

Neutral Citation Number: [2005] EWCA Crim 3248

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT EXETER
HIS HONOUR JUDGE COTTLE

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 21st December, 2005

B e f o r e:

LORD JUSTICE PILL,
MR JUSTICE NEWMAN
AND
MR JUSTICE LLOYD JONES

JOHN BRIAN ELY

Appellant

- v -

THE QUEEN

Respondent

(Transcript of the Handed Down Judgment of
Smith Bernal WordWave Limited
190 Fleet Street, London EC4A 2AG
Tel No: 020 7421 4040 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

SIR IVAN LAWRENCE QC and MR M D BARLOW (instructed by Shepherd & Co. NN12
6DB)for the Appellant
MR IAN PRINGLE QC and MISS R COLLINS (instructed by CPS Exeter, EX2 5WX) for
the Respondent

J U D G M E N T
As Approved by the Court
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Lord Justice Pill :

1. On 8 June 2001 in the Crown Court at Exeter before His Honour Judge Cottle and a jury, John Brian Ely was convicted of eighteen counts of indecent assault on a male (Counts 1 to 6, 11, 12, 14, 16 to 19, 21 to 24 and 31), seven counts of buggery (Counts 7 to 10, 15, 33 and 34) and one count of attempted buggery (Count 32). He was sentenced to a total of fifteen years imprisonment. This was made up of terms of six years imprisonment on Counts 7, 8, 9, 10 and 15, to run concurrently, sentences of six years imprisonment on counts 33 and 34, concurrent with each other but consecutive to that on Count 7, five years imprisonment, concurrent, on Count 32 and three years imprisonment on each of the Counts of indecent assault, concurrent with each other but consecutive to the sentences for buggery.
2. This is a renewed application for leave to appeal against conviction, leave having been refused by the single judge. An appeal against sentence is brought with leave of the single judge. We grant leave to appeal against conviction, on all counts, with a qualification which we will mention later.
3. Verdicts of not guilty were entered on eleven counts of indecent assault (Counts 13, 20, 25 to 30, and 35 to 37). On those, four were by direction of the judge (Counts 20, 30, 35 and 36).
4. The appellant was a housemaster at Bryn-y-Don Approved School in South Glamorgan from 1962 to 1967 and at Forde Park Approved School at Newton Abbott, Devon between 1967 and 1979. He was also the Scoutmaster at Forde Park. The offences are alleged to have been committed against boys who were pupils at those schools.

The trial

5. The appellant's arrest in 1999 followed a police investigation at the schools. Pupils were contacted by the police and a number of them made allegations against the appellant. The prosecution relied on the evidence of twelve complainants, four who had been pupils at Bryn-y-Don (Counts 1 to 13) and eight at Forde Park (Counts 14 to 37).
6. The appellant, who gave evidence at the trial, completely denied allegations of misconduct. The defence case was that the complaints were fabricated and that there had been collusion between complainants, most of whom had criminal records, to fabricate them. It was also said that there was a financial motive in that compensation may be payable to victims of sexual abuse. The appellant was sixty seven years old at the time of trial and had no previous convictions, including of course during the period since 1977.
7. Evidence was called, both by prosecution and defence, describing conditions at the two schools. There was evidence that no complaints of abuse were brought to the meetings of the Board of Managers at Forde Park School. A former member of the Board, Mr Folland, described the running of the school as relatively smooth and trouble-free but he believed that the regime would have prevented boys from reporting any incident of abuse. A former chairman of the Board, Mr Mitchelmore,

90. What was put to him in cross-examination was that he did indeed go to [DPA] but it was with Mr Cooksley and not with the [DPA]. The appellant was not with Mr Cooksley. It was put to him that his first camp with the [DPA] was at [DPA] in 1971. He accepted that [] and [] were never in the [DPA].
91. In evidence, the appellant said that [] could not have been in the [DPA] within a few weeks of joining the [DPA]. [] was not with him in 1970. [] and [] were not with him. The appellant said: "We have evidence that Mr Cooksley was camping in that area – specific area of [DPA] – in 1970 and that [] was with him at that specific site".
92. The jury plainly accepted the evidence of []. The appellant did not give evidence as to where the [DPA] went in the summer of 1970, though he claimed to remember the events of that year.
93. [] did not assert that he was a [DPA] at the time of the camp. He did not claim that [] and [] were [DPA]. It was when he was pressed in cross-examination that he accepted that one of them at least was at the camp.
94. It is in that context that the fresh evidence has to be considered. The court heard Mr Cooksley de bene esse. Contrary to submissions made, he had not refused to co-operate with the defence at the time of trial. When telephoned by solicitors, he was only asked in general terms whether he would assist and did not think he could contribute anything. He would have been prepared to help with relevant evidence if he had thought he could.
95. We do not even now know what "evidence" the appellant had, if any, which established that Mr Cooksley was camping in the specific area of [DPA] in 1970 and that [] was with him. Mr Cooksley made clear that, notwithstanding the case to be put at trial in relation to [], Mr Cooksley had not been asked about the summer camps. If there was any such evidence, it could have been called at the trial.
96. Mr Cooksley's evidence was that the school closed down for a period in the summer. Staff took and supervised various outdoor activities. The school closed down for Adventure Week, June 17-24 1970. Mr Cooksley's activity was camping with map reading and teaching the basics of rock climbing, involving up to five boys. He said it was really very basic. Others did more strenuous activities. The [DPA] did more adventurous things. He did not go on [DPA] activities.
97. The contemporaneous report on [] now available, establishes that Mr Cooksley was at a camp from 17 to 24 June 1970 and that [] was with him. The appellant was not. Mr Cooksley was not, however, at [DPA] but at [DPA] although it might be said that that was on the "edge of the moor". Mr Cooksley said that there was a [DPA] outing going on at the same time but he did not know where.
98. The oral evidence can now be considered in the context of a headmaster's report on [] which has become available and is dated 1 September 1970. Under the heading "Progress in School to Date", it is stated:

[]'s admission time coincided with a particularly active period of the term. Consequently he found himself thrown quickly