



Neutral Citation Number: [2023] EWCA Crim 445

Case No: 202103773B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT CANTERBURY
HER HONOUR JUDGE BROWN
Indictment No. T20207206

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2023

Before :

LADY JUSTICE ANDREWS
MR JUSTICE MORRIS
and
HH JUDGE EDMUNDS KC,
THE RECORDER OF KENSINGTON AND CHELSEA

Between :

THE KING

Respondent

- and -

PARRIE JACOB

Applicant

Tanya Robinson (instructed by **Bond Joseph Solicitors**) for the **Applicant**
Francesca Levett (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing date: 24 March 2023

Approved Judgment

This judgment was handed down by Lady Justice Andrews at 10.00 am on 27 April 2023 in Court 7 of the Royal Courts of Justice and was distributed to the parties or their representatives by e-mail. It was subject to an order under s.4(2) of the Contempt of Court Act pending a retrial, which has now occurred. Accordingly that order has now expired and the judgment has been released to the National Archives.

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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 as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of that Act.

Mr Justice Morris:

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 as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of that Act.

Introduction

2. These are applications by Parrie Jacob ("A"). At their heart, there is an application for leave to appeal against conviction which relies on fresh evidence that is said to call into question the safety of that conviction.
3. On 1 November 2021 in the Crown Court at Canterbury, A, then aged 24, was convicted of the rape of the complainant ("C") at a Beer Festival at the Farrier's Arms, Ashford in Kent on 27 July 2019. A's case was that the sexual intercourse was consensual. On 17 March 2022 he was sentenced before the same court to a term of imprisonment of 7 years and 6 months. His application for leave to appeal against conviction was refused by the single judge.
4. On a renewed application, on 18 January 2023, the full court (Lewis LJ, Cutts J and HH Judge Norton) refused leave to appeal on his three original grounds, and referred to this Court his applications for an extension of time in which to vary his grounds of appeal to introduce fresh evidence, for leave to call that fresh evidence pursuant to section 23 of the Criminal Appeal Act 1968 ("the 1968 Act") and for leave to appeal on the new ground that the fresh evidence undermines the safety of the conviction.
5. The fresh evidence in question is the evidence of Mr Byron Parara. He was a security officer working at the event on the night in question. A contends that his evidence supports his case that the sexual contact had been initiated by C and that she willingly participated in the sexual intercourse. It also provides support for A's account of why he ran away from the scene in the aftermath of the incident.
6. Mr Parara had been identified as a potential witness at an early stage of the investigation. However, despite steps taken by the police, he could not be found in advance of the trial. After A's conviction, he was located by A's mother.
7. We have now heard the oral evidence of Mr Parara. Having done so, we have decided that it would have been admissible at trial, that it is apparently credible, and it is potentially supportive of the defence case and of the credibility of A's version of events in material respects. It is therefore in the interests of justice that the evidence be admitted, and that A be permitted to amend his grounds of appeal to rely upon it and granted any necessary extensions of time.
8. In the light of that evidence, for the reasons set out in this judgment, we have concluded that the safety of the conviction is in doubt, and that the appeal must be allowed.

The undisputed facts in outline

9. On 27 July 2019, C, together with family members including her daughter (“D”), attended the Beer Festival. C was celebrating her birthday. A, who was then aged 21 and of good character, also attended the Beer Festival with some of his friends. Throughout the evening, from 6pm, A was in telephone contact with a female called Jade. In the course of the evening, some time before the incident took place, there was some interaction between A and C in the dance marquee. Neither was previously known to the other. Whilst in or around the marquee, A told C that he was going to the toilet.
10. In the period between 11:01pm and 11:07pm, C and A had vaginal sexual intercourse in a Portaloo toilet. After sexual intercourse had taken place, there came a point in time when A went, or was pushed by C, out of the Portaloo. At 11:08pm A texted Jade. C remained inside the cubicle, and messaged D using her mobile phone. D then arrived outside the toilet with other family members, including E, the partner of C’s cousin. A was outside the Portaloo when D and E arrived. Shortly afterwards an altercation took place between E and A. A then came into contact with two male security officers, one of whom was white and the other was black. Subsequently A left the Festival in the company of a friend, B.
11. C made a complaint of rape to her cousin. A female security officer called the police, who arrived at 11:32pm. PC Woollven was one of the two police officers who arrived. C described what had happened to PC Woollven, captured by her body worn camera, starting at 11:36pm. C can be seen to be a woman with blonde, straight, hair, of mid length to her shoulders. When giving her account, in that footage, C appeared to be visibly upset, shaking and crying. At about 1am, C gave an account of the events to another officer, PC Brown.

