Neutral Citation Number: [2019] EWCA 545 Crim

Case No: 201603087 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM SOUTHWARK CROWN COURT
HHJ Leonard QC
T20137220

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/04/2019

Before :

LADY JUSTICE RAFFERTY
MR JUSTICE GOSS
and
SIR BRIAN KEITH

- -

Between :

Maxwell Frank Clifford (Deceased)	**Applicant**
- and -	
Regina	**Respondent**

- -
- -

Ms S Forshaw QC& Ms O Daly (instructed by **ABV Solicitors**) for the **Applicant**
Ms R Cottage QC & Mr T Little QC (instructed by **CPS**) for the **Respondent**

Hearing dates: 12th March 2019

- -

Approved Judgment

Lady Justice Rafferty :

1. Maxwell Frank Clifford, now dead, pursues his application for leave to appeal against conviction by permission of the court allowing his daughter Louise Clifford to advance his arguments. Reference to the applicant is to Clifford not to Louise.

2. On 28th April 2014 at the Crown Court sitting at Southwark he was convicted and on 2nd May sentenced in all cases for Indecent Assault contrary to S14 Sexual Offences Act 1956 as follows: count 3 (a specimen) 12 months imprisonment, count 4 (a specimen) 18 months, counts 5 and 6 24 months, counts 8 & 9 6 months, count 10 21 months and count 11 15 months, all consecutive, the total sentence 8 years imprisonment.

3. Consequential orders flowed.

4. He was represented by Richard Horwell QC. An appeal against sentence was dismissed by the full court. Ms Forshaw QC appears for him in his application for an extension of more than 3 years in which to seek leave to appeal against conviction and to call witnesses referred to the full court by Sir John Griffith Williams who considered arguable two Grounds (consent not left to the jury, and the summing up of demeanour) but not the other five.

5. Justifications for an extension of time are three (i) a change in representation; (ii) lack of funds; and (iii) the volume of material and time available.

6. The Crown submits that none is properly arguable and many misconceived. The grounds founded in directions or other summing up failings were available to be appealed within time. Highly experienced Queen's Counsel and instructing solicitors at trial rightly concluded there were no arguable grounds. There is no basis for receiving "fresh evidence". Either evidence was called on issues outlined in the grounds or a tactical decision taken not to call some witnesses or elicit evidence on some aspects.

Reporting restrictions

7. Those reading should remind themselves of statutory reporting restrictions.

The Crown's case.

8. The convictions related to offending between 1977 and 1984. Four complainants were FB TS SA and SE.

9. Counts 3-6. FB, the Crown's principal witness, met the applicant on a 2-week holiday with her family in Torremolinos to which it flew on 12th August 1977 returning on August 26th. She was 15. The applicant said she was pretty and he could get her work. Contact was maintained after return to the UK and he began grooming FB. Once, over the phone, he pretended to be another male and made her repeat sexual words. As asked she went to his office where he made her take off her bra, making derogatory comments about her breasts. He gained her parents' trust so they let him take her out in his car, they thought to meet people who could help with her career. He supplied her with lies to tell her parents about whom she had met. She went out with him about ten times. On some seven he parked, and, erect, told her to masturbate him and showed her how.

10. Count 4 pleaded his digital penetration of her vagina as she sat in the passenger seat. He degraded her by taking her to buy a revealing bra then at the home of a friend telling her to dress in bra and knickers to seduce the friend whilst he watched.

11. Counts 5 and 6 pleaded the first and third of three occasions (the final three of the ten) when he made her perform oral sex on him, having told her how. On the second he told her a photographer in some bushes had caught what she did, wanted to publish, but that he would prevent it. FB thought her life over and said she intended to kill herself. After this the applicant neither contacted nor visited her again. FB came forward after telling her sister and once her parents had died.

