IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 201802431/C5

Neutral Citation Number: [2021] EWCA Crim 1423

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 22 September 2021

LORD JUSTICE SINGH

MR JUSTICE HOLGATE

MR JUSTICE JULIAN KNOWLES

REGINA

V

DARRYL WHITE

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MS J SMART appeared on behalf of the Appellant.

MS C PATEL appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE SINGH:

Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where 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 to be the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. This is an appeal against conviction brought with the permission of the full court, granted after a hearing on 22 June 2021. That permission was granted to bring an appeal, out of time, in the light of developments which had taken place after the refusal of permission by the single judge on the papers. In granting permission the Court concluded that the statutory criteria for the admission of fresh evidence in section 23 of the Criminal Appeal Act 1968 were satisfied.

3. On 1 June 2018, in the Crown Court at Snaresbrook, the appellant (then aged 35) was convicted of three offences of sexual activity with a child contrary to section 9(1) of the Sexual Offences Act 2003. On 8 June 2018 he was sentenced by Ms Recorder Weekes QC to a total sentence of 6 years' imprisonment, those sentences being concurrent on each count. Appropriate other orders were made which we need not go into now.

Factual Background

4. The case concerned allegations of sexual offending against the complainant ("LT"), who was born in April 1994. In two Achieving Best Evidence (ABE) interviews, dated 19 May 2016, the complainant stated that in August 2008 she lived in Harold Wood with her father, JT. At the time her father was in a relationship with the appellant's mother. She recalled that the appellant was on leave from the Army and came home to visit his mother. He stayed in the spare room in the property.

5. The complainant said that on 14 August 2008 she went to a Nando's restaurant in Romford, Essex, to celebrate a friend's birthday. The appellant subsequently picked her up from the restaurant and took her home. They returned to their respective bedrooms but soon started sending text messages to each other. She said that the appellant told her that she was "beautiful", asked her questions about her sex life and asked whether she was using any contraception. Once he was aware that the other family members had gone to bed the complainant said the appellant sent a further message inviting her to his bedroom. She went to that bedroom, got into bed with him and cuddled him. The

appellant subsequently took off her clothes, performed oral sex on her and then had vaginal sexual intercourse with her until he ejaculated. At the time the complainant was 14 years old and the appellant was 25 years old.

6. The complainant said that over the course of the next fortnight they continued to message each other and engaged in sexual activity, either oral sex or vaginal sexual intercourse on numerous occasions (this was the subject of count 2). She said that when the appellant left the family home, he sent her a message stating that they could not be together any more. He also stated that if anyone found out about what had happened he would lose his job in the Army and go to prison. The complainant said that she was very upset by this and struggled to cope. She thought that she was in love with the appellant and became concerned that she might be pregnant. She started to have suicidal thoughts and subsequently took an overdose of her prescribed migraine tablets. She was hospitalised and on her release she disclosed to her half-brother, TB, that she had had a sexual relationship with the appellant.

7. The complainant stated that the contact between them decreased over the course of the following months and during this time she discovered that the appellant had a new girlfriend. During the summer of 2009 the appellant started to text her again and told her that he still loved her. She said that there was an occasion when he took his girlfriend back to her university in Sheffield and returned home to visit the family. He subsequently stayed at the family home for couple of days. During that time the complainant said that they had sexual intercourse. She continued to have sexual intercourse with him on around 10 occasions when he returned home between 2009 and March 2010. This was the subject of count 3.

8. At the trial the prosecution case was that the appellant had engaged in sexual activity with the complainant as alleged. In order to prove the case against him the prosecution relied on the following pieces of evidence. First, evidence from the complainant herself. Secondly, evidence from the officer in the case in relation to the fact that the records from the appellant's insurance company confirmed that his car had been stolen and that they did not reimburse hire costs in such cases. It was not possible to provide a date in relation to when the appellant had first taken possession of a hire car or for how long he had been in possession of it. A courtesy car would have been available to the appellant in accordance with his insurance policy for a period of five days. Because of the passage of time the company did not have any additional documentary evidence. Thirdly, there was evidence in relation to the complainant's disclosure when she was aged 14, to her friend, CR, and her half-brother TB that she had been engaging in sexual activity with the appellant. Fourthly, there was evidence from the complainant's partner, AJ, in relation to her disclosure to him that she had engaged in sexual activity with the appellant between the ages of 14 and 16. Fifthly, there was the appellant's failure to answer questions in his police interview and to provide an alibi notice prior to the trial.

