occasion. These allegations were reflected in counts 1 to 4. Count 1 was a single-incident count of vaginal rape on 17 October 2016. Count 3 was a multi-incident count alleging vaginal rape on at least three other occasions between that date and 10 March 2017. Counts 2 and 4 alleged oral rape, following the same pattern of a single offence on 17 October 2016 and at least three other occasions up to 10 March 2017.
13. C2 had first been in contact with the applicant when she was aged 15. She alleged that she had been groomed into meeting him on one occasion with a view to sexual activity, in which she had refused to engage. That formed the basis of count 5.

**The Conviction Application**

14. The grounds of appeal against conviction are all concerned with a bundle of material that became known as the Timeline. It was a 938-page file or folder which included transcripts of real time exchanges on MyLOL, WhatsApp messages downloaded from mobile phones, extracts from billing records, and graphics in the form of maps showing where there were meetings with the girls and young women, as well as photographs of sex toys and other objects found at the applicant's address. The bundle was prepared for the purposes of presenting the prosecution case on the 23 counts that the applicant was still contesting at the start of the trial and the two counts which at that time were being denied by his co-defendant. The bundle also included material relating to other conduct of the applicant concerning other girls. The bundle was deployed by the prosecution in opening the case to the jury on 2 and 3 November 2021.

15. Following the applicant's guilty pleas of 5 November 2021, the defence reviewed their position in respect of the Timeline bundle. They took some time about it, but by 10 November 2021 they had notified the prosecution of an intention to apply for large amounts of material to be excluded from the Timeline bundle.

16. On Friday 12 November 2021 the co-defendant pleaded guilty to both counts against him, and later the same day the applicant's legal team formally applied for the exclusion of material from the bundle, arguing that it had become irrelevant and inadmissible following the guilty pleas entered by the applicant a week earlier or was so prejudicial that it should be excluded. The Crown resisted the application, contending that all the material in the bundle remained relevant to the issues on counts 1 to 5.

17. The judge heard the application the following Monday and Tuesday and gave a ruling refusing it, save in certain limited respects. His reasons (given later) were, in summary, that the remaining material was admissible evidence of bad character pursuant to s.101(1) of the Criminal Justice Act 2003 because it was relevant to the issues on counts 1 to 4 and in

particular to the issue of consent. He concluded that he was not required to exclude the material pursuant to s.101(3). There was little risk of prejudice and any that might exist could be addressed by suitable jury directions.

18. The trial continued for a further four weeks.

19. In summing up the judge gave the jury directions on the relevance of the issue of grooming. He explained that this was not a technical term but a way the prosecution put its case. He summarised the prosecution argument, namely that the applicant had subjected C1 to grooming techniques so as to bend her will and undermine her capacity to give free consent. His grooming was said to demonstrate a lack of interest in whether C1 consented or not.

20. The judge directed the jury that the applicant's convictions and the material in the Timeline were relevant to the issues for their consideration. As to the Timeline bundle, the judge directed the jury that its contents were capable of assisting them in deciding whether the applicant had engaged in sexual grooming of the two complainants, his reasonable belief in consent, and his reasonable belief as to C2's age. So far as C1 is concerned, the judge directed the jury to consider whether the evidence showed that the applicant had engaged in exploitation of a young, potentially vulnerable and inexperienced female, and that if so, that was "conduct you can take into account in deciding whether there was no genuine consent and no reasonable belief that C1 was consenting".

**The Grounds of Appeal**

21. The original grounds of appeal against conviction filed by trial counsel Ms Ellis KC came down to two main points: (1) that by wrongly refusing the application to exclude and declining to allow agreed facts to go before the jury, the judge allowed the jury to consider evidence that was irrelevant to the five counts before them and/or highly prejudicial such that it should have been excluded; (2) that the summing-up failed to guide the jury properly as to what facts were truly relevant to the issues arising under the five counts.

22. The further and supplemental grounds settled by Ms Goodwin KC are that the convictions

are unsafe because (3) trial counsel failed to apply promptly after the guilty pleas for the jury to be discharged; and (4) the judge gave the jury inadequate directions as to the potential relevance to the issues of the messages that related to girls other than C1 and C2 and the other material in the bundle.

