IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT KINGSTON
HIS HONOUR JUDGE MARK BRYANT-HERON T20220182

CASE NO: 2024 01958 A3

Neutral Citation Number: [2025] EWCA Crim 104

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 28 January 2025

Before:
LORD JUSTICE LEWIS
MRS JUSTICE YIP DBE
MR JUSTICE FOXTON

REX
v
D

(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 LISA WILSON appeared on behalf of the Applicant

J U D G M E N T

LORD JUSTICE LEWIS:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where an allegation has been made that 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 to members of the public being able to identify that person as the victim of the alleged offence.
2. On 29 February 2024, in the Crown Court at Kingston upon Thames, the appellant (whom we will refer to as 'D') was convicted of attempted sexual assault against his older daughter, whom we will refer to as 'C1'. He was sentenced to 3 years' imprisonment and a Restraining Order was imposed prohibiting him from contacting C1 for 10 years. He was acquitted of two offences of sexual assault on his younger daughter, whom we will call 'C2'. The judge made a restraining order prohibiting him from contacting C2 for 10 years. The appellant has permission to appeal against the restraining order imposed in relation to C2.
3. The facts can be stated shortly. The appellant was convicted of repeatedly attempting to sexually assault his older daughter when she was aged between 14 and 18 by trying to touch her breasts on at least five occasions. That occurred between about 2011 and 2016.
4. In relation to his younger daughter, C2, he was accused of two offences of sexual assault (that is, of touching her breasts). The first offence was said to have occurred in the kitchen, when he was alleged to have hugged her and rubbed himself against her chest. The second alleged offence again was said to involve the appellant hugging and rubbing against her breasts. The alleged offences were said to have occurred sometime between about 2013 and 2016. The appellant was acquitted of these two offences against C2.
5. The judge, however, imposed a restraining order pursuant to section 5A of the Protection from Harassment Act 1977. That section provides that a court before which a person is acquitted may make a restraining order if the court considers it necessary to protect the person from harassment.
6. In his ruling the judge said that the test was whether the order was necessary to protect C2

because the appellant was likely to pursue a course of conduct which would amount to harassment within the meaning of section 1 of the 1977 Act. The judge said that the appellant had caused C2 distress. First, she had been caused distress because of his behaviour towards C1. Secondly, he said that, whilst accepting the verdict of the jury, the appellant had engaged in inappropriate conduct towards C2 and further unwanted conduct would cause distress. In terms of the necessity to make the order, he accepted that there had been no reoffending since 2016, although he said the appellant had been on bail for the bulk of that time and that would have restricted him from engaging in further inappropriate conduct. The pre-sentence report indicated only a low risk of the commission of further offences but said there was a medium risk of harm to the appellant's children.

7. In her clear, focused and succinct submissions on behalf of the appellant, Ms Wilson, to whom we are grateful, submits that the judge did not explain what the behaviour was which fell short of the alleged offences of which the appellant had been acquitted and which it was said established there was a risk of future conduct. Further, she submitted that there had been no suggestion of offending or other inappropriate behaviour between 2016 and the appellant's acquittal in 2024. The judge was also wrong to state that the appellant was on bail for the bulk of that period. In addition, Ms Wilson drew attention to the fact that the assessment in the pre-sentence report was of a low likelihood of reoffending. In the circumstances, she submitted, the judge was wrong to conclude that it was necessary to make an order protecting C2 from harassment.

8. We have great sympathy for C2. We understand why she has suffered distress. However, in our judgment there was no proper basis for imposing a restraining order in relation to C2 on the evidence in this particular case.

9. Section 5A of the 1977 Act provides for a court to impose a restraining order, when a person has been acquitted, if it is necessary to protect the person from harassment. Harassment in this context means a course of conduct which causes alarm or distress. As this court held in ***R v Oshosanya*** [2023] 1 Cr App R (S) 34, section 5A does not require proof that an offence had occurred; rather, as it was put at [23] of the judgment:

> "The relevant question is thus simply whether the evidence established a risk of future harassment, making it necessary to impose a restraining order."

That involves consideration of whether the evidence establishes that there is a risk that the defendant will engage in conduct which will cause alarm or distress to the person concerned.

10. Here the judge referred first to the distress that C2 had suffered when she discovered that her sister C1 had been the subject of abuse. It is absolutely understandable that C2 should have been distressed when she discovered that. However, we do not consider that that evidence of itself establishes that there is a risk that the appellant will engage in conduct in future which will cause distress to C2.
11. Secondly, the judge referred to the inappropriate behaviour towards C2. He accepted the jury's verdict that the appellant was not guilty of an offence of sexual assault on C2. He did not identify what other conduct had occurred short of the offence which caused him to believe that it was necessary to make an order to prevent conduct occurring in future which would harass (that is, cause alarm or distress) to C2.
12. Furthermore, the offending behaviour against C1 had occurred in 2011 to 2014, when C1 was a child, and the behaviour against C2 was said to have occurred in about 2013 to 2016 when C2 was also a child. C2 is now an adult. She is not living at home with her parents. There is nothing in the evidence to suggest that the appellant has engaged in inappropriate conduct since 2016.
13. The judge indicated that the appellant had been on bail for the bulk of that period and that would have restrained him from acting in that way. That is not, however, correct. The appellant was placed on bail on 7 December 2022 until his acquittal on 29 February 2024.
14. Given the absence of evidence of future risk and the absence of any evidence of inappropriate behaviour since 2016, we do not consider that it is possible on the evidence to conclude that it is necessary to make a restraining order at present to protect C2 from

harassment (that is, to protect C2 from conduct in future which would alarm or distress her).

We therefore allow the appeal against the imposition of a Restraining Order in the case of C2 and we set that order aside.

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