IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 804

No. 202200194 B2

Royal Courts of Justice

Friday, 16 June 2023

Before:

LORD JUSTICE WARBY
MR JUSTICE HOLGATE
MR JUSTICE JACOBS

REX
V
IMRAN SABIR

REPORTING RESTRICTIONS APPLY:
Sexual Offences (Amendment) Act 1992
(NOTE: an order under s 4(2) of the Contempt of Court Act 1981 was lifted in March 2024 after the appellant's retrial)

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MR M MAGARIAN KC appeared on behalf of the Appellant.
MS K MELLY KC appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE WARBY:

Introduction

1 This is an appeal against conviction for offences of rape.

2 The anonymity provisions of the Sexual Offences (Amendment) Act 1992 apply. It is an offence to publish any matter relating to the woman we shall mention if it is likely to lead members of the public to identify her as the victim of any offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. We shall anonymise the woman accordingly.

The appeal

3 The appellant is Imran Sabir, now aged 43. On 25 October 2021 he was convicted of two counts of rape. On 18 February 2022 he was sentenced to 12 years' imprisonment. At a hearing on 17 March 2023 the full court gave him leave to appeal against conviction, granting the necessary extension of time.

4 As we shall explain, this was a case in which multiple defendants were accused of raping the same woman on many different occasions over an 11-month period. Her account of having sexual intercourse with many men at that time was not in itself disputed. In the case of one defendant the key issue was consent. But the case for three other defendants was mistaken identification. This appellant was one of those three. He said that he had never met, let alone had sex with the complainant.

5 At the heart of this appeal are the appellant's contentions that the Crown's case on identification was weak and that the trial judge failed to direct the jury adequately or at all on specific points arising from the evidence that tended to undermine the Crown's case against him on that issue and to support his case, or which might be thought to do so.

The allegations

6 The prosecution arose from the sexual exploitation of a young woman in 2009 and 2010. We shall call her K. She was aged 15 at that time, and lived in Keighley, West Yorkshire, a large town of some 50,000 people. In her teens she had started encountering problems. The death of her brother in a house fire in 2009 had profoundly affected her, and she had led a troubled life after that. In 2014, aged 20, she disclosed to the police child exploitation team that she had been sexually abused by a large number of older, Asian men. She said they would provide her with cannabis and vodka and she would be expected to perform oral sex on them. She had lost her virginity to one of these men and was then repeatedly and on multiple occasions subjected to oral, vaginal and anal rape by others.

7 Having made these initial disclosures, K was further interviewed by the police. Over a three-year period she gave 19 interviews, providing further and fuller details. She told police that since losing her virginity in October 2009 she had had sex with at least 30 men. They would hang around her house. On occasions she would go to other places to have sex with them. K said that she was able to date the events from the date of the house fire until the time at which she had a child by one of the men involved, known as “Qash”.

The indictment

8 These allegations led to an indictment against seven defendants containing 27 counts alleging rape on dates between 4 April 2009 and 3 March 2010.

9 Counts 7 and 8 concerned the appellant. Each was an allegation of vaginal rape of K. Count 7 was a single incident count. Count 8 was a multi-incident count alleging vaginal

rape "*on multiple occasions other than count 7*". The indictment described all these rapes as having taken place "*in the flat above the shop on Highfield Road with Hassan Basharat*."

10 Counts 9 and 10 were corresponding single-incident and multiple-incident counts against Basharat, alleging vaginal rape of K in the Highfield flat "*with Imran Sabir*". On count 11 Basharat was charged with rape of K on a separate occasion, alone in a derelict house.

The evidence

11 In support of the allegations about the "Highfield Flat" the Crown relied on K's account as given in interviews between 2015 and 2018. K first spoke of the rapes in the Highfield flat in the course of an ABE interview on 29 April 2015. She referred to a flat over a shop opposite Our Lady of Victories school, where she had had sex with two "lads" who knew the people who owned the shop. In a drive-round interview with police in September 2015, she identified the location as 207 Highfield Road.