The issue at trial

12. The issue at trial was whether C had consented to the sexual intercourse.
13. The Prosecution case was that A had raped C. It alleged that he had followed her to the Portaloo where she had gone to look for D when they had become separated. He had pushed her from behind into the cubicle and down onto the toilet, grabbing her face and pulling it towards him trying to kiss her, putting his tongue inside her mouth. He had pulled her trousers and knickers down and raped her, vaginally, from behind. Afterwards, he was confronted and restrained by E and handed over to two security guards, but broke loose from them and ran off.
14. To prove its case, the Prosecution relied upon the evidence of C, and, to rebut the suggestion of recent fabrication, the evidence of four witnesses, namely D, E, the cousin and the female security guard who summoned the police. The Prosecution also relied on the evidence of the police officers who arrived at the scene and the body worn footage of C’s first account to the police, and upon the evidence of A’s friend B, who had been at the Beer Festival with him and who picked him up in his car after the incident had taken place.
15. A’s case was that C had initiated the sexual contact and was a willing participant in the sexual intercourse in the toilet. A further relied on his previous good character;

upon DNA evidence and amylase found on A's penis which he argued was consistent with his account that C had performed oral sex on him; and a number of inconsistencies in and lack of corroboration of her evidence.

The evidence at trial

The complainant

16. C's evidence was that A had targeted her in the marquee when she had been dancing. He had tried to kiss her, approaching her from behind. His advances were unwelcome and she had pushed him away. Later, at around 11pm, D went off to the toilet. C stayed at the marquee, but when D did not come back she left the marquee to look for her. She went to the area of the portable toilets and, using her torch, called out to D. She tried unsuccessfully to open the doors to some of the Portalooos which were locked. In her ABE evidence, C denied walking over to the toilets with A, although in her account to PC Woollven recorded on the body worn footage, she said that she had done so.
17. When she came to an unlocked Portaloo she was pushed from behind and inside by a male. She thought he locked the door behind him. She did not know who was behind her, but recognised his smell as that of the man in the marquee. He forcibly pushed her inside the cubicle, held her down and pulled down her jeans and knickers and raped her from behind. She was not consenting. Whilst this was going on inside the Portaloo, she could hear her phone ringing and she later saw that her daughter had been ringing her between 11:01pm and 11:07pm.
18. The incident was then interrupted by a female member of the public who opened the Portaloo door whilst the sexual activity was taking place. That interruption enabled C to push A out of the Portaloo, lock the door behind her and use her mobile phone to contact D for help. That call was made at 11:07pm. Both in PC Woollven's body worn footage and in her account later given to PC Brown, C gave an account of what happened inside the Portaloo consistent with this evidence.
19. D arrived at the scene and knocked on the door and C came out of the toilet. C told her that a man had tried to take her clothes off, but did not say any more at that stage. She heard someone shout that they had been hit. C was very distressed and in shock. C and D found the female security guard, who called the police, although she was told by a male colleague not to call the police, as security could deal with it. At one point C saw the man (i.e. A) with security, but she was not sure it was him. The first person she told what had happened was her cousin, when they were in the red marquee. She disclosed to her cousin, and later to the police, that she had been raped.

The daughter, D

20. D went to the toilet and when she came back she could not find her mother. She tried phoning her several times without success and left a voicemail. That occurred between 11:01 and 11:07pm. She asked the female security guard if she had seen her mother, but she said she had not. When D did receive a telephone call from C, she sounded upset and scared. C told her that a man had pushed into a toilet cubicle, but she had pushed him out. The man was still outside the door. D told her to lock it and hold it shut. She then found E and went with him to the Portalooos.

