

ENGLAND AND WALES / JUDGMENT

R v JAH

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Computer Aided Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

J U D G M E N T (Approved) MRS JUSTICE STACEY: 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 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 the Act. In order to avoid the risk of indirect identification of the complainants, the offender's name as well as their names and their mother's (his wife) must be anonymised in any report of these proceedings. We direct that he be not named or otherwise identified and be referred to only by the randomly-chosen letters JAH.

1. On 11 April 2024 in the Crown Court at Gloucester before His Honour Judge Lowe, the applicant was convicted of four counts of Sexual Assault of a Child Under 13, contrary to s7(1) of the Sexual Offences Act 2003.

2. On 9 May 2024, before the same Court, the applicant was sentenced to a Suspended Sentence Order comprising a custodial element of 2 years imprisonment suspended for 2 years, 300 hours unpaid work, 40 hours Rehabilitation Requirement Days and prosecution costs of £3,500. He was 49 at date of both conviction and sentence and the offences had been committed 12 years previously.
3. He renews his application for leave to appeal against conviction following refusal by the single judge. We are grateful to him for his clear and measured submissions both orally and in writing.
4. The applicant married his wife, whom we shall refer to as W in 1999. They had two children: a son, whom we shall refer to as C1 born in July 2001, and a daughter, C2 born in October 2003. The children were the complainants. Page 2
5. The relationship between the applicant and W deteriorated and the applicant left the family home in May 2012 but had regular contact with his children. 6. In September 2013, W discovered a notebook in her daughter's room which had the applicant's and C2's handwriting on the cover. It appeared to her that the applicant had written statements and C2 had copied them. Two of them were sexualised phrases that had been written out and copied out: 'Give us a snog' and 'eat you [sic] tea my sex kitten'.
7. C2 confirmed that the applicant had written the phrases and made her copy them and that she understood 'Give us a snog' meant 'daddy kissing her' with his tongue that he wiggled about in her mouth. She also stated the applicant had kissed C1 in the same way.
8. When spoken to shortly afterwards by a Social Worker and family support officer, both children confirmed that they had been repeatedly kissed inappropriately by the applicant, however it was noted that C1 was more guarded in his response. The allegations were repeated to the police by both Cs in interview 2 weeks later. C2 confirmed that the applicant had written the statements on the cover of the notebook and told her to copy them. C2 did not tell anyone as she was scared and embarrassed. C1 had not mentioned it to anyone as at his young age he had only realised that it was not normal when he started to have sex education at school.
9. The applicant was interviewed in October 2013 when he denied kissing either C2 or C1 in the way alleged and denied that he had written the two phrases on the cover on his daughter's notebook. However he accepted that the writing looked similar to his and he admitted to having written out the non-sexualised phrases for her to copy. The case did not progress in 2013 but was re-opened in 2020.
10. Both Cs maintained the allegations. Page 3

11. The Defence case was one of denial. The applicant stated that after the marriage with W had broken down, he had continued to enjoy a good relationship with his children and had only ever shown affection towards them in an appropriate manner. He denied that he had ever kissed the complainants for prolonged periods on the lips and with his tongue in their mouths. The applicant had written some of the phrases in the notebook during handwriting practice with C2 for her to copy, but not the two sexualised phrases.
12. The applicant was convicted by the jury and seeks leave to appeal on eight disparate grounds. Privilege has been waived, his counsel has provided comments, and the prosecution have submitted a respondent's notice. A transcript of the proceedings is not available as the recording equipment had been faulty and, like the single judge we have assumed in the applicant's favour that his account of what was said in the court room was factually accurate.
13. Leave to appeal against conviction is granted where it is reasonably arguable that the conviction was unsafe and one looks to see if there is a lurking doubt about the safety of a conviction.
14. Dealing with each ground in turn, although the court building in which the trial took place was not designed for use as a Crown Court, alterations had been made to accommodate jury trials and it has been and continues to be used successfully used as a Nightingale court since Covid. Even if the Judge had told the jury that the courtroom was not fit for purpose and even if there was a large air conditioning unit and a printer server in the courtroom located next to the judge, neither the applicant, nor any members of the jury, witnesses or counsel raised any issues of not being able to hear or follow the case. Had the applicant not been able to follow the proceedings because of the noise of the aircon unit or printer at the time, he would no doubt have informed his counsel.
15. The charges the applicant faced were identified as allegations of a sexual offence contrary to s.7(1) Sexual Offences Act 2003 throughout. There is no material difference in the Page 4 wording of notice of criminal charge, Magistrates' Court sending form or the indictment about any of the offences. The allegations were consistent throughout.
16. The fact that the Notice of Criminal charge was initially sent to the Applicant's previous address did not prevent him receiving it as it was forwarded on to him so that he received it with plenty of time before the first hearing. The purpose of the notice of criminal charge was to draw it to his attention and since he did in fact receive it and was able to appear at court and defend himself, there was no disadvantage, delay or prejudice to him from the short delay in his receiving it. It has had no effect on the safety of the convictions.
17. The defence case was that the prosecution witnesses were all lying. During the course of the applicant's evidence in the absence of the jury and without first discussing it with his counsel, the applicant showed the Judge a letter from his new partner, at the time, (whom we shall refer to as P). She had not been called as witness by the defence as they were no longer together by the time of trial and her evidence now would have been detrimental to