12 K said that she was taken to the Highfield Flat by one man. At the flat there was a great deal of drinking and, having become drunk, she would have sex with this man and with another, older man who would be waiting at the Highfield Flat. K described this man as big and balding in his 30s. She described one occasion on which this man had vaginal intercourse with her whilst drinking, for over an hour. She stated that he did not ask her, and she did not want to do it. This was Count 7. K described going to the Highfield Flat in this way on at least 10 occasions in all, hence count 8, the multiple incident count. Other women would be brought to the address, she said, though she was not allowed to have any contact with them or to leave the room even to go to the toilet. There were parties in the flat, she said, with as many as 10 people present. The prosecution case was that K did not give any genuine consent on any of the occasions when she had sex with the men in Highfield Flat.

13 The prosecution alleged that the first man, who took K to the flat, was Basharat and that the other, older man was the appellant. The main factors relied upon by the Crown in support of its case that the appellant was the second man were these:
(1) First, on 6 July 2017, in a formal identification procedure, K identified the appellant as *"one of the people she was between 2008 and 2010 at the Highfield Road flat who raped her and also at a derelict house in Drury Road"*
(2) Secondly, evidence of Mr Ansar Ali, who appeared on the Council Tax records for the Highfield Flat in 2008. His evidence, read by agreement, said that he had planned to live at the flat in 2008, but had never in fact lived there due to his circumstances changing. He rented it from the appellant, whom he knew and he recalled that the appellant had a close friend then and later called 'Bash'. The prosecution case, naturally enough, was that this was Basharat.
(3) Thirdly, in interview, the appellant had made a prepared statement expressing bewilderment at the allegations, but he had answered some questions including telling police that he had a shop on Highfield Road. He had also denied knowing Ansar Ali. In addition, he had been reluctant to answer some of the questions he was asked.

14 The defence case was one of mistaken identity. Part of the case was that on K's account she had had sex with a large number of Asian men from the area (known as Topenders), most of whom had not been identified.

15 Among the specific points made by the appellant's trial counsel in cross-examination of K were these three:
(1) There was an inconsistency between K's account of the 2017 identification procedure and an ABE interview that she had given in January 2018 in which she said that it was only

Basharat who took her to the derelict house and committed the rape which later became the subject of count 11. The appellant agreed that this had been a mistake. She did not know why she had said it.
(2) It was suggested that K had recognised the appellant from the Highfield Shop. She said she had never been in the shop to buy anything. But it was a main road in her town so she drove past it a lot, and had passed it regularly in 2016 when she was working at Bronte Care nearby.
(3) The older man described by K had been undressed or at best partially clothed during the sexual activity they had had in the flat.

16 The relevance of this third point was that the appellant suffered from a lazy eye and eczema. The eczema was in evidence in the form of summarised medical records and, more particularly, photographs. The photographs were not contemporaneous with the indictment period but the appellant's evidence was that they showed his eczema in, if anything, a better state than it had been at the time. The court has viewed these photographs and they show a very noticeable condition with pronounced white lumps over much of the surface of the appellant's skin. The agreed facts included that the appellant had a lazy left eye which was visible in the photographs. The agreed facts noted that this had been recorded by the responsible police officer as an "unusual physical feature" at the time of the identification process. Neither of these matters had been mentioned by K in any of her ABE interviews.

17 At the close of the prosecution case two of the defendants made successful submissions of no case to answer and were formally acquitted by the jury. The case proceeded against the appellant and the other four.

The defence case

18 The appellant gave evidence. He said he was born and bred in Keighley and had owned the Highfield Stores at the address in question, running it for 15 years from 2003 to 2018. He did not know and had never spoken to nor had contact with K. He confirmed that he had a persistent history of serious eczema and a lifelong lazy eye problem.

19 The appellant said that he had advertised the Highfield Flat for rent in 2003, and another employee at the Highfield Shop called Sheila Carruthers had been a tenant there from 2004 to 2005. She had left in around 2008, but returned in early 2009 until 2010. The appellant denied ever attending parties or any gathering in the Highfield Flat to which he had a key. He said he did not sneak in while Carruthers, whom he stated was living there at the time, was not present.

20 The case put to the appellant at the outset of his cross-examination was that he owned the flat, had been identified by K, and knew Bash. He was therefore the other man. These appear to have been the principal features of the case relied on by the prosecution as supporting the identification.