12. Count 8 TS. In 1982 he pretended TS, 19, was suitable for a role in a Charles Bronson film and he needed to photograph her in lingerie. He did, in his office, where he tried to persuade her to part her legs for the camera. He engineered a telephone conversation with her in which another person pretended to be Bronson. He grabbed TS's shoulders and tried to kiss her mouth. She struggled, he pushed her onto a sofa and lay atop her trying to kiss her, touching her legs and upper body during the struggle. She escaped by kicking him between the legs.

13. Counts 9 and 10. SA in 1982-3 was 16 or 17 when she met the applicant who said he could help in her career. As arranged, she went to his office. He locked the door behind her and told her to take off her frock so he could see her figure. Reluctant, she did. He said he was turned on by her tights and began to grope her. As SA was putting back on her frock his wife telephoned, he pulled out his erect penis and masturbated. When the call was over he forced his penis part into SA's mouth and ejaculated over her face and shoulder. He invited her to dinner with him and his wife and someone, he said, would get her into a Bond film. He said he wanted her

to masturbate him under the table as he sat next to his wife. SA left his office and despite calls about the dinner never met him again.

14. Count 11. SE in 1984 was 18 and auditioning for a dancing job at Xenon night club when the applicant said he could get her a screen test for the new Bond film. He claimed she could talk to the producer on the phone at the nightclub. Whoever she spoke to - certainly not the producer - said she could have the part on condition she establish whether the applicant were circumcised. The applicant then took SE into the gentleman's lavatory, locked the cubicle door, put her hand on his penis and fondled her breasts whilst forcing her to masturbate him. He ejaculated and SE escaped the venue. As she was leaving he said no one would believe her, clearly conveying she was not to tell anyone.

15. On 6th December 2012 the applicant, of previous good character, was arrested. In interview and in evidence he denied non-consensual sexual activity with anyone. He accepted numerous extra-marital affairs. It was common ground that at his offices he routinely met young women for advice or career advancement. He said he had no independent recollection of the complainants and did not recognise any scenario set out. He did not accept that he met FB or her family on holiday or any relationship with her, professional or otherwise. Given the passage of time, he could not rule out having met the women and could have held meetings at Xenon.

16. Grounds pursued, after abandonment of a number, are:

[1] There were misdirections or inadequate directions on

(a) The removal of consent/belief in consent

(b) The demeanour of the complainant and its relevance

[2] Bad character and written material handed to the jury for retirement.

[3] Failure to ensure the defence case was given equal and fair consideration during the summing up.

[4] Propensity. There was improper use of voracious 'sexual appetite' as evidence from which a jury could conclude a propensity to commit acts of indecent assault, and failure to give appropriate warning regarding morality / immorality.

[5] Improper withdrawal of issue of fact: collusion / independence of complainants.

[6] Inadequate direction as to the effect of delay on the defendant's ability to counter the allegations

Consent

17. The applicant's defence excluded casual sex with women he did not know: he said it never happened in any circumstances anywhere. His case was that not only were the complainants lying but that nothing remotely sexual occurred or could have done.

18. The argument advanced is that albeit the defence was that no pleaded encounter occurred, the factual hinterland coupled with the passage of time required the judge to direct the jury on the possibility that the applicant might have believed a complainant was consenting. The issue could not arise in respect of FB whose youth precluded it.

19. The judge in an unimpugned direction said:

> *"In respect of each charge of indecent assault, the prosecution must make you sure of the following: (a) the defendant intentionally assaulted the named complainant; (b) the touching was indecent; (c) the complainant did not consent to the indecent assault. Consent obtained through compulsion is not true consent. In respect of counts 1 and 3 to 6, so long as you are sure that the assault took place when she was aged under 16, she cannot in law consent to what it is alleged was done to her. (d) The defendant did not believe that the complainant consented to the assault. The defendant does not accept that any of the assaults took place, and he has said that he has never done the acts he is accused of with anyone outside of an established, consensual relationship. It is not suggested by the defendant that any of the acts alleged did not amount to indecent assault, or that any of the complainants were consenting to what took place, or that the defendant believed that they were consenting to what took place. The decision for you to make in relation to the charge you are considering is: are you sure that it happened as the complainant alleges it happens? If yes, then you will find him guilty of that charge. If you are not sure, you will acquit".*

Discussion and conclusion.

