IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202301562/B3

Neutral Citation Number: [2024] EWCA Crim 519

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 1 May 2024

Before:

LORD JUSTICE LEWIS

MR JUSTICE GOSS

HER HONOUR JUDGE MONTGOMERY KC
(Sitting as a Judge of the CACD)

REX

V

LEE HAMMILL

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MS N ROBERSON appeared on behalf of the Applicant.

J U D G M E N T

1. LORD JUSTICE LEWIS: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Consequently, 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.
2. On 17 April 2023, in the Crown Court at St Albans, the applicant, Lee Hammill (then aged 31), was convicted of a number of offences. Two were offences of rape of a child under the age of 13. Two were offences of assault of a child under 13 by digital penetration and two similar offences by penetration with his tongue. Nine others were offences of sexual activity with a child. The applicant was sentenced to a total of 12 years, comprising a custodial term of 11 years and an additional 1-year licence period. The applicant's application for leave to appeal against conviction was refused by the single judge. He renews his application for leave to appeal against conviction.
3. The facts can be stated shortly. The complainant was a child whom we will refer to as "AB". A member of her family was in a relationship with the applicant. The prosecution alleged that from the age of 11 to 14, the applicant penetrated AB's vagina with his fingers and his tongue, and anally raped her on two occasions. When AB was between the ages of 13 and 14, the applicant was again accused of penetrating her vagina with his fingers and his tongue and, on occasions, penetrating her anus with his penis.
4. The prosecution relied upon evidence from AB. There was also evidence from others including AB's first partner. The applicant also gave evidence. He has autism and very shortly before he gave evidence it was decided that he would have an intermediary to assist him. The applicant denied that any sexual activity had occurred between him and AB. AB's mother also gave evidence on behalf of the prosecution. She in fact said that

AB had made it all up and she was cross-examined and asked questions in re-examination by the prosecution. It is clear, having read all the material put before us, that the central issue in the case was whether the prosecution had made the jury sure that each alleged event on each count had in fact happened.

5. On behalf of the applicant, Ms Roberson has made very detailed, very clear and very helpful written and oral submissions. She advanced four grounds of appeal. Grounds 1 and 2 can be taken together, but it is important to remember that that Ms Roberson submits that the grounds individually but also cumulatively give rise to questions about the safety of the conviction.

6. In relation to ground 1, Ms Roberson submits that the Recorder usurped the role of the jury by making repeated pro prosecution comments in the summing-up. Ms Roberson has set them all out in her detailed skeleton argument. She took us through a number of those, drawing attention in particular to items in paragraph 9 of her written argument and to what are said to be improper comments set out in paragraph 17 of her skeleton argument, drawing attention to some of those points in particular.Ms Roberson relied upon the decision in R v Mears [1993] 1 WLR 818 that, if a summing-up is fundamentally imbalanced, it cannot be corrected simply by the judge telling the jury that the assessment of the evidence was a matter for them. Alternatively, in relation to ground 2, Ms Roberson submits that the Recorder gave a summary of evidence that was so diffuse and unstructured as to be of no assistance to the jury.

7. Ground 3 is that the judge failed to allow the intermediary to assist the applicant to the best of her abilities during his evidence. Again, in her written submissions and orally, Ms Roberson took us through the various examples that she submitted exhibited those errors. She pointed out that the ground rules hearing, by which the rules relating to how

the evidence was going to be taken from the applicant, had not been done in a way that met the recommendations of the Advocate's Toolkit. The applicant did not have the ground rules hearing until shortly before he gave evidence even though Ms Roberson had asked for a ground rules hearing on the previous day. After 90 minutes the applicant stopped giving evidence and then, over a period of time, counsel reformulated his questions to make them more comprehensible by the applicant but, by that stage, Ms Roberson submitted that it was too late and the impact of the 90 minutes could not be minimised because the applicant would by then have felt confused. She submitted that the judge overruled the intermediary at a number of points. Not, it seems, expressly turning down anything the intermediary says but rather when the intermediary said something or raised her hand in an attempt to assist the applicant, Ms Roberson submitted that the Recorder effectively ignored the intermediary. There had been a recommendation for breaks at periodical intervals. There had not been a break. The intermediary requested a break but one was refused and the taking of evidence from the applicant continued.

8. Ground 4 concerns the fact that Ms Roberson submitted that the Recorder erred by allowing the prosecution to cross-examine their own witnesses. That is a reference to AB's mother in particular, although it is said the error occurred in relation to AB's father in evidence as well. In relation to AB's mother, two particular points that Ms Roberson made was that the prosecution, in re-examination, was allowed to ask whether the mother had said in the written statement that she made to the police that her daughter had made it all up, and the mother said it was something she had told the police but the policeman had not written it down. Ms Roberson submits that although it was not expressly said by the prosecution, it is implicit, or the inference was, that the mother was making that part of

her evidence up. The second point concerned re-examination on the question of timings and the time at which AB ceased to live at the parental home and went to live with her partner. There was an issue as to whether she had simply stayed with her partner from Christmas onwards and moved in with him in February, or whether she had in effect moved out of the family home in December.