9. The defence case was one of denial. The appellant gave evidence in which he stated that he had a good relationship with the complainant, her mother and her half-brother TB. He worked in the Army as a Royal Mechanical Electrical Engineer and accepted he had been on leave from the beginning of June 2008 until the end of August 2008. During 2010 he had spent time in Great Britain but had also spent various periods of time on deployment. He left the Army in 2011 and had taken up employment in private contracting. Despite the passage of time he maintained that he had a clear recollection of the events that occurred at the time of the alleged incidents. He said that in mid-2008 he was in a relationship with a woman called Joanne Kilroy. He had driven to Leeds to stay at his brother's house and his car was stolen in June 2008. He said that thereafter he did not have access to a car and did not travel to Romford to see his mother during August 2008. He denied that he had any sexual contact with the complainant when she was either 14 or 15 years old. He said that save for birthday messages he had not sent any messages to the complainant. He did however accept that he had purchased a new vehicle in 2010 and travelled to Romford in May of that year when the complainant was by now 16 years old. He stayed at the family home for around two days and accepted that they had sex on two occasions in May 2010 but this was when she was 16 years old.

10. He accepted that when his mother confronted him about having sexual intercourse with the complainant he had lied and denied that anything had happened. He maintained that he only had sexual intercourse with the complainant once she was 16. He did not know why she had made these allegations against him; he could only assume that she had a crush on him and this was some sort of fantasy. He had subsequently seen the complainant at family gatherings and did not think that she had been uncomfortable around him. He accepted that he had contributed to the deposit for JT's house and that without it JT would not have been able to obtain a mortgage. He accepted that he had failed to answer questions in his police interview but stated that he was acting on advice. He also accepted that he had failed to given an alibi notice prior to the trial but stated that he had not been thinking straight and had been unwilling to involve Ms Kilroy due to the fact that their breakup had been acrimonious. He denied that he had asked Ms Kilroy to provide a false alibi for him. The appellant also relied upon the following pieces of evidence. First, evidence of his previous good character. Secondly, character evidence from Anthony Cairns, a former colleague and friend, and various other people. Thirdly, there was evidence from his former girlfriend, Ms Kilroy, in relation to the fact that she was relatively confident that the appellant had remained in Yorkshire during August 2008 and that she could not recall him making a trip to visit his family. She recalled that the appellant's car was broken into and as a result he sometimes used his brother's car or took public transport to pick her up. Fourthly, there was evidence from the complainant's father JT in relation to the family background, the fact that the appellant stayed at the home address for no more than two or three days at a time and that he had not stayed for 10 - 12 consecutive days in August 2008. He also denied that he was supporting the appellant because of their financial and business connections. At the trial therefore the issue for the jury was the credibility of the complainant and whether the complainant had engaged in sexual activity with the appellant when she was aged 14 or 15.

The Judge's Directions to the Jury

11. In accordance with good current practice the judge provided the jury with her legal directions in writing. Of particular relevance for present purposes are two directions, first, at pages 12 - 13 there was a direction headed "Failure to provide an alibi notice" - this related essentially to the point that the defendant had provided an alibi notice late in the day. The other direction to which we must now refer was at page 14 and was headed "Good character of the defendant". This contained, in standard form, both limbs of the good character direction. No issue is taken with the written direction on this topic. When the judge came to sum up the case to the jury however, as is common ground, she did not read out that written direction. At page 40A-B of the transcript she said:

> "It is probably helpful, members of the jury, that we read the next direction, 'The good character of the defendant.' You have heard that the defendant has no previous convictions of any kind. Take into account also the character references called and read on his behalf. I am going to remind you of them now."

12. That is what she then proceeded to do by reference to a summary of the evidence before the jury.

13. As is apparent from the passage which begins at page 41F of the transcript, another matter arose which necessitated the jury's departure from the court. This was then discussed with counsel. The court then adjourned for lunch from approximately 1.05 pm until 2.06. The jury then came back into the court and the judge continued with her summing-up. She began:

> "You will remember I said there were three character witnesses that were read."

14. She then dealt with an unrelated matter which was the consequence of the discussion that she had had with counsel and continued to summarise the evidence the jury had heard about the defendant's other character witnesses. Unfortunately, no one, including counsel either for the prosecution or the defence, at the time noticed that the judge had failed to give orally the full written direction which had been provided to the jury on the subject of good character, this is to say the least regrettable.

