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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



No. 202203015 B1

[2024] EWCA Crim 256

Royal Courts of Justice

Friday, 16 February 2024

Before:

LADY JUSTICE WHIPPLE  
MRS JUSTICE STACEY  
HIS HONOUR JUDGE PICTON

REX  
V  
ADAM COURTNEY-KASHER

**REPORTING RESTRICTIONS APPLY:  
THE SEXUAL OFFENCES (AMENDMENT) ACT 1992**

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MR G. GATLAND appeared on behalf of the Respondent.

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

MRS JUSTICE STACEY:

- 1 The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. 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 is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with s.3 of that Act. It has not been waived or lifted.
- 2 On 15 September 2022 in the Crown Court at Durham before HHJ Kidd, the applicant (who was then aged 40) was convicted of six counts of indecency with a child contrary to s.1(1) of the Indecency with Children Act 1960 and three counts of rape contrary to s.1(1) of the Sexual Offences Act 1956.
- 3 On 10 October 2022 the applicant was sentenced to a total of 12 years' imprisonment. Twelve years' imprisonment was imposed on the three counts of rape concurrent to each other and concurrent to 16-month concurrent sentences for the remaining offences. However the sentence was reduced by three years on appeal. On 5 September 2023 the Court of Appeal Criminal Division allowed an appeal against sentence and the sentences imposed on Counts 3, 6 and 7 for rape were quashed and substituted with a sentence of nine years' imprisonment on each count concurrent. The remaining sentences were affirmed.
- 4 The applicant now renews his application for leave to appeal conviction following refusal by the single judge. It had not been possible for the full court to determine the applicant's renewed application to appeal against conviction on 5 September 2023 when it considered his sentence appeal as it had not received all the documents that the applicant had sent into the criminal appeal office seeking to amend and expand his grounds of appeal.

5 The court now has before it the perfected grounds of appeal against conviction and the applicant's letters to the court dated 11 March, 10 August, 5 September and 1 October 2023, the amended respondent's notice, the addendum respondent's notice and the applicant's response to the respondent's notice. The applications before us are for leave to amend, to add additional grounds and for an extension of time, in which to do so, since the amended proposed further grounds are now out of time.

### The Facts

6 In September 2020 the complainant contacted the police and told them he had been a victim of sexual abuse as a child some years ago. He gave a video recorded interview in which he stated that the applicant had sexually abused him from April 1997 until August 1999 when he and his family moved away from the area. He said that the abuse fell into three broad categories: occasions when the applicant carried out oral sex on him, occasions when he was forced to carry out oral sex on the applicant and three specific occasions when the applicant anally raped him.

7 The complainant explained that when he was aged seven to nine, he used to play out in the street as part of a larger group of children who all lived locally and the applicant was part of that group. During half-term holidays when his parents were working, the applicant would sexually abuse him. The applicant would undress him and perform oral sex on him and ask him to perform oral sex on the applicant and it progressed to anal rape. The offences occurred in the complainant's bedroom and bathroom while his parents were out. The applicant had told him that they were best pals so he did not need to tell anyone. The abuse stopped when the complainant moved away.

8 The complainant said he did not report the matter because it was not commonplace to report such things, especially for a man, in those days. However, he had written a letter to a close friend of his "GS" in 2014 stating that he had been abused. When he was older, he looked

the applicant up on Facebook and found that they had a mutual friend. He also looked up the electoral roll to find out where the applicant was living.

- 9 In his police interview in October 2020, the applicant denied knowing who the complainant was. He had lived at that address in the same street as the complainant and played football in the street, but did not know who the complainant was as he played with boys around the same age as him.
- 10 The prosecution case was that the applicant had groomed the complainant by telling him they were best friends, playing football with him and creating a degree of confidence and friendship between them to enable the applicant to sexually assault the complainant in a way that reduced the risk of him complaining.
- 11 The prosecution relied on four strands of evidence in support of the case: firstly the evidence given by the complainant; secondly the disclosure to the friend in 2014 (given in evidence from GS in a statement that was read) about the letter that the complainant had written to him about being abused by a good friend when he was seven, eight or nine; thirdly, evidence from the complainant's mother, including that she recalled the applicant and his family and that the complainant used to play out in the street at the time with a group of children, including the applicant. She had assumed that the applicant did not have many friends of his own since he played with younger children. She could not remember seeing the applicant in her home, but did remember seeing him in the garden. She did not ever see the complainant and the applicant together by themselves during school holidays, but the complainant would go out and would return for lunch and dinner. The fourth ground was evidence from BW, one the complainant's childhood friends, to whom the complainant had made a disclosure in the autumn of 2020 after contacting him on Facebook and asked him if he remembered the applicant, which he did.

- 12 The defence case was denial. He did not know the complainant, did not play with him, did not groom him, they did not go to each other's houses and he did not sexually abuse him. The applicant gave evidence that although the address he lived at was correct, his bedroom was nothing as described by the complainant and he did not wear the type of clothes as described by him either. He had no interest in other males. He had girlfriends, his first being when he was 14 or 15. He used to play on the street but only occasionally with the younger children collectively and that started when he was 15 or 16. He had no idea why the allegation was made. The defence read a statement from a former girlfriend of the applicant who confirmed she knew the applicant between the relevant dates and they had dated on a casual basis when she was around 15.
- 13 The issue for the jury was factual: whether the applicant had an opportunity to commit the acts alleged and, if so, whether he did so or whether the complainant had incorrectly identified the applicant as his abuser. The applicant was unanimously convicted by the jury.
- 14 Leave was refused by the single judge on the grounds of appeal prepared by counsel which are now renewed by the applicant. Those grounds were that late disclosure and service of material evidence created a situation which was unable to be rectified and caused an unfairness and prejudice to the applicant. The disclosure issues were twofold. Firstly, the naming of the applicant by the complainant in messages with another person, BW, and, secondly, that the defence were unaware until the officer in the case gave evidence that approximately five neighbours had been spoken to but had refused to give statements.
- 15 It is accepted by the prosecution that there had been a request for disclosure in the defence case statement served in May 2022. The defence had sought any relevant text, Facebook and WhatsApp messages. The prosecution accept that there were five pages of messages between the complainant and his family from 2019 onwards naming the applicant as his abuser when a child which should have been disclosed sooner. They were not disclosed

until the day before the trial commenced and they were then admitted as agreed facts by the defence during the course of the defendant's evidence.