**Leave to Amend**

23. The first question is whether leave should be given to amend the grounds of appeal out of time. The principles are identified in *James*, to which we have already referred. As we observed in June, the four grounds are all closely related to one another. The burden of grounds 1 and 3 is that the material to which objection was taken was so irrelevant or prejudicial that it could not safely be left in the jury's possession. Put simply, the case now is that either the jury had to be discharged altogether or alternatively the objectionable material had to be taken away from them. Grounds 2 and 4 proceed on the alternative basis that by the time the judge came to sum up to the jury it was still possible for them to return safe verdicts on counts 1 to 5, but for that to happen it was essential for the judge to give clearer and more precise directions than he did about how the disputed material might be relevant.

24. The fact that these four points are closely related does not of itself provide the answer to the question of whether leave to amend should be given. In answering that question we have regard to the further information that we now have. In the light of that information, we refuse leave to amend to add the ground that we have numbered 3. The helpful note of Ms Ellis makes clear that the option of making an application to discharge the jury was considered and discussed in detail with the applicant. Having taken advice, he decided that he did not wish to make such an application but wished the trial to proceed with the same jury. He gave instructions to his legal team to apply instead for the editing of the Timeline bundle. Ms Ellis's notes make clear that this was a fully informed decision. The applicant gave clear and rational reasons for his choice to retain the same jury. He has no arguable

basis for complaining about that to this court.

25. No such difficulties confront the supplemental ground of appeal which we have numbered 4. That way of putting the matter is so closely related to the original ground 2 that it is appropriate to grant leave to amend in that respect.

**Merits**

26. We have reflected on the written and oral arguments of Ms Goodwin and the detailed submissions of Ms Newell for the prosecution on all the grounds that are now before us for consideration. We are grateful to them for their arguments. We have looked at the material that is in dispute, at the judge's ruling and at his summing-up. We have concluded that there is no arguable basis for an appeal against conviction.

27. It is not unusual for a defendant to enter guilty pleas to some counts during a trial after the jury have heard the case opened on those counts and seen or heard some evidence upon them. In such a case the first question for consideration will be whether the allegations and evidence then before the jury remain admissible in relation to the remaining issues. That is what happened here. The judge had to decide whether and to what extent the bundle should be pruned for relevance or whether because the material though relevant was so prejudicial that it should be excluded on grounds of fairness. He correctly directed himself with respect to the applicable legal provisions, namely those of s.101 of the Criminal Justice Act 2003. His broad conclusions are, in our judgment, unimpeachable.

28. In relation to counts 1 to 4, the acts of penetration were not disputed by the applicant. The important issues for the jury were whether C1 had consented, or if she did not, whether the applicant reasonably believed that she had. An aspect of the prosecution case was that the applicant's relationship with C1 was exploitative, manipulative and uncaring. It was further suggested that his ruthless conduct amounted to grooming which had served to condition C1's mind and to undermine any apparent consent she may have given. The applicant's case was that this was a genuine consensual relationship in which he had C1's best interests at

heart and that she freely consented to the penetration in question.

29. The applicant's admitted conduct towards other young women was capable of supporting the prosecution case and undermining that of the applicant on these issues. His guilty pleas to the other offences were unquestionably relevant and admissible. They demonstrated extensive dealings with a number of other young women over a period of some 9 months that included the period of offending alleged in counts 1 to 5. The guilty pleas demonstrated or were at least capable of demonstrating a powerful sexual interest in young women, and further, that the applicant was prepared to act on such sexual urges and to do so repeatedly and persistently.

30. Relevant also, in our judgment, was the material underlying the charges to which he had pleaded guilty. Messages passing between the applicant and C1 were before the jury and were a major focus of the case. It was open to the jury to conclude that there were marked similarities of methodology between the applicant's dealings with C1 and his dealings with other children whom he had exploited by paying them for sexual services or whom he had sought to exploit by attempts to engage them in sexual activity. Reference was fairly made to the use by the applicant of a "template". If the jury were satisfied of this aspect of the prosecution case it would be open to them to reach the further conclusion that the applicant's dealings with C1 were of the same or a similar exploitative nature and that he had no interest in or care for whether she consented. We accept also that the overall picture was clearly capable of bearing on the issue of C1's actual consent. The prosecution was entitled to invite the jury to consider whether the methods used by the applicant had undermined C1's capacity to give free consent and in that context to invite the jury to take account of what had passed between the applicant and other young women and its impact upon them.