Relevant Principles

15. The relevant principles as to the role of this Court in appeals of this kind was not, as we understood it, in dispute before us. They are helpfully summarised in Blackstone's Criminal Practice 2021 at paragraph D26.19 where well-known authorities both from the House of Lords and from this Court are summarised, going back to the case of Stafford v

Director of Public Prosecutions [1974] AC 878, where Lord Kilbrandon summarised the test to be applied by each member of the appellate court as:

> "Have I a reasonable doubt, or perhaps even a lurking doubt, that this conviction may be unsafe or unsatisfactory?"

16. As the summary in Blackstone's goes on to make clear the test is one for this Court itself and it is not what is sometimes called the "jury impact" test. As was put by Hughes LJ in R v Ahmed [2010] EWCA Crim 2899:

> "The responsibility for deciding whether fresh material renders a conviction unsafe is laid inescapably on this court, which must make up its own mind. Of course it must consider the nature of the issue before the jury and such information as it can gather as to the reasoning process through which the jury will have been passing. It is likely to ask itself by way of check what impact the fresh material might have had on the jury."

17. Later in the same passage in Blackstone's there is a citation from the decision of this Court in R v Park [2020] EWCA Crim 589, where the relevant authorities were reviewed and this Court said at paragraph 178:

> "... the ultimate question is whether the ... fresh evidence relied on in this appeal causes us to doubt the safety of the conviction."

18. Before leaving this matter we would observe that in the decision of the House of Lords in R v Pendleton [2001] UKHL 66; [2002] 1 Cr App R 34, in the main speech which was given by Lord Bingham of Cornhill at paragraphs 17 - 19, Lord Bingham stressed that the test, as we have said, is one for this Court itself to apply, having considered the fresh evidence. The House of Lords re-affirmed what had been said previously in Stafford. Nevertheless it is important to appreciate that at paragraph 19 Lord Bingham said this:

> "I am not persuaded that the House laid down any incorrect principle in Stafford, so long as the Court of Appeal bears very clearly in mind that the question for its consideration is whether the conviction is safe and not whether the accused is guilty."

19. On the separate topic of good character the leading authority in this Court is now R v Hunter & Ors [2015] EWCA Crim 631; [2015] 1 WLR 5367 (see in particular the judgment of the Court which was a five-member Court presided over by the Lord Chief Justice but in which the judgment was handed down by the then Vice President of the Criminal Division (Hallett LJ)) at paragraphs 61 and following. On the purpose of a summing-up, at paragraph 61 there was cited with approval a statement in the 2010 edition of the Bench Book which included the following:

> "The task of the trial judge in summing up is to present the law and a summary of the evidence in such a way as best to enable the jury to reach a just conclusion. That can be achieved only if the trial judge communicates effectively to the jury the issues which they need to resolve and their legitimate approach to the evidence relevant to those issues."

20. Furthermore, in relation to the impact of a failure to give any or a proper direction on good character on the safety of a conviction, it was said in particular, at paragraph 89 that:

> "The sole statutory test for the Court of Appeal Criminal Division is now one of safety of the conviction. There can be no fixed rule or principle that a failure to give a good character direction or a misdirection is necessarily or usually fatal. It must depend on the facts of individual cases.
> It follows that all the decisions put before us in which convictions were quashed as a result of a misdirection were entirely fact specific. They provide no guidance at all."

Submissions on behalf of the Appellant

21. On behalf of the appellant Ms Smart QC advances in essence two grounds of appeal although ground 2 is further subdivided. Furthermore, Ms Smart submits that it is the combined and cumulative effect of the grounds which is important and which renders these convictions unsafe. Ground 1 is that the judge erred by failing to direct the jury orally as to the law regarding the appellant's good character. It is accepted that she correctly set out the two limb character direction in her written directions. It is noted that after the passage which we have already quoted from the summing-up at page 40A-B the judge went on to summarise the character witnesses who had been called. This part of the summing-up was interrupted by an adjournment for lunch. After the adjournment the judge returned to the topic and first corrected herself on an unrelated issue of the evidence of another Crown witness. She then continued to summarise character references but did not in fact give the good character direction at all.

22. On behalf of the appellant Ms Smart submits that this was a clear irregularity as the jury were never given an oral direction on this crucial matter. It cannot be shown that the jury ever actually returned to the document in retirement and read it. We would also observe that it must of course be borne in mind that each member of the jury would need to have the ability and the willingness to read it.