21 Sheila Carruthers gave evidence that she had worked at the Highfield Shop and she had lived at the Highfield Flat between January 2009 and April 2010, that is to say throughout the indictment period. She said she had paid Council tax and did not allow anyone into the flat to socialise. No-one would have been having any form of party in the flat without her knowledge. She had been shown a photograph of K shortly after the appellant's arrest. Her evidence was that she 'vaguely' recognised her. She 'firmly' believed that she had served K as a customer in the Highfield shop. She also gave evidence of seeing a female in the passenger seat of a car outside the shop, whom she thought was K, though it ultimately became an agreed fact that Carruthers was mistaken about these matters.

22 Carruthers was robustly cross-examined. There was no direct challenge to her evidence that she had been living in the flat throughout the material time. But her evidence was tested through questions about whether she had produced her tenancy agreement from the time to the police, and how she had come to know about the flat, and she was asked if she had registered to live at the property and received rent through the benefits agency, without actually living there. She denied it.

The summing up

23 The judge gave a split summing up. The first part consisted of legal directions given orally, beginning at 11.23 on Thursday 14 October 2021 and concluding in the middle of the afternoon of that day. Two passages in that part of the summing up are relevant.

24 The first is a passage in which the judge dealt with the cross-examination of Ms Carruthers. He told the jury that there had been a hint or even a suggestion at one point that the letting of the Highfield Flat had been a device to obtain rent or council tax payments in a dishonest way. He made clear as was the fact that the prosecution did not now suggest that there was any fraud, and he told them they must disregard any hint or suggestion to that effect.

25 The second relevant passage of the oral directions on the law addressed the issue of identification. It was dealt with as the last matter before lunch. By that stage three identifications were in dispute: those of the appellant, Basharat, and another defendant called Amjad Hussain. Dealing with each of those defendants in turn the judge reminded the jury of the agreed facts about the identification procedures in that defendant's case. He then reminded the jury that each of these defendants disputed his identification as rapist.

26 The judge then gave a single standard *"Turnbull"* direction, relating to all three of these defendants. This contained all the essential warnings. He cautioned the jury that experience has shown that there is a risk of identifications being wrong, that honest witnesses may be mistaken even if sure, and that they could only rely on identification evidence if they were sure that it was accurate. The judge identified the need for careful consideration of the circumstances in which each of these defendants had been identified, looking at each of them separately. He gave standard examples of factors that required consideration, including the length of time the witness had the person under observation and the length of time between the incidents and the identification procedures.

27 The judge then directed the jury to think about whether there was any evidence which if they accepted it might support the identification. He illustrated the point, saying this:

> "In respect of each of the three people she was describing she spoke of many meetings which lasted some time and she was physically close to the faces of each of those three individuals during the times when sexual activity which she described took place"

28 The judge then went on to deal with the other side of the matter, in this way:

> "But almost a decade had passed between all of the incidents she was describing and the identification parades you have heard about, a significant period of time. Points will be made to you by the barristers in respect of their respective clients on identification issues, but those are factors that you must have very much in mind."

29 Having said this the judge briefly alluded to a distinct point about the first defendant, Safdar. Safdar did not dispute that K knew him but he said that she was wrong to pick him out as someone who committed sexual acts with her. His case was that this was either a

mistake or a deliberate mistaken identification. The judge then said: *"That concludes identification, ladies and gentlemen, and it is a convenient moment to break."*

30 After the lunch adjournment the judge provided the jury with a document entitled "Jury document" containing written legal directions and routes to verdict which he took the jury through orally. The documents addressed the burden and standard of proof, the ingredients of the offences and the steps towards a verdict of guilty or not guilty. No complain has been raised about the manner in which the judge dealt with those issues. But neither of those documents referred to identification, of which nothing more was said in writing or orally.

31 Speeches followed, occupying the Friday and Monday. From Tuesday morning until midday on Wednesday 20 October 2021 the judge summed up the evidence, the jury being sent out at 12.09 on the Wednesday. The jury then deliberated for the remainder of the week, and were discharged over the weekend. They returned guilty verdicts against the appellant and Basharat on Monday 25, October 2021. On the same day, the jury also returned verdicts on all remaining counts against all other defendants except for two, against whom guilty verdicts were returned on Tuesday, 26 October.