20. The difficulty which the applicant cannot overcome begins with the complainants' evidence that they did not consent to what had happened or behave in a fashion prompting him to believe that they did.

21. A judge should only leave to a jury a possible conclusion, that is an alternative approach not advanced by either side, on a proper evidential basis: *Bashir (1983) 77 Cr. App. R. 60, Von Starck [2000] WLR 1270, Elliott (Denrick) [2000] Crim.L.R. 51 and Coutts [2007] 1 Cr. App. R. 6.* Here the evidence, undented in cross-examination, was of compulsion applied to extract sexual gratification.

22. TS told the jury that as he grabbed and tried to kiss her she struggled. He persisted while she continued to struggle. It follows that on the evidence he knew immediately he began his assault that she did not consent, and that when he persisted she did not consent. She escaped - an illuminating use of word - by kicking him between the legs.

23. SA struggled against his forcing with limited success his erect penis into her mouth. By "struggle" she meant physical action.

24. He pushed SE into the gentleman's lavatory, locked her with him in a cubicle and forced her to masturbate him before she too escaped. His parting words were delivered as a threat to secure her silence. It is difficult to see why, had he a belief in her consent, he found it necessary to threaten her.

25. These three complainants spoke uncompromisingly of coercion and of their unmistakable indication, at the time, of resistance. The judge was not required to leave to the jury consent or belief in consent. It came nowhere near arising on these facts. There was no evidence on which the jury could reasonably have concluded that any one of the complainants might have consented or that the applicant might have believed that she had.

26. We reject this ground.

Demeanour.

27. The complaint is that although demeanour at the time of the alleged offence must be kept distinct from demeanour much later once an individual knows she is being observed, the summing up emphasized and repeated the distress of complainants years afterwards. The Crown called a number of witnesses who were not complainants but whose evidence was conveniently termed bad character. Each gave an account of sexual

indignity endured or witnessed. The jury heard from a total of some 40 women. The applicant's legal advisers made a tactical decision that each should give evidence so as to test exaggeration of among other things their accounts of the demeanour of the complainants.

28. The judge directed the jury:

> *"A word of warning on stereotyping the reactions of complainants. Experience in the courts has shown that there are many different ways in which a woman will react if they have been sexually assaulted. Some will challenge the perpetrator or physically attack him. Some will shout and scream. Others will keep quiet through fear and embarrassment. Submission is not uncommon and does not mean that the complainant is not indecently assaulted. That they did not shout and scream or confront their attacker may be a sign that nothing happened. It may equally be their way of dealing with the situation. Some will want to tell someone about it straight away. Others, through embarrassment or through fear, or because they do not want to tell a parent or a partner, or because they think they are in some way to blame, will not report it for many years, or at all. That one complainant reports it and the other does not is not an accurate guide as to whether the complaint is or is not a truthful one. You must look at the evidence and the way each complainant gave her evidence in deciding whether they have given you a truthful account, and place any preconceived ideas about how you think they should react to one side. Similarly, you may think that if the complaint was true, the complainant would have shown distress to you in court when recounting the effects. Again, experience shows that distress shown in recounting their evidence may not be a reliable indicator as to whether the complaint is genuine. That is particularly so when so many years have passed since the events themselves. Some witnesses will hold their emotions in. Others will let them out. In doing so, those emotions may be genuine or they may be contrived".*

29. The judge is criticised first for emphasising demeanour and second, for, having taken that decision, failing to direct the jury that distress is not evidence independent of the individual and that there is sometimes a real risk of other causes or that it is feigned.

Discussion and conclusion.