31. As for count 5, the central issue for the jury related to the applicant's state of mind: did he reasonably believe that she was 16 at the time they met? There was much material in the Timeline bundle that went to that issue.

32. The question of whether and, if so, how far the bundle should be edited to remove material

of no relevance or to limit its prejudicial impact was of course an important one. It was before the judge and he clearly gave it careful consideration before concluding that only light pruning was required. It is apparent from the papers that the content of the Timeline was subjected to close scrutiny and detailed argument. Ms Newell has confirmed as much to us today.

33. On this appeal, counsel for the applicant has provided us with a detailed schedule of criticisms of the judge's conclusion, making reference to numerous individual documents in the Timeline bundle. We have had the benefit of a detailed counter analysis from the prosecution setting out how in its contention each of those items was capable of being legitimately used by the jury. There may be room for debate about some of the individual items or documents, but the question for us is whether the judge's decision is arguably so deficient as to undermine the safety of the conviction. We have not been persuaded that it is.

34. The notion that the evidential material ought alternatively to have been replaced by agreed facts appears to us to be fanciful. It would have been a poor and inadequate substitute.

35. Finally, we have scrutinised the judge's summing-up with care. This was split in the way that is nowadays commonplace, at least in trials as long as this one. As is also the norm, the judge's legal directions were provided to counsel in draft before being delivered. In our judgment the legal directions, which were given orally and in writing, were clear and sufficient. They served to identify the potential relevance of the material that is disputed on this appeal but without unduly focusing attention on the detail. That, as has been pointed out in argument, could have been prejudicial to the defence. The directions contained the appropriate warnings against convicting wholly or mainly on the basis of bad character and cautioned against judgments based on emotional responses. We have regard also to the fact that further directions were given in the course of the judge's summing-up of the evidence after counsel had made their closing speeches, and the rival contentions as to the way the material might or might not be relevant to the issues under consideration were before the

jury in that way. Taken overall, we are satisfied that the summing-up gave the jury all the necessary guidance and contained all the necessary safeguards. The contrary is not, in our judgment, arguable. Accordingly, the renewed application for leave to appeal against conviction is refused.

**The Sentence Application**

36. We turn to the renewed application for leave to appeal against sentence. The judge's approach, as we have said, was to take the four counts of rape as the lead offences for sentencing purposes with the aim of passing sentences on each of those counts that reflected the overall criminality, with concurrent sentences on all other counts. In arriving at the lead sentences the judge had to start with the lead offences themselves. He was also required to consider the individual sentences appropriate for each of the other offences for which he was sentencing, and to factor those in. He was also obliged, critically, to have due regard to the principle of totality in ensuring that the overall sentence was just and proportionate and not more.

37. The judge assessed each of the rapes as falling within category 2A of the sentencing guidelines. For a single offence in that category the starting point is 10 years' imprisonment and the range is 9 to 13 years. For the other offences, the judge passed concurrent sentences of 6 years on each of the nine counts of attempted sexual exploitation of a child; 5 years for each of the five offences of paying for the sexual services of a child; 3 years for the grooming and meeting offence against C2 on count 5; 2 years for the single count of assault occasioning actual bodily harm on count 14; 1 year for each of the fourteen counts of distributing indecent photographs; 1 year for each of seven counts of taking indecent photographs; and 6 months for the single count of possessing indecent photographs.

38. Having considered the pre-sentence report, the judge found that the applicant was dangerous and concluded that on each of counts 1 to 4 he should pass an extended determinate sentence, comprising a custodial term of 22 years and an extended licence period of 3 years.

39. The propriety of the judge's overall approach to sentencing is rightly acknowledged. This was plainly a case in which to pass sentences on the lead offences in the way that he did. There is no challenge to the finding of dangerousness nor to the decision to pass an extended determinate sentence. The defence makes no criticism of any of the individual concurrent sentences passed on any of the counts relating to indecent images, paying children for sexual services, or attempted sexual exploitation. The was written grounds of appeal contained a complaint about the sentence imposed in respect of the assault occasioning actual bodily harm, but that has not been pressed in oral argument before us today.

40. The grounds of appeal take aim at the overall scale of the custodial term of 22 years, which is said to be manifestly excessive. Two main lines of criticism have been advanced in support of that headline complaint.