21. As they ran towards the Portaloos, she saw a man leaning up against one of them. There was no one else round the area at the time, apart from the man, herself and E. She recognised the man waiting outside the cubicle. He was trying to get back in. It was a man who had earlier been deliberately bumping into her, D, in the marquee. He was on his phone. She told the man to move away from the cubicle, and he ran off. She told E to hold the man make sure that he did *not* run away, so that they could get a security guard. She didn't know whether E went after him, as she went to get her mum who was still in the toilet. She denied seeing E punch the man, and denied that the man ran away after being hit by E.
22. D knocked on the cubicle door and found her mother shaking and crying. By that time the man and E had gone. Her mother did not disclose that she had been raped at that point. D then walked C over to the female security guard. As she was asking the female security guard to help, she saw A being physically carried off by two male security guards. The female security guard then rang the police. She stayed with her mother until the police arrived.

The cousin's partner, E

23. E said that he was unaware of any problems until about 11pm when, as he was heading towards the toilet block from the marquee, he was told by D that C had been dragged into the toilets by a man. He then went to the Portaloos. There was no lighting in the vicinity of the Portaloos. He was concerned rather than angry. As he approached the Portaloos he saw a man standing in the vicinity, but not next to them - about 6 to 7 metres away. The man seemed to be waiting for someone rather than waiting for the toilet. He was the only person around. E went up to the man and asked him if he had tried to grab girls in the toilets. The man was not aggressive or confrontational. He did not remember D saying anything or identifying the man as responsible.
24. E then turned and saw both C and her daughter. A was identified by C as the man responsible; and with that the man ran off. E denied that he punched A. A ran towards the marquee and E gave chase. E restrained him, falling with him to the floor and into the mud. He then handed him over to a white security guard. He told the security guard that A had been trying to grab girls in the toilet. E accepted that he may have called him some choice names. He denied that A himself had run up to the security guard. He did not recall a black security guard coming over.

The female security officer

25. She was patrolling around, and mainly outside, the marquee and the toilet area. She was approached by D who was with C. Both appeared distressed. She was told by D, in the presence of C, that C had been pushed into one of the portable toilets by a male who had locked the door from inside. The man had tried to pull off her clothes. She had fought him off, pushed him out and locked herself in.
26. The security officer called the police, because it was her professional duty, but also at the request of D. She observed that C was shaking and crying. At one stage security told her that they would deal with it, but they did not know what had happened and thought it was just a fight. She confirmed that the two members of security that dealt with the fight were Byron who was black, and Charlie Scott who was white. She

understood that they had dealt with that matter. D had said to her that E “had beaten this man up because he had just sexually assaulted my mum in the Portaloo”.