9. We have read very carefully all the material submitted to us for this hearing, including the entirety of the summing-up and the transcripts of the re-examination of AB's mother. We have also read the transcripts of the cross-examination and re-examination of the applicant, and we have read the autism spectrum disorder assessment and the intermediary report, although the intermediary at the hearing was a different one from the one who made the report.

10. We remind ourselves that the question for this Court in deciding whether to grant leave to appeal is whether the conviction is arguably unsafe. Having read the transcript of the summing-up in its entirety, we do not consider that it demonstrates that the Recorder usurped the role of the jury. The summing-up went through the Route to Verdict document explaining what the jury had to be sure of before they could convict the applicant on each of the counts. The Recorder reminded the jury that the applicant was of good character, which supported his credibility and made it less likely that he had committed the offences. The central issue in the case was whether or not the jury were sure that the conduct alleged in each count had in fact happened.

11. The Recorder summarised the evidence of AB. She also summarised the evidence given by the applicant. She set out his answers, including those where he said he had never shared a bed with AB or massaged her. He had never put his fingers or his tongue in her vagina and he said he had never put his penis in her anus. That was what the jury had to

assess. It is correct that the Recorder said once, in the course of the transcript of the summing-up that "we suggest", when, of course, it was the prosecution who was bringing the case and making submissions. The judge was not suggesting anything. The judge was presiding over the trial. The Recorder did however correct herself. We do not regard this error, unfortunate though it was, as demonstrating that the summing-up was fundamentally biased. Nor do we think that the summing-up was so diffuse or unstructured as to be of no assistance to the jury. Reading the summing-up as a whole and fairly, it was clear what the jury had to decide and what the central issues were, namely whether or not they were sure that the events in each of the counts had happened. They were told what the evidence was and what the defence case was. Grounds 1 and 2 do not arguably demonstrate that the conviction was unsafe.

12. In relation to ground 3 and the intermediary, we make the following observations. Intermediaries are important in a criminal trial. They assist vulnerable witnesses to give their evidence in the best way possible. It is important that consideration be given to how the arrangements are going to be operated and what needs to be done to enable the intermediary to function properly and to give his or her assistance to the witness. There are recommendations which deal with that.

13. Dealing with the criticism advanced here. The first concerns the fact that the arrangements did not provide for a ground rules hearing before or adequately before the start of the trial. That is obviously important because it allows people to focus and preparation to be made on the basis of how the intermediary is going to operate. However, we have to bear in mind the question here is the safety of the convictions. The fact of the matter is that a ground rules hearing was held shortly before the applicant gave evidence. The intermediary who was going to be present and acting as the intermediary at

the trial did highlight certain points that she thought were important and which we understand were agreed to be the points that needed to be taken into account. They were that there were to be breaks to be taken every 40 minutes for 15 minutes, the appellant was to be reminded that he was not guessing, there be short and specific questions, common language was to be used, counsel was to avoid dates and refer to events instead, counsel was to signpost topic changes and these were to be ordered chronologically wherever possible, additional processing time should be allowed for the applicant to process the question and advocates were to speak slowly. Despite the criticism therefore of the timing of the holding of the ground rules hearing, it was held and the relevant points that the intermediary wanted brought out were brought out.

14. In terms of the report that had been prepared, that did refer to questions being written out. But, as far as we can see, that was not something that the intermediary raised on the day. There is no ground of appeal in relation to that and no complaint about that matter is made in the written skeleton argument.

15. So far as the starting of the cross-examination and the first 90 minutes is concerned, the position was this. Prosecution counsel has said that he had begun cross-examination without having time to rework his questions. In fact, he did rework his questions over the Easter weekend break. No examples were shown to us, where, in our judgment, on a fair reading of the transcript, the applicant was unable to give his evidence. On the question of the breaks, that came towards the end of the cross-examination. It was apparent there was a short time left and, when it was raised, the applicant indicated he did not want a break and he could, and did in fact, continue to give evidence without apparent difficulty. He also confirmed that the question and answers that he had given in response to the police interview were correct and the jury had that material as well.

16. We do not see any evidence that the judge overruled the intermediary, and in all the circumstances, reading the transcripts fairly, and considering the effect of what happened, we do not consider that it is arguable that the way in which the intermediary was dealt with gives rise to an arguable ground that the conviction was unsafe.
17. On ground 4, having read the examination and the re-examination, it seems to us that what happened in re-examination was that the Crown had confirmed with the witness that the reference to the witness's daughter having made these allegations up was not in the statement and the witness explained why. She said she had given the information to the police but the policeman had not written it down. That was a matter for the jury to assess.
18. So far as the timing in relation to when AB moved out - was it Christmas or was it technically later in February? -we do not see that that matter could possibly affect the safety of the conviction, whether or not it was a question that should have been asked. So we do not see that ground 4 raises any arguable issue of the safety of the conviction.
19. Standing back from the four individual grounds of appeal, we have considered the four grounds cumulatively to see whether the effect of what Ms Roberson criticised has arguably rendered this conviction unsafe. We are satisfied that the errors that she says occurred do not in fact make an arguable case that the conviction was unsafe. For those reasons, we refuse leave to appeal.
20. We understand that maybe disappointing for the family. We thank them for the dignity they have shown in Court as they have listened to what must be a difficult judgment and we are grateful to Ms Roberson, for her written argument and helpful oral arguments.

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

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