IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202301214/B1

Neutral Citation No.: [2024] EWCA Crim 159

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 7 February 2024

Before:

LADY JUSTICE ANDREWS

MRS JUSTICE CHEEMA-GRUBB

THE RECORDER OF REDBRIDGE
(HER HONOUR JUDGE ROSA DEAN)
(Sitting as a Judge of the CACD)

REX

V

JORDAN THOMAS CAMPBELL

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NON-COUNSEL APPLICATION

J U D G M E N T

1. MRS JUSTICE CHEEMA-GRUBB: This is a renewed application for permission to appeal against convictions for strangulation and rape, following refusal by the single judge.
2. The applicant was convicted, after trial in February 2023, and on 4 May 2023, he was sentenced to an extended sentence of 15 years, comprising a custodial term of 9 years and an extended licence of 6 years for rape, with 2 years' imprisonment concurrent for strangulation. A restraining order of indefinite duration was imposed.
3. The basis of the application is fresh evidence by way of an email from the complainant, sent after the trial, which the applicant believes exculpates him. In addition, the applicant criticises the legislation which prevents cross-examination of a complainant on her previous sexual history except with leave of the judge.
4. The applicant requires an extension of time of 40 days in which to renew his application for an extension of 8 days for leave to appeal against conviction.
5. The background can be stated shortly, as it is set out fully in the Criminal Appeal Office summary which the applicant has. The complainant has life-long anonymity. We do not intend to identify her in this judgment but the provisions of the Sexual Offences (Amendment) Act 1992 apply, and no matter relating to her can be included in any publication, during her lifetime, if it is likely to lead members of the public to identify her as a victim of these offences.
6. The applicant and his ex-partner met up at the applicant's address on 17 September 2022, a few days after they had broken up. There was an argument and he attacked her. He strangled her and told her they were going to have sex. She was too frightened to say "no". She left in the morning and told witnesses what had happened, albeit her entire

account came out in stages.

7. The applicant's contrary account was that she had wanted to have makeup sex and they argued. Although she was distressed, there was no deliberate strangulation, and they went on to have consensual sexual intercourse.
8. It is clear that the jury had to determine whether they could be sure that the complainant's account was reliable and honest.
9. The applicant relies in these applications on an email he has produced dated 5 April 2023 which he says he received "out of the blue" from his ex-partner after his conviction. The email includes the following:

    i. **"Now it's over and I heard your defence it's had my brain boggled. I didn't realise I couldn't remember so much of the night, especially the walk home, and that scared me. You said you asked me for makeup sex in court, but I didn't remember that. I mean, I didn't think you had at all but now I'm doubting myself and I believe you did, and I said yes, even if I didn't want to so you wouldn't have known."**

10. She also refers to the respectful way in which the applicant had treated her in the past, and her desire that he be a father still to their child.
11. Following receipt of the email, the prosecution obtained a further statement from the complainant. That statement is dated 2 May 2023, and the applicant's ex-partner confirms therein that everything she said in her evidence at the trial was truthful. She explains that the email she sent to the applicant post-trial was a result of her being manipulated by him, including through his friends, at a time when she was vulnerable, he having been sent to prison. Her statement concludes:

    i. **"I still stand by what I said in the trial. I do not remember the walk home. However, I remember what happened in the room. I remember he strangled me, hit me and then after he had sex**

with me when I did not want to. I was crying and I was just lying there. He would have known I was not consenting. I did lie in the email, but I did this because I was stupid, calm and mentally not in the right place and vulnerable. I believed he had changed. I thought things would be different next time and I wanted my son to have a dad."

12. Nevertheless, the applicant seeks to argue his conviction is unsafe. We accept that this proposed ground of appeal could not have arisen within the 28 days permitted for an application for leave to appeal to be lodged. Had there been any merit in the application, we would have granted all the necessary extensions.

13. Under section 23(2) of the Criminal Appeal Act 1968, this Court may, if it is necessary or expedient in the interests of justice, receive any evidence which was not adduced in the proceedings from which the appeal lies. Under that provision, the Court needs to have regard in particular to whether the evidence appears to be capable of belief, whether it appears to the Court that the evidence may afford a ground for allowing the appeal, whether the evidence is admissible, or would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal and whether there is a reasonable explanation for the failure to adduce the evidence in the proceedings.

14. We bear in mind that in formulating his grounds of appeal the applicant has not had the benefit of legal advice. The original application for permission to appeal has been refused by the single judge. Although we are satisfied that the applicant has provided a reasonable explanation for the failure to adduce the evidence at the trial, we are not satisfied, having regard to the circumstances in which the email that the applicant relies on was sent to him and the subsequent statement obtained by the police, that the evidence arguably may afford grounds for allowing an appeal. The ultimate question at the trial was whether the jury could be sure the complainant was correct in her account or

whether, as the applicant said at trial, she had not described or recollected the events accurately. Even taking the 5 April email at face value, the complainant does not therein withdraw her evidence or agree that she had misled the court; she simply states on reflection that she cannot, at that time, exclude the possibility that the applicant had asked her for makeup sex and she had agreed. She does not say anything about the strangulation which the applicant had also denied.

15. We are unable to find any reason to disregard the more recent statement the complainant has made to the police. It is of note that the statement itself was preceded by an email from the witness herself to the police on 17 April in which she said:

    i. "I need to speak to you pretty urgently. I've messed up big time and allowed Jordan to get in my head again. So much I've written him a letter stating I remember him asking me for sex that night and I said yes. I don't remember this, and Jordan had asked me to write it so he could apply for a retrial or appeal."

16. The applicant also draws our attention, albeit not as a freestanding proposed ground of appeal, to another issue raised at the trial, which was his account that he and his ex-partner had had makeup sex in the past. An application to adduce evidence of text messages in this regard was made, we are told, pursuant to section 41 of the Youth Justice and Criminal Evidence Act 1999, but the trial judge ruled that the introduction of evidence about previous instances of makeup sex were excluded by the legislation.

17. In this regard the applicant does no more than invite us to consider that position as part of context in which to assess his intended appeal. We have done so. We have read the judge's summing-up in which the cases for the prosecution and defence are set out, including a summary of the applicant's evidence. It appears that the applicant had given evidence in respect of the strangulation, that the complainant had introduced him to "this

kind of thing" and also that they had done it when they had been drinking or having makeup sex. It follows that what the applicant wanted the jury to know about in respect of there having been previous occasions of makeup sex and strangulation was indeed adduced during his own evidence.

18. Accordingly, having considered the matter independently and for ourselves, we agree with the single judge that there is no arguable ground of appeal, and the applications sought must therefore be 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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