The Applicant

27. A’s evidence was that he had danced with C in the marquee and that they had held hands, smiled at each other and briefly spoken. He did not accept that he had tried to kiss C in the marquee and he denied deliberately bumping into D. He saw C and D go out for a cigarette and then come back in. He had mentioned to C that he was going to the toilet, but that was when he was in the marquee. She followed him and was directly behind him in the queue, about 4 metres away.
28. When he got to the Portaloo, at his request, C held his drink whilst he went into the toilet cubicle and closed the door. He did not lock the door. Once he had urinated, to his surprise, she had followed him in. They kissed at her instigation and she pulled his trousers down and engaged in sexual activity, performing oral sex on him. She then pulled her trousers and knickers down to her ankles, straddled him and engaged in vaginal sexual intercourse. This lasted about five minutes. He stopped the sexual activity because it felt wrong, not because she was not consenting, but because it was not pleasant doing it in the toilet. He told her they should stop. There had been no indication whatsoever that she was not consenting to what had taken place.
29. He got dressed, told her that he would wait for her and left the Portaloo and waited for her outside while she got dressed. He went out and closed the door behind him. He denied forcing the complainant into the toilet or raping her. The complainant had locked the cubicle door when she entered after him. No one had burst in on them. Once outside, he had waited a few minutes and then knocked on the door. C said that she was ok. He continued to wait nearby. At 11:08pm he texted Jade stating “all right, could have been better xxx”.
30. As he was waiting by the Portaloo, a man who he did not know came up and asked if he had been in the Portaloo with a woman. He turned round and the man punched him and he fell to his knees. He felt intimidated by the man and was scared. He got up and ran towards the marquee. By that time, C had not come out of the Portaloo. A ran up to a white security officer who was by “the air raid thing”. On the way he tripped over. He told the man he had been assaulted. The black security officer then came over and A heard that a sexual assault had been reported. He understood it related to him and he was stunned. He had been punched and chased and was now being accused of sexual assault.
31. The black security officer told him to go, and he did. He knew there was an exit across the fields from the toilets and so he went that way. He slipped down a bank into the river and that is how he became muddy. He rang his friend B who then came and picked him up. He ran off because he was scared and afraid of a further assault and not because he had committed an offence. He denied being dragged out of the marquee by E or being carried by the two security guards.

A’s friend, B

32. B was at the Beer Festival with A. At about 11pm, he saw A walking with two security guards through the seating area between the marquee and the food stalls from

the direction of the toilets. A had a swelling to his right cheek and he appeared really shaken up and “shit scared”. He was not being held by the security officers, but was just walking with them and seemed to be cooperating with them. A told B that he had been punched to the face and had been accused of going into the toilet with someone. He denied doing anything wrong. At that point the security officers steered A away. He was not being manhandled.

33. Subsequently at about 11:40pm B received a telephone call from A who asked him for help. He asked to be collected from the pub and taken home. When asked what had happened, A appeared scared and confused. A had said to him that he had “been in the toilet with her” and they had sex, but “it was not proper” and “I’ve done nothing wrong”.

Events following conviction

34. On 6 January 2022, A lodged his notice of appeal relying on his three original grounds of appeal against conviction. On 21 March 2022 the single judge refused permission to appeal in respect of those grounds.
35. In the meantime, in January and February 2022 A’s mother (“M”) succeeded in making contact with Mr Parara. In the course of a telephone conversation with her he gave, for the first time, his account of events on the evening of 27 July 2019. On 11 April 2022 A’s representatives notified the Court of Appeal that A might seek permission to add a further ground of appeal. On 14 April 2022 M made a witness statement setting out the enquiries she had made seeking to locate Mr Parara and what Mr Parara had told her in the telephone conversation.
36. In May 2022 A’s solicitors notified the Court of problems they were then encountering in contacting Mr Parara. In June 2022, a private investigator instructed by A’s family re-established contact with Mr Parara, and on 7 June 2022 Mr Parara signed a witness statement setting out his recollection of events on 27 July 2019. On 8 August 2022 A’s solicitor notified the Court of the updated position and on 5 September 2022 new Perfected Grounds of Appeal were lodged. These comprised the original Grounds and a further Ground based upon the evidence of Mr Parara, which A sought leave to adduce. It was contended that this was evidence from an apparently independent and credible witness purporting to have seen part of the key events, which directly contradicted C’s account and supported A’s account, and was thus capable of having a significant bearing on the outcome.
37. On 6 September 2022 Mr Wray, A’s solicitor, made a statement explaining the steps that had been taken to obtain the fresh evidence and the delay in making the applications. On 14 October 2022 A made a formal application for an extension of time to vary the notice of appeal to add the additional Ground on the basis of the fresh evidence.
38. The case came before the Full Court on 18 January 2023. As stated earlier, the Court refused the renewed application for leave on the original grounds, and directed that the matter should be adjourned to a further Full Court hearing, for argument from both parties to determine whether or not to grant an extension of time, whether to grant leave to adduce the fresh evidence, whether to grant leave to appeal and, if those

applications were successful, to allow the case to proceed to hear full argument if the court considered that appropriate. It is with those matters that we are concerned.