30. This criticism is answered by the summing up where at page 63 the judge had earlier said:

> *"Similarly, you may think that if the complaint was true, the complainant would have shown distress to you in court when recounting the effect. Again, experience shows that distress shown in recounting their evidence may not be a reliable indicator as to whether the complaint is genuine. That is particularly so when so many years have passed since the events themselves."*

31. That is an end to this ground.

Bad character evidence

32. The Crown led evidence from a large number of conveniently described bad character witnesses. The jury retired with a document "Schedule of Relevance" which listed five of them, and, in columns, the nature of their evidence and the counts it might support.

33. The judge said:

> *"You have heard evidence from these witnesses because the prosecution suggest that the way that the defendant behaved towards these witnesses tends to support the allegations made by the witnesses whose evidence is reflected in a charge on the indictment, in the following ways in respect of all five witnesses: (a) he abused his position by promising them a work opportunity in films; (b) the sexual conduct alleged took place in his office; (c) telephone calls made to the witnesses. The defence say that he did not offer an opportunity in films in exchange for sexual acts, whether or not they consented, and that except for a very limited number of times, with some women with whom he was already in a sexual relationship, no sexual activity took place in his offices. You must look*

at the evidence of each of those five witnesses separately and decide:

(a) Are you sure that the evidence given by the witness you are considering is true and accurate? If you are not sure, then you will not consider the evidence of that witness any further."

(b) Are you sure that the evidence given by the witness who you are considering does in fact establish what the prosecution contends for? If you are not sure of that, then you will not consider the evidence of that witness any further.

(c) To what extent does the evidence given by the witness you are considering assist in determining the defendant's guilt of any of the charges on the indictment? Please refer to the schedule of relevance as to what counts each issue may be relevant to. We will look at that schedule in a moment. Just to complete this direction with paragraph 3.4, you must not convict the defendant of any count on the indictment wholly or mainly on the basis of the evidence of these witnesses. The principal evidence remains that of the complainant, who is the subject matter of the charge which you are considering. When doing so, you may make use of the evidence of these other witnesses, once you have gone through the steps set out in paragraph 3.3(a) to (c) above. Pausing there again, those directions, (a), (b) and (c) in paragraph 3.3, is a three-stage process. You move from one to the other to the next. If at any stage you come against the barriers set out there, then you don't bother to go any further. But if you are going to make use of the evidence in the way suggested, you have to get through all three of those subparagraphs. Following those legal directions, what the law is saying is no more than common sense, you may think. If a number of witnesses give evidence saying that they experienced a similar approach to them by the same defendant, then that may assist you in deciding whether the allegations made by the complainants whose evidence is reflected in the charges on the indictment is truthful. The greater the similarities and the more often they happen, the more

the evidence may be capable of assisting you. If you go to the back of this typed bundle, you will find that schedule which is referred to in this direction. I hope you all have it at the back of that bundle. This sets out, I hope in a simple and easy form, which witness may be relevant to which complaints on the indictment. You have in the left-hand column the names of the five witnesses to which this direction relates, you have the nature of the evidence, and that reflects those three categories of evidence that I set out in the direction, then you have the counts which they may support, and finally a reference back to the direction in the body of this same document and which I have read out to you. To take some examples to explain how it works, B, whose name you see as the name of the first witness in the schedule, her evidence that whilst he was exposing his penis to her, he told her that his Italian friend, the producer or director, would contact her, may be relevant to your consideration of -- and now you go to the "may support" column -- the evidence of JA on count 1, that if she wanted to meet anyone, who would it be; to F on counts 3 to 6, who was being offered the opportunity to become the UK version of Jody Foster; to T on count 8, to be leading lady in a Charles Bronson film; to SA on counts 9 and 10, that he would get her into the next Bond film and to S on count 11, that he would get her a screen test for Octopussy. Then you can consider whether you find support for the allegations made by those complainants by looking at the evidence of MB, whose name is the next one to appear on the left-hand side: MB, that he would get her the part of Fallon in Dynasty; to LB, that he could arrange for her to meet David Bowie, the next name down; to LA, that she had something quite special for a career in films and that they were about to pick a female lead in Labyrinth to play opposite David Bowie; and to R, that he could arrange some auditions, and there was mention of a film with Rutger Hauer. The prosecution suggest that putting that all together, having considered the evidence of the complainant on the count you are considering, this establishes that the defendant did act in the way they allege towards the particular complainant whose case you are

