

## **Regina v David John Bryant**

No: 201501164 C3

Court of Appeal Criminal Division

20 July 2016

**[2016] EWCA Crim 1245**

**2016 WL 04591815**

Before: President of the Queen's Bench Division ( Sir Brian Leveson ) Mr Justice Singh  
Mr Justice Holgate

Wednesday, 20th July 2016

### **Representation**

Mr P Knox QC , Mr R Butler and Ms R Earle appeared on behalf of the Appellant.  
Mr T Compton appeared on behalf of the Crown.

### **Judgment**

Mr Justice Singh:

1 On 20 December 2013 in the Crown Court at Bournemouth the appellant was convicted, by a majority of 10 to 2, of an offence of buggery. On 24 January 2014 he was sentenced by His Honour Judge Wiggs to 6 years' imprisonment. Other appropriate orders were made under the legislation relating to sex offenders.

2 On 3 April 2014, following a Reference by the Attorney-General, this court, in a constitution presided over by Treacy LJ, quashed the sentence imposed and substituted a sentence of 8 years and 6 months' imprisonment.

3 In the present proceedings the appellant renews his applications for an extension of time, for leave to appeal against conviction and for leave to adduce fresh evidence under [section 23 of the Criminal Appeal Act 1968](#) . This follows refusal by the single judge.

4 For reasons that will become apparent we grant the extension of time needed, we also grant leave to appeal against conviction and leave to adduce the fresh evidence. We therefore proceed to deal with this as an appeal against conviction.

5 The facts can be stated as follows. The complainant, Danny Day, said that he had come to know this appellant when he worked at the local British Legion Club in Christchurch, Dorset. On a few occasions in 1976 he had accompanied the appellant and a friend, Dennis Goodman, to the local fire station where they both worked as retained fire fighters in order to play darts in the social area. The complainant was then aged about 14. The appellant was in his mid-20s and Mr Goodman in his 40s.

6 At the trial the prosecution case was that on the last occasion that the complainant had visited the fire station both the appellant and Mr Goodman had held him down and raped him whilst also engaging in consensual sex with each other. The complainant did not report the incident at the time but told a school friend, Chris White. He only reported it in 2012 when he was back in the area for a social engagement and discovered that the appellant had become a prominent and respected citizen in the local community.

7 In his evidence the complainant said that he had got to know several of the local fire fighters when he started working at the British legion. The appellant and Mr Goodman were at the Legion and said since they were returning to work he could accompany them and play darts. Nothing out of the ordinary happened on the first occasion but on the second occasion they had been more "hands on". On the third occasion Mr Goodman and the appellant each held him down, it was alleged, over a table and bugged him whilst also having sex with each other. This went on for about 20 minutes. He was in pain, crying and screaming. When the incident finished Mr Goodman was said to have thrown money at him and asked if he would like to visit again. The place was locked and they let him out through the front gates. He said he had not told his parents as they had enough on their plates and he was also fearful of the consequences. He said that he had told Mr White a couple of weeks after the incident because he had asked him why he had stopped going to the club.

8 In cross-examination the complainant said that Mr Goodman had been the instigator and had taken the lead part. He thought that the table was a pool table but accepted that there might not have been one in the room during the 1970s. He said that he was really screaming. He said that there had been blood in his underwear but accepted that he had not told the police about that. He denied that he had made the allegation because he wanted or needed to make money from it, he said that it was because he needed closure. He accepted that he had left a note for the appellant which said "one way or another you'll pay for it."

9 When interviewed by the police this appellant accepted that he was a retained fire fighter at the time of the incident but denied that the offence had taken place. At the trial the defence case was that an incident had not taken place at the fire station either as described by the complainant or at all. The appellant gave evidence. He said that he had become a retained fireman when he was 16 and eventually retired in 2006. He was available for calls as often as he could be and they would all attend on Thursday nights for drill night. He said that 1976 was an extremely busy year. There were two flats occupied by two other retained fire fighters and their families. He had not thought about the complainant since the mid-70s until he received the note in 2012. He and Mr Goodman were the only two unmarried firemen at the time and he spent time with him. He denied that he ever had an alcoholic drink before going to the fire station although there were sometimes social occasions at the station. He denied that he raped the complainant or that he was there when Mr Goodman had raped him. He denied he gone to the fire station with the complainant or that he played darts regularly. He said that he had reported the letters to the police. He thought the complainant wanted money.

