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IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2024] EWCA Crim 148



Case No: 2023/00293/B1

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 7th February 2024

B e f o r e :

LADY JUSTICE MACUR DBE

MRS JUSTICE STACEY DBE

HIS HONOUR JUDGE PICTON

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

R E X

- v -

ASIF KHAN

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Non-Counsel Application

J U D G M E N T
(Approved)

Wednesday 7th February 2024

LADY JUSTICE MACUR: I shall ask Mrs Justice Stacey to give the judgment of the court.

MRS JUSTICE STACEY:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under these 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 the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 13th September 2021, following a trial in the Crown Court at Oxford before His Honour Judge Gledhill KC, the applicant was convicted of one offence of rape, contrary to section 1(1) of the Sexual Offences Act 2003 (count 2, vaginal rape) and acquitted of count 1 (oral rape). He was sentenced to ten years' imprisonment.

3. The applicant now renews his application for an extension of time (472 days) in which to apply for leave to appeal against conviction following refusal by the single judge. The applicant also applies for leave to adduce fresh evidence from Georgie Smith of alibi.

4. The applicant was an informal taxi driver working in Oxford at the time. The case against him was that he picked up the complainant as a fare after she had left a club in Oxford City Centre. He took her home and raped her in her bedroom and then went back to his cab and left the scene. His DNA was found on a condom wrapper in her waste paper basket and was also found on her underwear. His Bluetooth headset was found in her bedroom. His defence was denial. He had picked up a drunk woman that night who had been verbally abusive so he

had removed her from his cab. She stole his blue tooth headset and there must have been secondary transfer of his DNA from when he pulled her out of his taxi.

5. The applicant now states that he and Ms Smith were in an intimate relationship at the time of the alleged offence (17th August 2017). Four years later, in November 2021, he posted a request on Facebook for witnesses to come forward who had travelled with AA Taxis in August 2017 and to send any videos or photographs they might have. As a result, he said, Georgie Smith came forward on Facebook and reminded him of their intimate relationship. She stated that she had intimate pictures of them together at exactly the same time as the alleged offence was said to have taken place thus proving his innocence.

6. If her Facebook message is to be believed, it is inexplicable that the applicant would not have remembered this when he was arrested and charged shortly after the incident in August 2017. There is no reasonable explanation of why he failed to recall that he was somewhere else at the time and approach his intimate friend, Ms Smith, or to advance an alibi defence both at his interview and explaining that he was with someone else and could prove his innocence in his defence case statement. There is no reasonable explanation for the failure to call Georgie Smith at his trial.

7. The applicant's statement concerning the Facebook messages raises many questions. It does not appear to be capable of belief. Ms Smith has not made a statement in section 9 format and no Form W has been completed. There are only copies of what purport to be Facebook messages.

8. For these reasons the application to adduce fresh evidence is refused.

9. There are four proposed grounds of appeal prepared by the applicant. First, it is said that

the indictment was defective because it was unsigned. That is incorrect.

10. As to ground 2, (defective ANPR footage) there was no indication that the prosecution evidence was fabricated or that the Automatic Number Plate Recognition footage was faulty. THE ANPR footage placed his taxi outside the complainant's house at the time of the offence.

11. As to ground 3 (that his conviction on count 2 was inconsistent with the applicant's acquittal on count 1) the argument does not bear up to scrutiny. Instead, it demonstrates that the jury had rightly considered each count separately as they had been directed to by the judge. These were not allegations that necessarily rose or fell together. Whilst the forensic evidence of the applicant's semen and DNA on the complainant's thong would have assisted the jury in being sure of guilt in relation to count 2 (vaginal rape), they were not so sure about the allegation of oral rape (count 1), where there was no such forensic evidence. The jury had clearly given the applicant the benefit of the doubt as they were required to do.

12. As to ground 4, (generic unfairness) the applicant has put forward no cogent grounds to support an allegation that the trial was unfair. It is apparent from trial counsel's response to the proposed grounds of appeal that trial counsel was neither incompetent nor ineffective.

13. For the reasons given by the single judge, with which we agree, there is no reasonable prospect of success in any of the proposed grounds of appeal. There was an abundance of cogent evidence that supported the complainant's account of having been taken advantage of by an informal taxi driver on her way home from a club, and then raped in her own flat. The applicant's defence lacked plausibility.

14. The application was lodged 472 days out of time. It is not in the interests of justice to

extend time, since there is no merit in any appeal.

15. Accordingly, all applications are refused.

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

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