23. Ground 2.1 is that the appellant can now rely upon photographic evidence which gives him an alibi for count 2, wholly undermines LT's evidence on count 2 and thereby

undermines her evidence also on count 3. Since the trial ST has found family photographs on an SD card which had lain forgotten in a drawer of a bedside table at the address of the appellant's wife. The photographs is timed and dated as being on 14 August 2008 at 14.18 hours. It shows the appellant drinking with family members at a public house in Pudsey, West Yorkshire. Ms Smart submits that had this photograph been available at trial, this would have had a significant impact on the jury's assessment of LT's credibility since she remained adamant over the date which was the day of a friend's birthday and they had gone out to have a meal to celebrate. Ms Smart submits that this photograph would also have lent support to the credibility of the alibi witnesses Joanne Kilroy and JT. She submits that the authenticity of the photograph is supported by witness statements not only from this appellant but also his brother Ryan and the publican, Shaun Thompson. In addition, ST has found a further photograph showing LT with her family at Clacton Pier on the following day, 15 August 2008.

24. At the trial LT had maintained that on that day she had spent the day with the appellant in Romford shopping and eating and then having sex when they got home. That is the subject of ground 2.2: that the photographs would have provided independent support to the alibi evidence of Joanne Kilroy and JT.

25. Ground 2.3 is that the judge would not have directed the jury on the late alibi being false if this photographic evidence had been available at trial. Since the alibi notice had been served late, this allowed the prosecution to contend that Joanne Kilroy was a false alibi witness and the jury were directed on that issue, as we have mentioned, in her summing-up and there was a written direction on this topic.

26. Ground 2.14 is that the jury were left with a misleading impression as to the evidence about a hire car. The prosecution contended that upon the material available at trial the appellant had access to courtesy hire car at the time of counts 2 and 3, thus lending support to LT's account, whereas the new documentation demonstrates that the appellant did not have access to a hire car at the time and the miles driven could not have allowed him in any event to complete a return trip from Bradford Car Rental Depot to LT's home address in Essex.

27. At the trial LT was adamant as to the black Volkswagen Golf she was driven in by the appellant in her ABE interview. This was the vehicle which the defence could prove had in fact been stolen in June 2008 - a point which was checked by the prosecution and found to be correct. In her ABE interview LT had said that the appellant had arrived two days earlier; in other words on/or around 12 August 2008. Her evidence was that he stayed 10 - 12 days after the first sexual incident (which had been on 14 August) and that she had sex with him on every night that he was there. Many hours of trial were spent in attempting to "bottom out" the position as to whether the appellant had had access to a hire car in the period LT alleged he had stayed in Essex. This was an issue which arose during the trial when the appellant stated that he did not have access to a car at the time.

28. Ms Patel, who was counsel for the prosecution at trial and has appeared for the Crown before this Court also, indicated that she had looked into the position as to whether he was given a courtesy car when his car was stolen. The documentation suggested the defendant was supplied a courtesy car by Kwik Fit but that claim could not now be traced.

29. On 29 May 2018 the officer in the case gave evidence about the hire car position. She agreed that the vehicle with the relevant registration number had been stolen on 15 June 2008 and that Kwik Fit had provided a courtesy car. The appellant was then recalled and gave evidence that he did not have a courtesy car. On the following day, 13 May 2018, counsel for the defence (not Ms Smart) addressed the court on the fact that overnight the appellant had made his own enquiries of Allianz that no courtesy car had in fact been provided to him. Later that day counsel for the prosecution received an update from Allianz that Kwik Fit had refused to pay a bill for a courtesy car from Enterprise Rent-A-Car. There was further discussion until counsel for the prosecution recalled the officer in the case to deal with this evidence. The judge described the evidence as "important" in her summing-up where she summarised it at pages 22-23. She reminded the jury that the Crown said that it was important evidence supporting the credibility of LT and LT would not have known that the defendant had access to a hire car, whereas the defendant had maintained that he did not have a hire car at the time.

30. After efforts were made by ST since the trial there is now documentation which, submits Ms Smart, establishes that the appellant was given a hire car by Enterprise but only for five days to 6 - 11 August 2008 and it was therefore not available to him during the period alleged in the indictment. Furthermore, the vehicle was hired from and returned to a firm in Bradford. It is recorded that the vehicle had been driven only just over 254 miles so, submits Ms Smart, it could not have made the return trip to Romford.