> *considering. Then, staying with the schedule and staying with B, but the second entry under her name, there are, it is suggested, similarities in the way that the sexual act took place in his office, which may go to support the evidence of KA on count 2, T on count 8 and SA on counts 9 and 10. The same support for those counts may come from the evidence of MB, looking at the second entry for her, LB and R. Again, staying with B, but this time the third entry under her name, there are, it is suggested, similarities in the way that the defendant used the telephone to make calls, pretending to be someone else, which may assist you in respect of counts 3 to 6 and F, on count 8 and T and count 11 and S. The same support for those counts might come from the evidence of MB, look at the third entry under her name, LB, third entry under her name and R, third entry under her name. So that's how the schedule works in order to direct you as to which of the charges on the indictment their evidence may be relevant to".*

34. The applicant complains that the length and close reasoning of this direction, over three pages, was bound to have persuaded the jury that the judge was enthusiastic about the Crown's case and given it a judicial imprimatur.

Discussion and conclusion.

35. After an exemplary distillation of the legal approach to this type of evidence and the use to which the jury could put it, the judge explained how the jury should use the schedule:

36. *"This sets out...in a simple and easy form, which witness may be relevant to which complaints. ...in the left-hand column the names of the five witnesses..., the nature of the evidence….[in] those three categories of evidence...in the direction, ...the counts which they may support, and finally a reference back to the direction .."*

37. All the judge did was reduce into an easily followed document the evidence upon which the Crown relied, where it sat and what it was capable of achieving. The document does not approbate the case for the Crown.

38. We reject this argument.

Propensity

39. The judge directed the jury:

> *" "Propensity". This direction is relevant to all the charges on the indictment. The second way in which the prosecution allege that the evidence of one count can support the evidence on others of the same type is as follows: if the evidence on a particular charge which you are considering makes you sure that the defendant is guilty of that charge, then that may be relevant to an important matter in issue; that is whether he indecently assaulted the complainant who is the subject of another charge on the indictment. The prosecution say that being sure he is guilty of one charge establishes a propensity or tendency to commit that type of offence. If you are sure that he is guilty of a particular charge on the indictment, you should approach this as follows:"*
>
> *(a) Does that charge establish a propensity/tendency to commit the offence of the same type in respect of the charge you are considering? If your answer is no, then you do not consider it further in respect of that charge. If your answer is yes, then go on to consider (b).*
>
> *(b) To what extent, if at all, does the propensity assist you in deciding whether the defendant is guilty of the charge which you are considering? You must bear in mind that if you have found the defendant had a propensity to commit an offence, that in itself does not prove that the defendant committed it. It would be wrong to jump to that conclusion. It is only a part of the evidence and its importance should not be exaggerated. However, it is something which you can take into account in considering the evidence on that charge. Pausing there again, firstly you must be sure that the defendant is guilty of a charge on the indictment. If you are sure of that, then you can go on to ask yourselves whether it establishes a propensity/tendency to commit that type of offence, bearing in mind the guidance that I have given you in paragraph 5.8 and 5.9 of this direction. Finally on this topic, I come back to the complaint of K. Just turn back, please, to paragraph*

> *4.1 to remind yourself where you last saw her name. You will remember that at paragraph 4.4, it directs you to go on to consider paragraph [5.10] . ..and I will read it again, if you will follow it, please. In addition, the prosecution say that the evidence of K may show a propensity to commit indecent assaults on a person under 16, as alleged in counts 1 and 3 to 6. Before you may use the evidence in this way, you must be sure that the defendant is guilty of that charge, and then ask yourselves the two questions set out in paragraphs 5.8 and 5.9 above. So you are asking yourselves those same questions in relation to K, although of course in her case she is not a charge on the indictment, and I have explained earlier why it is that she is not a charge on the indictment. So when you are dealing with the issue as to how the evidence of witnesses who are not reflected in charges on the indictment may be relevant to your verdict, and how the evidence on one charge on the indictment relates to another, please come back to these written directions and follow them through. They are, I think you will find, quite logical, and if you take it slowly, you will see how it works and you will then be able to assess the relevance of this other evidence, if any, to the decisions you have to make about the charges that are on the indictment".*