10 The appellant relied at his trial upon evidence from a John Trowbridge which he

said demonstrated that the lay out of the fire station as described by the complainant was more consistent with the current layout than at the time of the alleged offence. Further, any one of the other retained fire fighters might have appeared in the social area at any time or heard a voice screaming for 20 minutes. Therefore at the trial the issue for the jury was whether the appellant had acted as described by the complainant in the fire station.

11 The applications to this court were first made on 6 March 2015. In the initial grounds of appeal it was submitted that there is fresh evidence which is capable of undermining the credibility of the complainant which thereby rendered the conviction unsafe in this case.

12 The appellant sought leave to introduce in particular, evidence from Chris White attained by his solicitor in July 2014 following a chance meeting, while both he and the witness were in custody in prison.

13 It was also sought to have leave to adduce a psychiatric report from a Dr Nikki De Taranto which was disclosed to the appellant's representatives as a consequence of civil proceedings issued by the complainant against the appellant and his employers.

14 Mr White said that he knew the complainant but would not have described him as a "friend". He recalled that the complainant hung about when he was tinkering with his car in about 1978. He knew the appellant and Mr Goodman from the Legion but he denied that the complainant ever disclosed to him that he had been abused by the appellant and Mr Goodman.

15 Dr De Taranto outlined the psychiatric history of the complainant contained within his GP medical records. We will return to those later.

16 After the single judge had refused leave in this case the appellant then renewed his applications to the Full Court. On 4 March 2016 the renewed application for leave was listed before a different constitution of this court, presided over by Macur LJ. It was decided that the application should be adjourned and directions were made for the further conduct of the case. Subsequently there have been important developments which we will outline here. Of course, the single judge did not have the advantage of seeing all of this material as we have done, since much of it has emerged since his decision.

17 At the hearing on 4 March it was observed by the court that it was doubtful whether Dr Taranto's report itself would be admissible in evidence and what was really needed in order to assess the fresh application properly was the underlying medical records and other documents referred to in that report. The appellant's representatives then made an application on 24 March 2016. The Crown then disclosed various medical records and related documents which had been referred to in Dr Taranto's report.

18 The contents of that material have been viewed by this court and are also summarised in the revised skeleton arguments submitted on behalf of the appellant dated 7 June 2016 - see in particular, paragraph 16. It is unnecessary for present purposes to rehearse all of that material. Suffice it to say that what that evidence

indicates is that over a period dating from 2000 to 2010 the complainant in this case had to seek medical attention from his GP in relation to what can only be described as his being a chronic liar. For example, there is material dated 17 August 2010 where reference is made to the fact that the complainant was referred by his GP to mental health services under a cover of letter, which noted that he has a history of lying and cheating and that it was suspected he has an underlying personality disorder. He had similar problems it was observed back in 2007.

19 Furthermore on behalf of the appellant Mr Peter Knox QC, who has appeared before us but was not trial counsel, submits that what the medical records also disclose is that although the complainant attributed his psychological problems to a number of other causes, for example his poor relationship with his parents, at no time did he suggest that they were attributable to the trauma of the alleged offence which is the subject of this case.

20 Furthermore, in the time which has elapsed those acting on behalf of the appellant have been able to make enquiries, in particular, through an inquiry agent, as to what has become known in this case as "the boxing evidence". The background to this lies in the fact that there were at the trial, as part of the unused material two statements. One from a Nick Gregory, who was said to be a former England boxing coach and who purported to speak in detail about the complainant's boxing career and his selection apparently for the Olympic Games in 1984. There was also a statement from the complainant's partner, Suzanne Huckle, in which she also spoke to the complainant's boxing record. Mr Knox submits that as has become apparent subsequently, the statement from Mr Gregory was untrue and indeed he submits had been procured by the complainant himself. He also submits that the information which was contained in the statement by Ms Huckle, could only have come from the complainant himself and was also untrue.

21 Finally Mr Knox submits that contrary to the view which was taken by the Single Judge about the significance if any of the evidence of Mr White, it does tend to support the appellant's account and that it tended to undermine the complainant's account, which had been used to rebut the suggestion of recent fabrication.