- 16 Although the timing was not ideal, there was no prejudice to the applicant from the late disclosure which explains why defence counsel agreed that they be admitted as agreed facts. It is not said how the defence could or would have been run differently if the information had been provided sooner or what other questions would have been asked of the witnesses. In any event, the complainant as the first witness to be called by the prosecution gave evidence of his naming the applicant as his abuser to his family and told the jury of his searches on Facebook and on the internet to try and ascertain the applicant's current whereabouts in the evidence he gave to the court. There was no dispute that the messages had been sent, even if the accuracy of the allegations contained in them was in dispute.
- 17 As to the second ground, the applicant's defence team was on notice six months before the trial on 8 March 2022 that the five neighbours whose names the complainant could remember had been spoken to by the police. It was served in the unused material. They either had no memory, or they did not want to be involved or could not be identified and traced by the police. It was therefore not accurate that the applicant was unaware until the officer gave evidence that five neighbours had been approached by police and that they had not provided any corroborative evidence. But in any event, given that those approached provided neither inculpatory nor exculpatory evidence, there would have been no unfairness or prejudice to the applicant even if the information about their being approached had not been known of until the detective constable gave evidence.
- 18 For these reasons, the original grounds of appeal perfected by counsel are not reasonably arguable and do not give reasonable grounds to show that the conviction was unsafe. Leave to appeal is refused.

The proposed new grounds.

19 In his letters of 18 March, 10 August, 5 September, 1 October 2023 and the response to the respondent's amended notice, the applicant repeats the grounds set out by counsel which we have dealt with already and also raised a number of additional points that can be divided into five headings.

(i) Firstly, discrepancies and deficiencies in the evidence that was served.

The applicant identifies inconsistencies in the evidence, such as the complainant not accurately describing the layout of the applicant's bedroom.

(ii) Secondly, that the photographs used of the applicant in court did not match his photographs on Facebook.

(iii) Thirdly, that there were some inconsistencies in the recollection of the prosecution witness BW, a childhood friend, to whom the complainant had later disclosed the abuse.

(iv) Fourthly, that the complainant's mother had said that her son was never left alone and that other relations would be there on hand in the holidays and that the complainant stated that the applicant's aunt lived in the same street when she did not. All of which it was said undermined the prosecution case.

(v) He also relies on inaccuracies in the complainant's evidence such as that the bathroom door did not have a lock in his house and that there was no room to hide in the cupboard under the stairs.

20 However, these were all matters that were before the jury and were for the jury to assess in considering if they could be sure of the applicant's guilt. The issue in the case was whether the complainant had correctly identified the applicant and whether the jury was sure of the factual accuracy of the complainant's central allegations, even if some of the details were inaccurate or had been misremembered. The jury was entitled to conclude that the

inconsistencies, such as they were, were not material and did not undermine the central allegation and they do not render the conviction unsafe.

- 21 The second category in the proposed further grounds is that there was a failure to conduct sufficient investigation and the applicant relies on the duty of the prosecution to explore all reasonable lines of investigation, whether they point towards or away from the guilt of a suspect. The police are criticised for not conducting more detailed investigations by, for example, interviewing the applicant's mother and stepfather or going through his mother's diary or asking his mother if she could identify other potential witnesses. A further criticism was of not obtaining the applicant's employment records to identify his shift pattern and his work with the Royal Navy as a possible alibi defence.
- 22 If the applicant had wanted police assistance in checking particular witnesses or obtaining specific disclosure of documents, they could have and should have been put in the defence case statement and enquiries could then have been made. No names were provided and the police had no knowledge of the individuals. Furthermore, if the names had been relevant, they could have been called by the defence at the trial. The applicant did not raise an alibi defence, but it is not suggested that his work pattern or employment would have made it impossible for him to have committed these offences and, again, these issues were part of the factual matrix for the jury to consider. In any event, the applicant's counsel, Ms Lamb, explored the extent of the police investigation in cross-examination with the police officers before the jury. The point was therefore before the jury to take into account in deciding if they were sure of guilt.
- 23 We appreciate the difficulties the applicant has in prison, the toll that his separation from his wife and three young children has had on him and the difficulties that they are experiencing because of his conviction and sentence. We also accept that it is difficult when matters such as these are raised many years after they have occurred. But nothing in the grounds put forward either by trial counsel or by the applicant as a litigant in person provide arguable



grounds that the conviction was unsafe. The jury had a careful direction on the impact of delay and the disadvantage this may put to a defendant.

24 We therefore refuse leave to appeal and we also refuse leave to amend the notice of appeal to add additional grounds. It is not in the interests of justice to grant the amendment application since, if granted, none of the proposed further grounds have any prospect of success. For the same reason, we also refuse the extension of time needed. The application is refused.

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**CERTIFICATE**

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