40. The criticism, as we understand it, is that this case attracted unprecedented publicity. Social media was awash with pictures of the applicant, derogatory representations of him were painted on walls nationwide and photographers and journalists were hard at work throughout the trial. His 2005 autobiography in which he had been candid about his sexual appetites was in the public domain. Ms Forshaw submitted that young women and their chosen ways of advancement also featured before the jury which heard allegations certain to prompt moral repugnance. Consequently it was essential the jury be warned that evidence of sexual appetite or of affairs did not make the applicant a likely assailant. The absence of such was a misdirection.

Discussion and conclusion.

41. There was no misdirection. In the context of this case, that a heightened sexual appetite did not without more equate to guilt as an assailant was so

obvious as to preclude the need to insult the jury's intelligence by pointing it out.

42. We reject this ground.

Improper withdrawal of collusion

43. The complaint is that after the applicant's 2012 arrest women came forward to complain against the backdrop of a national mood of repugnance following the Jimmy Savile scandal, in which compensation claims featured. The submission is that the jury was certain to realise all this and that the applicant had written a book which sold surprisingly well. It rehearsed his taste for dissimulation over the telephone. It mentioned the size of his penis which also featured in the narrative to this case. Consequently it was said to be misleading and to his detriment to leave the jury under the impression that what the women could say was truly independent one from the other.

44. The judge directed:

> *"You must reach separate verdicts in respect of each charge on the indictment. The defendant denies any sexual impropriety towards any of the complainants. However, the prosecution suggest that there are two ways in which this evidence can be used, and the first of those two ways I have headed as "More than coincidence". The prosecution has pointed out that there are similarities in the defendant's behaviour as described by the complainants named on the indictment. The prosecution suggest to you that it is no coincidence. They point to the abuse of his position to offer them work opportunities in films and elsewhere, the use of his office to perform sexual acts, and telephone calls made by him or arranged by him to groom them to take part in sexual acts.*
>
> *The schedule below sets out how that evidence may relate to the charges on the indictment. Because you are dealing with fewer charges and it is simpler in this context, I have been able to put the schedule here as part of the direction, rather than adding it on to the end. But really the schedule works in an identical way to that which we have already gone through, and you can see I have set out those three categories: work*

opportunities, use of office, telephone call, and I have put the relevant counts on the indictment next to it, as to what might relate to what. You are perfectly entitled to conclude that the fact that the complainants who are the subject matter of the charges set out in the schedule have made similar complaints about the defendant's behaviour makes it more likely that each of these complaints is true. In that sense, the evidence of each complainant is capable of lending support to the others. Before doing so, you must consider the following: (a) firstly, the prosecution point only has force if the complaints made are truly independent of one another. No one suggests that there was any collusion between the witnesses, nor that anything was mentioned in the press about the details of any complaint which could have led to collusion. You can therefore accept that each complaint is independent of the other. So (a) is a tick passed. You then go on to: (b) secondly, you then need to assess the value of the evidence. The closer the similarities between the complaints, the less likely it is that they can be explained away as coincidence. You will want to look at the type of assaults alleged and the circumstances in which they took place. It is for you to decide the degree to which the evidence of one complainant assists you to assess the evidence of the others. It may lend powerful support or it may not. You must decide.Pausing there again, this direction looks at the charges on the indictment and how they relate to each other. Again, it follows, what you may regard as common sense, that subject to the safeguards set out in this direction, the fact that the complainants have made similar complaints about the defendant's behaviour makes it more likely that each of those complaints is true. So, with that in mind, you should look at each complaint and see what support, if any, it may give to the allegation made by another complainant. The matters which you can consider, again, are set out in that small schedule that I have put by paragraph 5.3".