him. Although she had been supportive of the applicant in 2013, she now said that she had seen him kissing his children in this way. In the contemporaneous letter P voices concerns about contact that she had had from the Cs' mother, W. The letter from P was inadmissible hearsay as P was not being called as a witness and the Judge rightly warned the applicant in stern terms not to mention it in front of the jury. There can be no criticism of the Judge's actions since the letter was inadmissible and if the applicant had referred to it in front of the jury it would have jeopardised the trial.

18. In answer to a jury question about whether the handwriting in the notebook had been analysed, the Judge replied that there was no evidence put before the jury about this. This was factually accurate. The Judge was aware that the defence had commissioned a report from a handwriting expert that they had chosen not to rely on. The applicant's trial counsel has now explained that the reason for this was because the report lent weight to the prosecution case that it was more likely that it was the applicant who wrote the Page 5 sexualised phrases for his daughter to copy into her notebook, as well as the non- sexualised phrases that he admitted that he had written for his daughter to copy out.
19. Prosecuting counsel accepts that he referred to his "psycho switch" in his closing submissions to the jury, apparently as a light-hearted way of emphasising to the jury the importance of switching off emotion. It is a curious expression to use, but if it had been used in any context to refer to the applicant, the applicant's counsel and the Judge would no doubt have intervened and raised it in the absence of the jury and repaired any risk of damage it might have caused. But since it was a reference by counsel to himself and a self-denigrating reference his own "psycho switch" it does not give rise to any concerns about the safety of the conviction.
20. The applicant criticises the choice of documents his trial counsel added to the Jury Bundle. In fact, the important relevant documents were included, the ones that insofar as it was possible to do, supported his theory that his children had fabricated complaints against him because they, and their mother did not like his then new partner P. The jury had the relevant information before them. There were good reasons why P could not be called as a witness by the defence at trial and it was explained to him that the letters and material from her at the time were inadmissible and could not be before the jury unless she was called as a witness and that the advice of his lawyers, which he sensibly followed was that it risked doing more harm than good to call her as a witness.
21. The criticism that trial counsel failed to call a witness who would have potentially exonerated him, is a reference to a single document in the school file of a conversation between C1 & a teacher, to the effect that C1 had made a comment that was potentially inconsistent with his complaint. Attempts to trace the teacher concerned by the defence team had failed and in the absence of the witness the view was taken that the note of the comment would not have been admitted and the Judge would not have allowed it to be put before the jury. The applicant has through his own efforts been able to trace the witness concerned, but unfortunately since the information would have been available Page 6 before

the trial, it is not now possible to rely on it. In any event even if the teacher had been traced before the trial, we cannot see that it would have made a difference.

22. Standing back from the individual grounds of appeal, this was a strong prosecution case with consistent accounts from both complainants both contemporaneously with the allegations and at the time of trial together with the evidence from the notebook.
23. The jury had the points made by the defence that the complaints were fabricated and motivated by the acrimonious divorce proceedings, but the jury was nonetheless sure of the prosecution evidence which it was entitled to accept.
24. It is not reasonably arguable that the conviction was unsafe on any of the grounds whether considered individually or collectively. Leave refused. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk Page 7

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