39. At the hearing we heard the oral evidence of Mr Parara, *de bene esse*. We considered this appropriate to enable us to answer the questions in section 23(2)(a) and (b) of the 1968 Act: see *Archbold 2023* §7-208; and to enable us to proceed to hear the substantive appeal, if we were to grant leave to adduce the evidence and leave to appeal. No objection to our adopting that course was taken by the Respondent.

The fresh evidence

40. In his oral evidence, Mr Parara said that at the time in 2019 he was working for a security company. On 27 July 2019 he was working at the Beer Festival. He was head of security, in charge of all security staff, but he did not know the names of all the other staff as they had been recruited by Tony, his friend and boss. When first asked, he could not remember the name of the pub; his memory was refreshed from his witness statement. He was doing the overseeing, checking that everyone was ok and walking around the site. He was the only black security officer on duty at the venue.
41. The main thing he remembered about that night was about a man and a woman. He noticed them when he was covering for one of the other security staff who had been on duty at the Portaloo spot. Mr Parara was at the Portaloo spot, which was at a location giving him a line of sight to both sets of toilets at the venue. Whenever he covered for someone else during their break he would be in position for around an hour. The man and the woman were walking towards the Portaloo. At first, he noticed two people having fun; they caught his eye. It was a very happy vibe. They were holding hands when he first saw them. He noticed the man enter the Portaloo first and the woman entered after. That was not allowed, but he gave himself time to decide if he was going to interfere.
42. After giving them time, they came out. The door opened. The man came out first and she stayed. She asked him to come back and he said No. He could not hear that, but could tell from their gestures. At that point Mr Parara went over and told them that they couldn't be in the Portaloo together. In cross-examination he said it felt like 7 to 10 minutes before he went over to the Portaloo cabin. Both then came out. They walked off back towards the dance tent. She was slightly behind. He did not see her again.
43. Asked to describe them, he said both were white. He could not remember what they were wearing. The woman had shortish hair; not blonde, mousy brown. Her hair was not long; he demonstrated with his hands that it came down to her neckline. Her hair was straightish, but not dead straight. In cross-examination, he estimated her to be in her late teens, but he said this was a guess based on her attitude and the way she carried herself. She was very slim. The male was white and slender. He could not remember much more. In cross-examination he estimated the man to be in his early 20s.
44. When initially asked about when the incident occurred, Mr Parara said it was about 8 to 10pm - more towards 10pm. In cross-examination, he put the timescale as between 7 and 10pm, and then said it would have been before 9pm. At the time it was heading

towards dark. There were no artificial lights at the Portaloos and the area was pretty dark. In cross-examination, he said it was not possible that he was recalling an event which had nothing to do with the allegation of rape.

45. Later, after his period of cover was over, he was doing his rounds when he heard something on the radio about an altercation. He then saw a young man being punched twice. He was “really hit bad.” There was a group of around six men. He, Mr Parara, felt pretty scared and definitely outnumbered. He was 100% sure that the man who was punched was the same man as from the Portaloos. He remembered his face and how he looked. The young man ran up to him and begged him for help. He was really scared. Mr Parara told him to get behind him. The man who had assaulted him was pretty big, much bigger than the young man, and he now approached Mr Parara. As that man came towards Mr Parara, he stood between him and the young man and tried to calm the situation down.
46. The men in front of him were upset about something but they offered no violence to Mr Parara. The biggest one said that the young man had done something to his daughter. Mr Parara’s biggest concern was how to get the boy away. There were bushes with a car gap behind. He didn’t know where it led. He told the young man that he was going to have to run for it and that he would “try to keep them here with me.” He said “You’re gonna have to go, mate” and he did. The big man who had punched the young man was not handing the young man over to him; rather, the young man had run over to him. He, Mr Parara, more or less begged him to go. In cross-examination, he said that he was not aware of the young man getting away from security or of security then setting out to the field to find him.