Discussion and conclusion.

45. Collusion was never suggested. The complaint here is not what the judge said about the complainants having been independent of one another but the absence of a direction about contamination – that they might have tailored their evidence in light of what they read in his autobiography or in the media. The complaint is in truth about tactical decisions by the applicant's legal team. Experienced leading counsel mentioned before the jury the autobiography but did not explore passages from it. It thus lies unattractively in the mouth of the applicant at this stage to complain of a direction he labels deficient but which was inevitable given the way his case was advanced. The Judge was entitled to give the direction he did, reflecting the evidence.

46. We reject this ground.

Delay

47. The impugned direction read:

> *"There is no bar on the prosecution of criminal cases which have taken place many years ago. However, the passage of time is bound to have an effect on the prosecution witnesses, the defendant and the defence witnesses. It is bound to affect the memory of the witnesses called by either side. It may make them unsure of certain details of the case, or it may cause a witness to be sure of some matter which did not occur. Material that existed and witnesses that may have been available at or near the time of the alleged offences may no longer be attainable or available, and some of the people mentioned during the evidence have died. You must make due allowance for that when considering how far the defendant has been able to answer the allegations he faces. Similarly, you must make allowances for any difficulty the defendant may have had remembering what took place. Because the law requires that the names and details of a complainant are not publicised, the defence may have lost an opportunity to call witnesses who may otherwise have come forward, having recognised a name in the press. It may have acted as an impediment to the defence, and you must have that in mind when considering the difficulties the defendant may face in putting forward his defence".*

Discussion and conclusion.

48. The criticism is that the judge was wrong to interweave into the standard direction on delay content which was to the advantage of the Crown. We are entirely unpersuaded. At no stage were additions or amendments to this direction suggested. In any event it does no more than tailor a standard direction to the facts of this case and to how an experienced legal team had used its skill to defend the allegations.

49. There is nothing in this ground.

Failure fairly and equally to sum up the applicant's case.

50. Ms Forshaw, sensibly, advanced this ground briskly and by reference to highlights. Her ground as drafted isolated a handful of sections of the summing up.

51. She chose as her best example that the applicant's evidence that he would not perform sexual acts in his Bond Street office by reason of visibility and geography went unaddressed in the summing up. Invited more than once to take us to what the judge should have said but omitted, Ms Forshaw submitted that the judge had "flattened" the point the defence sought to make.

Discussion and conclusion.

52. In the context of a strong prosecution case it was no part of the Judge's function to rebalance that by making every single defence point. There is nothing in the submission and we reject this ground.

Fresh evidence.

53. The applicant seeks leave pursuant to section 23 Criminal Appeal Act 1968 to adduce evidence secured post-verdict to establish that he could not

54. (a) have met FB in Torremolinos in August 1977 and

(b) have abused FB at the University car park in Motspur Park Road.

55. S23 reads where relevant:

"23 (1) .....the Court of Appeal may, if they think it necessary or expedient in the interests of justice .....

(c) receive any evidence which was not adduced in the proceedings from which the appeal lies.

(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—

(b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;……

56. Ms Forshaw concentrated on the contribution from Christopher Raphael, whose statement dated 25th September 2015 goes to the holiday in Torremolinos. Sara Ross, Tony Cartwright, and Andrea Robinson had also made statements directed to that holiday, but she sensibly conceded that even taken together the most that could be achieved at its highest for the applicant was limited and not dispositive.

57. There was no realistic possibility on the evidence that the holiday in Torremolinos was in any year other than 1977. The date in FB's father's passport and entries in her 1977 diary supported the Crown's case. The issue was credibility: if she first met the applicant in Torremolinos it was summer 1977 and no other year.

58. On the evidence FB went to Torremolinos on 12th August 1977 as her father's passport revealed and returned to England on 26th August 1977.