41. First, there is criticism of the judge's categorisation of the seriousness of the offending on counts 1 to 4. In the written grounds this was coupled with criticism of the approach to count 5 and count 14, as we have mentioned. It is submitted that the judge should have placed the rape offences in sentencing category 3A, with a starting point of 7 years and a range of 6 to 9. The argument is that on the evidence this was not a purely exploitative relationship but involved a genuine friendship. There was not severe harm nor was C1 *"particularly vulnerable"* within the meaning of the guidelines. The argument on count 5 was that the judge was wrong to treat the offence as aggravated by post-meeting conduct with C2 on one occasion. That, again, has not been pressed but we will address it nonetheless.

42. The second line of criticism is that the judge gave insufficient weight to the mitigating factors in the case. Stress was laid on the applicant's age, previous good character and personal history, some specific medical problems, his good behaviour whilst on bail pending trial and expressions of remorse, which were said to be genuine.

**Assessment**

43. We are not persuaded that any of the criticisms of the judge's individual sentences have arguable merit. In relation to the complaint about the rape categorisation, the defence Sentencing Note suggested that the offending was "borderline category 2A and 3A". It was thus conceded that culpability fell within category A, and rightly so in our judgment. Although some care has to be taken with findings of abuse of trust, the judge was plainly entitled to regard this as a clear example. As for harm, the judge was in our view entitled to conclude that this was in category 2. The Sentencing Note implicitly concedes that much.

44. Two factors could, at least arguably, ground this categorisation. The first is the psychological harm, of which there was certainly evidence in C1's victim personal statement. More obviously, perhaps, the judge was fully entitled to conclude that C1 was, within the meaning of the guideline, *"particularly vulnerable due to personal circumstances"*. As the prosecution had pointed out in a sentencing note and as has been conceded before us today, C1 had a dysfunctional family background that included alcohol abuse and violence; she had also suffered from anorexia, body dysmorphia and depression. It was, it appears, these background characteristics coupled with her naivety that accounted for her falling prey to the applicant's persistent and effective grooming.

45. So far as the pleaded criticism of the sentence on count 5 is concerned, this appears to have been based on the misunderstanding that the sentence was one of 5 years when in fact it was one of 3 years. Not only was a 3-year sentence firmly within the available sentencing range on any view of the appropriate categorisation, the judge was entitled to form his own view of whether there had been continued contact later; C2 had given evidence about the matter which the judge was entitled to regard as sufficient and convincing.

46. It is in any event important not to lose sight of the ultimate issue on this application. As the single judge observed, the real question is whether the total sentence for all the applicant's offending is arguably manifestly excessive. In a case of this kind the decision on what sentence is just and proportionate for the totality of the offending cannot be an arithmetical

exercise. It is never a question of totting up the sentences that are apt for each of the offences in question. In this case that would lead to a sentence lasting many decades. The appropriate landing place is always a matter of judgment. This court may interfere if there is an error of principle or a failure to take account of some relevant matter that has led to an overall sentence which is manifestly excessive, or if it concludes that an otherwise appropriate approach has led to such a sentence. But an application for permission to appeal in such a case will not prosper if the sentencing judge has plainly made a legitimate assessment of what is just and proportionate.

47. We have reviewed the judge's approach to the mitigation that has been relied on and see no arguable error of approach. We are satisfied that all strands of that mitigation were properly considered.

48. As for totality, and in any event, we see no arguable grounds for this court to second-guess the judge's assessment. The judge described the applicant's offending as prolific, far reaching and relentless. We consider each of those terms is amply justified. In summary, in the 9-month period from September 2016 to June 2017, this applicant, by his own admission, engaged in actual or attempted child exploitation of five children whose names we know and another ten whose identities are unknown. In respect of those five whose names we do know he committed at least fourteen offences of paying for their sexual services. Two of the victims were 15 at the time, the other three being 16 or 17 years old. He repeatedly assaulted one of the 15-year-olds in the course of sexual activity. He took, distributed to others or possessed, 50 indecent images of that same child and two others - some of those images being category A. In the same period, as the jury found, he groomed and met C2, with a view to exploiting her for sexual purposes; and he raped C1 on no fewer than eight occasions. The judge was entitled to conclude that any one of those rapes would have merited a sentence of 10 years' imprisonment. Against this background it is not arguable that the overall custodial term of 22 years at which the judge arrived can be faulted.

49. The renewed application for leave to appeal against sentence is therefore refused.

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