31. Ms Smart submits that if this evidence had been available at trial, it would have had a significant impact upon the jury's assessment of LT's evidence on this issue and would have confirmed the appellant's position that he did not have access to a vehicle at the time of counts 1 and 2. For those reasons Ms Smart submits that the convictions in this case are unsafe and should be quashed.

Submissions on behalf of the Respondent

32. On behalf of the Crown Ms Patel submits that the convictions in this case are not rendered unsafe by the fresh evidence and further submits that the matters now raised by the appellant must be considered in their proper context and not in isolation. In relation to ground 1, Ms Patel submits that a full direction on good character was given to the jury albeit that it was in written form. She submits that that was sufficient.

33. In relation to ground 2, Ms Patel makes the following submissions. Concerning count 1, she submits that timing is of importance when considering the photographic evidence now available. The photograph of the appellant at a public house in Yorkshire was timed at 14.18 hours on 14 August 2008. She submits that was many hours before "dinner time", which was the evidence of the complainant as to when she was picked up from Nando's. She submits that this would have given the appellant more than sufficient time to drive from Pudsey to Romford. She further submits that the witness statement from Ryan White cannot be correct when it asserts that a photograph was taken on a night out. This would be inconsistent with the time shown on the photograph. Moreover, in his witness statement Ryan White makes no mention of the appellant having remained at Pudsey throughout August 2008. Further, she submits that the publican Mr Thompson, is silent in relation to the presence of the appellant in Pudsey during 2008 but also goes on to say that he recalls seeing the appellant at the pub although he was in less frequently. This, she submits, supports the contention that the appellant did not spend the whole of August 2008 in Pudsey. It is also telling that there are no subsequent photographs provided by the appellant to suggest that he remained there in August.

34. The respondent does not dispute the documentation submitted from Enterprise that relates to a courtesy car. However, whilst the respondent accepts that the appellant may not have had access to an official courtesy car on 14 August 2008, there is evidence to suggest that the appellant had the availability and use of another car on that date. Joanne Kilroy in her evidence suggested that he may have had use of his brother's Ryan's car. In her evidence she said that sometimes he borrowed his brother's car. Despite this, submits Ms Patel, during his evidence at the trial the appellant denied having a courtesy car or use of another vehicle in August 2008. In that context we bear in mind what the judge said about this topic at page 65B-D of her summing-up. In summarising the evidence of Joanne Kilroy she said:

> "She recalls that the car was broken into, that the window was smashed, but that is something that she said she was told by Darryl. She says, 'I believe that was before we met and it was in the newspaper.' 'Did he ever have use of a car?' 'Yes, sometimes his brother's car that would be shared between his brother and the girlfriend, and when they didn't use it he was able to use it, otherwise he would pick me up on public transport.'"

35. It appears to us that that is evidence far from saying that the appellant at the material time had access to his brother's car on a continuing basis.

36. Returning to Ms Patel's submissions, she observed that Joanne Kilroy in her evidence was certain that the appellant was in Pudsey with her between 24 July and 8 August 2008. She was however unable to confirm his continued presence in Pudsey after 8 August. She submits that Joanne Kilroy, while trying to provide honest evidence in an attempt to assist the appellant, simply could not remember events from 10 years earlier.

Moreover, she submits that there is no independent support for the appellant's assertion that he remained in Pudsey during the whole of August 2008. In relation to count 2, Ms Patel observed that the appellant now relies on a photograph dated 15 August showing the complainant at Clacton Pier. She submits that this photograph cannot provide any insight into other events as described by her earlier that day and much later that night. It cannot be suggested that the complainant did not engage in other perfectly innocent activities in between those times. Furthermore, she submits that there was other clear and cogent evidence at the trial to support the contention that this appellant had engaged in sexual activity with LT while she was still under the age of 16. First, the only way the complainant would have known that the appellant was on leave from the Army in August 2008 was if she saw him. This would not have been possible if he remained in Pudsey. In September 2008 the complainant took an overdose and was hospitalised. She gave evidence that she spoke to the appellant on the phone and denied that her action was due to him. She said that she was 14 at the time. Soon after this she told her stepbrother TB what had been going on. Ms Patel submits that the complainant's disclosure to TB when she was aged 14 is highly probative of events as they were at the time. In addition, on the day that TB arrived to give his evidence at trial he produced a text message between him and JT. The message was transcribed but not uploaded to the Digital Case System ("DCS") but there is reference to it within the transcript and the matter was raised with the judge. In the text messages which are dated 25 April 2016 the respondent submits that there are two key messages. First, TB said that the complainant told him when it started and that she was 14. Secondly, JT replied that one fact about the dates of this "sordid tryst" was that it was March 2010. In March 2010 the complainant would still have been aged 15.