59. FB said that those two weeks included Elvis Presley's death (16th August) and her meeting the applicant.

60. His name and office address were recorded in FB's address book. FB wrote to him accusing him of abusing her. Found following his arrest was one copy of that letter in his bedroom drawer and another in his second wife's safe. FB's sister told the jury she could recall being told by FB and their parents that they had met the applicant in Torremolinos, that after the 1977 summer holiday the applicant came to their home (which the applicant denied), and that she went with FB to his office.

61. Christopher Raphael (as did the other witnesses) explains that for part of the period 12th-26th August 1977 the applicant was not in Torremolinos but in his London office. Ms Robinson's rabbit had been tended by the Cliffords for the month of August. Candidates for feeding the animal included Mrs and Miss Clifford.

62. FB had not specified when the applicant there appeared, merely that at some stage he did. Thus what the witnesses could say is not determinative

of the issue. Ms Forshaw accepted that at the very least 20th-25th August 1977 were dates when no evidence save the applicant's own supported his absence from the resort, in other words those dates were available for a meeting to occur as FB described.

63. This was not FB's word against his. Evidence corroborated her account. Even on the fresh evidence served there was still ample time for her to have met the applicant.

64. Anthony Dawson's evidence goes to counts 5 and 6. He managed the University grounds at Motspur Park, where the gates were locked by a groundsman daily at about 1730-1800. It would have been impossible for any car to gain entry thereafter or remain within the grounds absent the knowledge of a groundsman, which no-one suggested was the case. The object in seeking to rely on him is to undermine the evidence of FB that after return from Torremolinos the applicant's sexual activities with her escalated gradually and that in the final three of ten trips in his car, in wintertime, in that car park he assaulted her as we earlier described.

65. She was a schoolgirl. The final three instances were after her October half term and thus, allowing time for the escalation, during December after school. Darkness would be falling by about 1630 at a conservative estimate, allowing ample time for the car to be in the car park when darkness had fallen and out by about 1800 when the gates were closed.

66. If this were not enough to undermine the applicant's argument, across the road was the BBC car park, never closed. FB on the map exhibited marked the University car park as the locus of the assault but it would be a challenge, given the passage of time and her youth, to exclude the simple proposition that she got the car parks the wrong way round.

67. The evidence of Mr Raphael and others, and of Mr Dawson, even taken together, does not imperil the conviction.

68. Finally under this heading Ms Forshaw argued that whereas in evidence FB had firmly ruled out any interest in seeking compensation, within three weeks of sentence a claim for £800.000 in her name was submitted. It had been the applicant's case that after the Savile and the Jonathan King cases false allegations were made against him, probably for financial gain.

69. The submission is that had the jury known the speed with which her attitude appeared to change, its verdict might have been affected.

70. We can take this shortly. Post conviction, a firm of solicitors approached FB and advised her to issue a claim. She did. Her change of mind was triggered by the advice of professionals and the point is without substance.

71. We reject all applications to adduce fresh evidence.

Final comments.

72. This strong case was summed up by an experienced trial judge. The applicant was represented by highly experienced Queen's Counsel and solicitors. *R. v. Hunter & others* [2015] EWCA Crim 631; [2015] 1 WLR 5367 [98]:

> a) *".....if defence advocates do not take a point [on the character directions] at trial and/or if they agree with the judge's proposed directions which are then given, these are good indications that nothing was amiss. The trial was considered fair by those who were present and understood the dynamics. In those cases this court should be slow to grant extension of time and leave to appeal."*

73. Directions were provided in advance and amended. Issues taken with them were few and most of the complaints now made not voiced. The balanced and fair summing up dealt with issues thematically. The Schedule of Relevance is an example of the trouble to which the judge went so as to help the jury. Unsurprisingly neither counsel was opposed to it being given to the jury. No other criticisms are made of the conduct of the trial so, as we clarified with Ms Forshaw QC in dialogue, the complaint can only be that a trial otherwise fair was rendered unfair by the summing up.

74. Nothing we heard came anywhere near imperilling the safety of this conviction. We grant an extension of time and refuse leave to appeal.