The relevant legal principles

Variation of Grounds of Appeal

47. Rule 36.14 (3)-(5) of the Criminal Procedure Rules 2020 makes explicit provision for giving notice for the variation of grounds of appeal. In *R v James* [2018] EWCA Crim 285 at §38 this Court set out a number of principles relating to such an application. Once an application has been considered by a single judge, an application to advance fresh grounds must be accompanied by an application to vary the notice of appeal. The application does not require exceptional leave, but the hurdle is a high one.
48. Leave will not be given to renew out of time unless the applicant can persuade the court that very good reasons exist. Counsel must address the relevant factors, namely the extent of the delay, the reasons for the delay, whether the issues of facts giving rise to new grounds were known at the time that the representative gave advice as to the grounds of appeal, the overriding objective, and the interests of justice.

Receipt of Fresh evidence

49. Section 23 of the 1968 Act provides as follows:

“(1) For the purposes of an appeal, or an application for leave to appeal, under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice—

- (a) ...
- (b) order any witness to attend for examination and be examined before the Court (whether or not he was called in the proceedings from which the appeal lies); and
- (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—
 - (a) whether the evidence appears to the Court to be capable of belief;
 - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
 - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.

...”

The question under section 23(1) is whether receipt of the fresh evidence is “in the interests of justice”. The particular factors identified in section 23(2)(a) to (d) are not exhaustive or conclusive: see *Archbold 2023* §7-208 citing *Erskine Williams* [2009] EWCA Crim 1425. Under sections 23(2)(a) and (b) the questions are, respectively, whether the fresh evidence is “capable of belief” and whether it “may afford” a ground for allowing the appeal.

The approach to an appeal against conviction based on fresh evidence

- 50. On an appeal, where fresh evidence has been admitted, the question is whether this Court, having regard to the fresh evidence, considers that the conviction is unsafe, pursuant to section 2(1)(a) of the 1968 Act. In other words, does the fresh evidence cause the Court to doubt the safety of the verdict of guilty?
- 51. In reaching its own conclusion in a difficult case, this Court may test its view by considering what impact the fresh evidence might have had on the jury: see *Archbold 2023* §7-50 and *R v Pendleton* [2001] UKHL 66, *R v Ahmed* [2010] EWCA Crim 2899 at §24 and *R v Barker* [2021] EWCA Crim 603. In this regard, the question to be considered is whether there is a realistic prospect that the jury would have reached a different conclusion.

The approach to this case

- 52. In a case such as the present, therefore, there are three distinct stages. First, whether the fresh evidence of Mr Parara should be received by reference to the test in section 23; secondly, if so, whether leave to appeal should be granted (i.e. whether on the basis of that fresh evidence, the conviction is arguably unsafe); and thirdly, if leave is granted, whether the conviction is unsafe and the appeal should be allowed.

53. Although strictly distinct, we consider that the first and second stages can be considered together.

The Issues

54. The issues which, formally, fall to be determined are as follows:
- (1) whether A should be granted an extension of time in which to apply to vary his grounds of appeal;
 - (2) whether leave to vary the grounds of appeal should be granted;
 - (3) whether A should be granted leave to adduce the fresh evidence pursuant to s.23;
 - (4) whether leave to appeal against conviction on the new ground should be granted;
 - (5) if leave to appeal is granted, whether the substantive appeal should be allowed.
55. As regards Issues (1) and (2) the evidence giving rise to the new ground of appeal (i.e. Mr Parara's evidence) was not known at the time that the original notice of appeal was lodged on 6 January 2022. In the light of the detailed explanation by Mr Wray and M of the sequence of events between January and October 2022, we are satisfied that a sufficient explanation has been given for the reasons for the delay in seeking to advance this ground. Having now heard Mr Parara's evidence, we conclude that it is in the interests of justice for A to be permitted to put forward this new ground of appeal, with the necessary extension of time in which to do so.
56. We state our conclusions on Issues (3) and (4), and then Issue (5), following our substantive analysis of Mr Parara's evidence.