37. During the course of the trial JT said that he had meant to say "May" not 'March'. By then of course the complainant would have turned 16. But he had declined to provide a witness statement to the police. Further Ms Patel draws attention to the fact that on 8 March 2010, at a time when LT was still aged 15, she sent a message to a friend, LM. Ms Patel submits that this message is probative because of its date and content. Similarly, she draws attention to a message on 22 May 2010, when the complainant was now aged 16, which was sent to the appellant. Ms Patel submits that the date of this message and the reference to what had been going on "in the past 2 years" is significant because LT would have been 14 and 15 in those 2 years.

38. Finally, Ms Patel observes that at the trial CR gave evidence going to the question of recent complaint. She said that when she was aged 15 and LT was aged 14, LT had told her things that happened between her and the appellant and that they had had sex.

Conclusions

39. We have reached the conclusion that the good character direction as given in the circumstances of this case was deficient. Although it was properly set out in writing the jury were never given that direction orally. By itself that might not have been sufficient

to render these convictions unsafe but when taken in combination with the fresh evidence, it does leave us to conclude that the convictions are unsafe. In particular, we must bear in mind that at the heart of this trial was the issue of credibility. Furthermore, this was a relatively unusual case for a historical sex offence case because in many such cases, for understandable reasons, the persons concerned are often unable to be precise about particular dates or periods in the past, but nevertheless give clear evidence that the offending did take place.

40. In this case, as Ms Smart has submitted to this Court, there was a real issue of alibi, namely where was the appellant on 14 August 2008. That date was important because the complainant herself was adamant that that had been the date of the first sexual activity because it was the day of her friend's birthday and they had gone to Nando's to celebrate. In this case therefore, we have reached the conclusion that the photographic evidence, in particular the photograph timed at 14.18 hours on 14 August 2008 is of crucial importance.

41. Also important is the now accepted proposition on the fresh evidence that the appellant could not have had access to a hire car at the material time; his period of access to it had run out on 11 August 2008. This necessarily leads, in our view, to the Crown having to invite the court to speculate as to how the appellant could nevertheless have travelled to Romford, for example, by speculating as to whether he may have used his brother's car.

42. It is true that the evidence by the complainant as to the events of the period 12 - 14 August 2008 was not before the jury in evidence. As Ms Patel has reminded us, that was set out in her ABE interview. Nevertheless, in our view, this would have affected the way in which defence counsel at the time would have cross-examined the complainant, particularly in a case which turned on credibility. That the defence were not able to do because this evidence was not available at the time of the trial.

43. The other evidence which has been relied upon by the Crown before us is, with respect, not independent of the complainant. It would have been a matter for the jury at the trial what they made of it in the light of any other evidence they might have had and which this Court now does have. On one view of that evidence, it was consistent with the appellant's case that the complainant had had a crush on him for 2 years but that he had not had sex with her before she was 16 years old.

44. For those reasons, we must allow this appeal and these convictions are quashed.

MS PATEL: My Lord thank you. I am instructed to ask for a retrial. I bear in mind that this appellant has served a 6-year sentence, and so that will have to be subject to review. But those are my instructions, so I ask for a retrial.

LORD JUSTICE SINGH: Ms Smart.

MS SMART: Well it is a matter for your Lordships as you know as to whether it is in the interests of justice for there to be a retrial, and I can only rely upon the fact that this man, of previously good character, has indeed served the entirety of his sentence. For those reasons, in my submission, it is not in the interests of justice for there to be such a retrial.

LORD JUSTICE SINGH: Do you want to reply?

MS PATEL: No thank you. They incorporate my submissions: he has served his sentence for the matters that have now be quashed.

LORD JUSTICE SINGH: Do you nevertheless maintain the application?

MS PATEL: I do my Lord because I am instructed to do so.

LORD JUSTICE SINGH: Since you do, we will rise to consider our decision. We need to rise so that we can discuss the matter with Julian Knowles J outside Court.

MS PATEL: My Lord, yes.

(The Court adjourned for a short while)

LORD JUSTICE SINGH: Ms Patel, we have considered your application. All three members of the Court have discussed it outside Court. In the circumstances of this case, we have concluded that it would not be in the interests of justice for there to be a retrial, not least because the appellant has now in effect served his sentence of imprisonment.

MS PATEL: My Lords, thank you.

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