22 The court has also had placed before it a supplemental skeleton argument on behalf of the appellant dated 30 June 2016, in which further argument are elaborated in particular in relation to the boxing matter. It is unnecessary to rehearse those matters in detail for present purposes.

23 In summary, Mr Knox submits on behalf of the appellant that the fresh evidence in this case is such that the jury might reasonably have declined to convict. He submits in a nutshell that the evidence tends to show generally that the victim was a chronic liar. This was of crucial relevance he submits in a case where the only evidence essentially was conflicting accounts by the complainant and the appellant and central to the jury's consideration of the issue therefore was the question of credibility. He also submits that the jury might reasonably have come to a different conclusion if it had been able to consider this evidence and might therefore have acquitted the appellant.

24 Since these materials were recently placed before the court we have had the

advantage of a revised respondent's notice on behalf of the Crown dated 12 July 2016. The respondent's notice was drafted by counsel who appeared for the prosecution at the trial, that is Mr Rob Griffiths. We have also been assisted at this hearing today by Mr Compton. We are grateful to them both.

25 In the recent respondent's notice the Crown makes its position abundantly clear in the following way. It does not feel able to sustain the conviction in this case as being safe. In summary, the way it is put at paragraph 4 of that notice is as follows. First, the case hinged entirely on the credibility of Mr Day as a witness for the prosecution. Secondly, in respect of assertions about his boxing career the information given by Mr Day to the police was plainly incorrect. Thirdly, at the very least Suzanne Huckle was misled by Mr Day. Fourthly, the original statement of Mr Gregory was incorrect. The statement itself appears to have been drafted by Mr Day. Mr Gregory's more recent statement casts serious doubt upon the integrity of that purported evidence. The Crown accept that had the single judge been aware of the boxing evidence leave to appeal on that ground alone might have been granted and indeed the prosecution would not have resisted the application for permission to appeal. Given what the prosecution now knows about the boxing evidence it is also of the view the conviction should be considered to be unsafe and further that the ground of appeal which relates to the medical evidence in the prosecution's view has increased force, as it is put by the prosecution at paragraph 7 of the respondent's notice:

"Had the jury known not only of the boxing evidence but also of the complainant's medical history with regard to lying and exaggerating it would be impossible to argue that they would have no influence on their decision."

26 Fairly and properly the Crown acknowledge that the ultimate decision is for this court. But the respondent does not seek to resist the appeal against conviction. At the hearing before us Mr Compton has also made it clear that the Crown does not suggest that this case would be appropriate for any application for a retrial.

27 In our judgment, the concessions made by the Crown are rightly made. The only issue at the trial was credibility. This was vital to the jury's task of resolving the conflict in the evidence between the complainant and the appellant. The fresh evidence which this court has now been able to see is such that the appellant did not have the opportunity to deploy it in order to seek to undermine the credibility of the complainant at his trial. Further, it is such that if the jury had been made aware of it it might reasonably have acquitted the appellant. It follows that this appeal must be allowed and the conviction quashed.

28 Finally we say this. We regret that these matters did not come to light earlier and that the appellant, a man of good character, has suffered the consequences that he has.

President of the Queen's Bench Division:

29 The conviction is quashed and Mr Bryant is free to go.

Mr Knox:

30 There is only one point. I may have missed it. That is my client is also subject to notification requirements.

President of the Queen's Bench Division:

31 Notification requirement lives with the conviction. That having gone, it is also gone. Thank you very much. I am very sorry Mr Bryant.

Mr Compton:

32 Can I mention Mr Griffith's apologies for not being here this afternoon, he is not in the jurisdiction.

Member of the Press:

33 Can I just check that there is now no anonymity in this case with regards to Mr Day?

President of the Queen's Bench Division:

34 We have seen several newspaper reports in which it may appear he has waived his anonymity rights. Whether that is to be done formally. Do you know anything about that Mr Compton?

Mr Compton:

35 My Lord, I do not I am afraid. All I know from the paperwork I have seen is that he has clearly waived his rights. In the newspaper reports you have and the comments which have been posted on line by people, and Mr Day himself has posted comments under his own name.

President of the Queen's Bench Division:

36 For the protection of the Press you can read the reports (Same Handed). Thank you very much.