Analysis of Mr Parara's evidence

The Parties' arguments

57. Ms Robinson for A submitted that, unlike C's family members, Mr Parara is an independent witness who has no reason to favour one side or the other. In this case, as in most cases of rape, it was a question of the complainant's word against the defendant's, and therefore credibility was key. Mr Parara's evidence is consistent with A's evidence in crucial respects: how the two went into the Portaloo (particularly that the man went in first and the woman followed him), and how A came to leave the scene in haste, after speaking to Mr Parara. His evidence was capable of calling into question the evidence of C and of other witnesses relied upon by the Prosecution, D and E, and raises serious doubts about the safety of the conviction.
58. Whilst she accepted that there were inconsistencies in Mr Parara's evidence, and that in some respects it was at odds with both A's and C's evidence (e.g. that the couple who had been in the Portaloo both walked off towards the marquee afterwards), Ms Robinson pointed out that C's own evidence and the case as whole had many inconsistencies. This was not a reason to conclude that Mr Parara's evidence might not

have led the jury to reach a different conclusion, if they had heard it and evaluated it for themselves.

59. Ms Levett for the Respondent submitted that the fresh evidence should not be received, and even if was received, it was not such as to render the conviction unsafe. She contended that Mr Parara's evidence did not support A's case as regards the issue of consent. In particular, it was far from clear that what he witnessed happening at the Portaloo related to the incident between A and C. There are significant discrepancies both in the timing of what he saw and in his description of the woman he saw. In some respects, Mr Parara's evidence about what he witnessed at the Portaloo is inconsistent both with A's evidence and C's evidence. He saw neither a drink being handed over to the woman by the man, nor the woman using her torch and apparently looking for someone at the Portaloo. His evidence that A ran away, with his strong encouragement, because he had been assaulted and was still under threat of violence was, on the face of it, inconsistent with the evidence of B who saw A walking between two security guards. But even if Mr Parara's evidence about the altercation might have increased the prospect of the jury believing A's evidence about how and why he came to run off, it did not mean that what had occurred earlier was consensual.

Discussion

60. We find that Mr Parara was a credible witness who gave his evidence honestly and to the best of his recollection of events, in circumstances where those events took place now almost 4 years ago and the first occasion on which he was asked about them was some 2½ years after the night in question. From the manner in which he gave his evidence, it is clear that he himself had found the events that he witnessed that night (in particular, the assault on A) distressing. Specific details of his recollection had the ring of truth. We consider that his evidence overall was capable of belief.
61. Mr Parara was the black male security officer present at the Beer Festival on 27 July 2019, to whom A and other witnesses had referred as being present that night, at least in relation to events after the incident in the Portaloo. He is a witness independent of C, her family members and A. His evidence substantially supports A's account in two material respects; first, in relation to the incident in the Portaloo, and secondly, in relation to the altercation with E and the circumstances in which A encountered the two male security officers and then left the scene.
62. In particular, Mr Parara's evidence was clear on the following. As regards the incident in the Portaloo, first, his evidence is that it was the man who entered the Portaloo first and that the woman went in after him. He also said that the man and the woman walked over to the Portaloo together, and that they appeared happy. Secondly, he said that the man came out of the Portaloo first and that the woman stayed in the Portaloo, but appeared to be asking him to come back in. Thirdly, he was sure that that man was the same young man whom he subsequently saw being punched, and whom he told to run away; in other words, that man was A. This evidence is consistent with A's account and inconsistent with that of C.
63. As regards events after the incident, Mr Parara recalls seeing A being punched, and A running up to him and begging him for help. Both he and A were in fear. He, Mr Parara, then shielded A from E and others, and told him to run away. His evidence is consistent with A's evidence. Contrary to the evidence of D and E, he said that A had

not been handed over to him or the other security officer by E, nor had he broken free, nor was he subsequently carried off by the security officers. His evidence about bushes and a “car gap” chimes with A’s evidence about an exit across the fields. This evidence supports A’s case that he had run away out of fear, and undermines the impression that he was running away because he was guilty of rape – an impression which we were told by Ms Robinson the Prosecution deliberately sought to foster by its line of questioning of A.

