APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 55
HCA/2018/000483/XC

Lord Menzies
Lord Turnbull
Lord Pentland

OPINION OF THE COURT

delivered by LORD MENZIES

in

APPEAL AGAINST CONVICTION AND SENTENCE

by

WILLIAM WRIGHT

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: Collins, sol adv; Collins & Co
Respondent: Prentice QC AD; Crown Agent

24 July 2019

[1] On 13 August 2018 at Glasgow High Court following a trial which commenced on 7 August 2018 the appellant was convicted by a jury of three charges in the following terms:

> "(001) on various occasions between 1 August 1974 and 30 June 1976, both dates inclusive, at (a specified school), you WILLIAM WRIGHT did use lewd, indecent and libidinous practices and behaviour towards LM, a pupil at said school, a girl then of or above the age of 12 years and under the age of 16 years and did place your arms around her body and hug her, tickle her, touch her breasts, pull at her bra: CONTRARY to the Criminal Law Amendment Act 1922, Section 4(1);
> (002) on various occasions between 1 August 1977 and 2 November 1979, both dates inclusive, at (the same specified school), you WILLIAM WRIGHT did use lewd,

> indecent and libidinous practices and behaviour towards JP, a pupil at said school, a girl then above the age of 12 years and under the age of 16 years and did poke her in the ribs, place your arms around her body, press your clothed erect penis against her body, tickle her, place your fingers inside her shirt, place your hand inside her bra, touch and rub her breasts, seize hold of her hand and place it on your clothed erect penis: CONTRARY to the Sexual Offences (Scotland) Act 1976, Section 5;
>
> and
>
> (003) on various occasions between 3 November 1979 and 30 June 1981, both dates inclusive, at (the same specified school), you WILLIAM WRIGHT did indecently assault JP, a pupil at said school, and did poke her in the ribs, place your arms around her body, press your clothed erect penis against her body, tickle her, place your fingers inside her shirt, place your hand inside her bra, touch and rub her breasts, seize hold of her hand and place it on your clothed erect penis, and, on one occasion seize hold of her arm and drag her into a room, lock the door and push her to the ground, expose your penis and penetrate her mouth with your penis."

[2] The appellant appeals against conviction on charge 3 only and in fact only in respect of the words commencing with the words "and, on one occasion" in the last three lines of that charge. Mr Collins accepted that there was sufficient corroboration of the rest of charge 3 but maintained that the trial judge misdirected the jury in relation to corroboration of the episode of oral penetration in charge 3. He also submitted that if we were with him in his submission on conviction we should make an adjustment to the sentence of 4 years imprisonment imposed by the trial judge in respect of charge 3 because it was clear from the trial judge's report and his sentencing remarks that he viewed the episode of oral penetration as a significant and serious element of charge 3 which he reflected in his sentence.

[3] Essentially the submission for the appellant regarding the last three lines of charge 3 and what he described as the episode of oral penetration was that this could not be viewed as an escalation of the offending described in the rest of charges 1 to 3 but was effectively a separate offence.

[4] The advocate depute relied on the terms of the Crown's written submissions and submitted that the following factors were indicative of a course of conduct.

(a) The appellant was in a position of responsibility and authority over the complainers. He was their music teacher at the school they both attended.

(b) The appellant knew the mothers of both complainers through the music profession. Both complainers cited a fear of disappointing their mothers as a reason for not disclosing the abuse at the time. That could indicate a reason for the appellant targeting those particular girls.

(c) The loci of all of the offending was the same, the music department of the specified school and the temporal gap in the offending was not significant. There was a gap of one school year between the cessation of the abuse of LM and the commencement of the abuse of JP.

(d) The majority of the abuse occurred when both girls were practicing piano. Their positioning allowed the appellant to approach them from behind and touch them while their hands were occupied.

(e) The offending against both complainers followed the same pattern. It began with minor tickling and touching before progressing to more overtly sexual touching of the breasts. That conduct was repeated and ongoing while the complainers were both 13 to 15 years old.

[5] The advocate depute went on to acknowledge that the offending against JP escalated to more serious conduct than that inflicted on LM. However, he submitted that that does not of itself prevent the escalated conduct from being viewed as part of the same continuing course of conduct perpetrated against both girls. He submitted that the jury would be entitled to conclude that charges 1 to 3 represented a course of escalating conduct committed by a teacher against two of his pupils whose mothers he knew. The underlying unity of purpose was to obtain sexual gratification from the girls by using his dominant position as a

teacher. He submitted that the conduct in the charges were repetitions of the same offences, sexually assaulting pupils, springing from the same impulses or motives.

[6] Mr Collins accepted that there were striking similarities between the offences in charges 1 to 3 excluding the last three lines but he maintained his position regarding the last three lines of charge 3.

[7] We agree with the submissions advanced by the advocate depute on behalf of the Crown. The matter has been clearly and succinctly summarised recently in *Khalid Jamal* v *Her Majesty's Advocate* 2019 SCCR 135 where at paragraph 21 the Lord Justice General in delivering the opinion of the court observed as follows:

> "In a mutual corroboration case, the confirmation or support in respect of both lack of consent and penetration comes from the existence of testimony from more than one witness speaking to different incidents which demonstrate an underlying unity of conduct (*McMahon* v *HM Advocate* 1996 SLT 1139, LJG (Hope), delivering the opinion of the court, at 1142; *B* v *HM Advocate* 2009 JC 88; LJG (Hamilton) at para [6]). There is no principle whereby what might be perceived as less serious criminal conduct, such as a non- penetrative offence, cannot provide corroboration of what is libelled as an apparently more serious crime involving penetration (*MR* v *HM Advocate* 2013 JC 212, LJC (Carloway), delivering the opinion of the court, at para [21]; *HMcA* v *HM Advocate* 2015 JC 27, LJC (Carloway), delivering the opinion of the court, at para [9]). The fundamental issue is whether the evidence demonstrates a course of conduct systematically pursued."

[8] In light of that clear statement of the law, and having regard to the particular facts and circumstances of the present case, we are unable to conclude that the trial judge misdirected the jury in the way submitted on behalf of the appellant. There was sufficient evidence before the jury to enable them to conclude that the oral penetration libelled in the last three lines of charge 3 formed part of the same continuing course of conduct perpetrated by the appellant against both complainers. The appeal against conviction must therefore be refused and as the appeal against sentence was contingent on the conviction appeal succeeding that too must be refused.