64. There are discrepancies between Mr Parara’s evidence and facts which are not in dispute; most importantly as to his description of the complainant and the timing of the incident he witnessed at the Portaloo. As regards his description of the complainant, there is a substantial difference between his assessment of her age (19) and her actual age (38). However, as to his description of her physical appearance, the discrepancies are not so marked. His description of her hair length and it being straightish are broadly accurate. There is some slight discrepancy in relation the colour of her hair and, perhaps, as to her build, but as he indicated whilst giving evidence his observation of the couple was initially from a distance which roughly spanned the diagonal length of the courtroom from the witness box to the doors, and the area was dark. Whereas he saw and, he says, recognised A later the same night, he never saw the woman again.
65. As regards timing, his recollection is that the incident he witnessed at the Portaloo took place in a time period at least one hour (and perhaps two hours) earlier than the time of the incident between A and C, which can be timed with relative accuracy because of the telephone evidence. Thus, if Mr Parara’s recollection is correct, there had to have been a significant time gap between that incident and the later events leading to A’s running away. That, and the difference in the description of the woman involved, raises the possibility that Mr Parara was witnessing a wholly different encounter (of a similar kind) at the Portaloo which occurred earlier that evening. However, on his evidence that he was certain that it was the same man, this would be a second such encounter involving A. As to this, Mr Parara was adamant that he was not recalling a different event and there was only one incident of which he was aware that evening which involved a man and a woman at the Portaloo.
66. Whilst we accept that it is possible that Mr Parara was witnessing a different, earlier, encounter in the Portaloo, nevertheless, standing back and assessing his evidence in the round, we cannot be sure that he was not witnessing the incident between A and C. Moreover, his evidence corroborates A’s own account of why he ran from the scene and contradicts the Prosecution case that he was attempting to avoid being detained by security. We do not consider that the discrepancies are such as to lead us to discard the force of those significant aspects of Mr Parara’s independent evidence which are consistent with A’s account. Given the passage of time since the events in question, these are discrepancies which might properly be accounted for by a witness mistakenly convincing himself of the accuracy of his recollection.
67. For these reasons, we conclude that Mr Parara’s evidence supports A’s case in important respects and as a result causes us to doubt the safety of the jury’s verdict of guilty. Testing our conclusion by considering the impact upon the jury, we consider that, if it had heard Mr Parara’s evidence at trial, there is a realistic prospect that the jury would have reached a different conclusion i.e. that it would not have been sure of A’s guilt.

Conclusions and disposal

Issue (3) and (4): Receipt of fresh evidence and leave to appeal

68. In the light of the foregoing analysis of Mr Parara's evidence, we are satisfied that it is in the interests of justice for the evidence of Mr Parara to be received, both in respect of the application for leave to appeal and for the purposes of the appeal. His evidence is capable of belief, it gives rise to an arguable ground of appeal and would have been admissible at trial. There is a reasonable explanation for the evidence not having been adduced at trial. Mr Parara was identified as a potentially relevant witness but he could not be located by the Prosecution, and he was traced for the first time by A's mother after A's conviction. We therefore receive Mr Parara's evidence pursuant to section 23(1)(c) of the 1968 Act. Further, having received this evidence, we formally grant leave to appeal, on the fresh ground, on the basis that this evidence renders the conviction arguably unsafe. We therefore proceed to consider A's substantive appeal and whether the conviction is unsafe.

Issue (5): the substantive appeal

69. As regard A's substantive appeal, in the light of our conclusion at paragraph 67 above, we consider that A's conviction is unsafe.
70. For these reasons, pursuant to section 2(1)(a) and (2) of the 1968 Act, the appeal is allowed and the conviction is quashed.
71. The Prosecution has indicated that in this event it seeks a re-trial. We consider that, pursuant to section 7(1) of the 1968 Act, the interests of justice so require, and we therefore order A to be retried.
72. We make an order pursuant to s.4(2) of the Contempt of Court Act 1981 postponing publication of any report of these proceedings (including this judgment) until the conclusion of the re-trial in order to avoid a substantial risk of prejudice to the administration of justice in those proceedings.