Grounds of appeal

32 Leave was given to argue three grounds of appeal, which were all in one way or another criticisms of the judge's legal directions on identification. Ground 1 is that the judge failed to mention the early ABE interview in which K said she would be unable to identify the other man. Ground 2 is that the judge should have referred to the fact that if Carruthers' evidence was accepted then the identification evidence had to be mistaken. The third ground is that the Crown had unfairly challenged Carruthers's credibility by suggesting dishonesty in connection with the tenancy of the Highfield Flat, and that the judge's directions failed adequately to address the consequent risk of prejudice to the defence.

33 In its brief reasons for granting leave, the full court identified what it thought was the main point in the appeal. As a result, and with a view to reflecting the reasoning of the full court, a new and overarching ground of appeal has been formulated, which embraces grounds 1 and 2. We would encapsulate it as failure by the judge to direct the jury on the weaknesses in the identification evidence as part of his legal directions. If necessary, we give leave to argue that ground.

34 The argument in support involves a series of relatively straight forward propositions, as follows:

(1) The judge's directions of law on identification in Part one of his summing up drew the attention of the jury to points which supported the identification evidence but he gave them no assistance with the potential weaknesses of the identification: points that might have undermined it.
(2) There were six main points of that kind, to which we will come.
(3) Although each of those six points was mentioned at some point in the summing up, for instance when relating the appellant's own testimony, there was no attempt to draw them together and lay them out coherently as part of the direction of law, so that their cumulative impact could be seen and assessed.
(4) Fourthly, and finally, there was accordingly no attempt to relate the conventional *Turnbull* direction, which was given, to the facts of this specific case and to bring alive the dangers which that case addresses.

35 The six main points which are now relied on as tending to undermine the identification evidence are these:

(1) First the Carruthers evidence which, if accepted, is said to "rule out" the possibility of K's evidence about events in the flat being accurate. Here it is submitted that the judge should have taken further and more detailed steps to neutralize the prejudice flowing from the Crown's approach to Carruthers's credibility.
(2) The generic nature of K's description of the older man who raped her;
(3) The appellant's eczema, distinctive but not mentioned in K's first account in 2015 or at any time thereafter. Mr Magarian KC places particular emphasis on this on behalf of the appellant.
(4) The appellant's lazy eye, again distinctive but not mentioned.
(5) The fact that in a 2016 ABE interview, and hence before the identification procedure, K had said that she would not be able to recognise the other man, who was now said to be the appellant. She said:

> "*If I saw him in the street I probably wouldn't recognise him*."

There was an obvious inconsistency between that interview and K's 2017 identification of the appellant as being that person; this is another point on which the defence places particular emphasis.
(6) The fact that in 2017 K had admittedly made a mistaken identification of the appellant as a person who raped her at the derelict house, which she had later retracted or qualified (though Mr Magarian did not place great weight on this in his oral submissions to us today).

36 As will be obvious from our summary account of the trial, not all of these points were brought out in cross-examination. But all save the fifth point were made in a written submission to the judge on matters that should be included in his directions of law. The fifth point was in evidence, and it was summarised by the judge in Part 2 of his summing up.

Assessment

37 We are grateful to Mr Magarian KC and Ms Melly KC for their able and helpful submissions on these issues and we have given the matter the most careful consideration.

38 There is no doubt that the way in which the judge dealt with the case on identification fell short of the ideal. One of the key points that emerges from *Turnbull* is that in directing the jury on the issue of identification the judge should go beyond the general warnings and guide the jury by identifying specific relevant aspects of the evidence. We have been referred in this regard to the decisions of this court in *R v Elliott (Denerick)* (22 December 1997 unreported), *R v Edwards (Adrian)* [2004] EWCA Crim 2102 and *R v I* [2007] EWCA Crim 923 [2007] 2 Cr App R 24. A helpful summary of the applicable principles is to be found in *Edwards* at [40] where the court drew the following relevant proposition from the authorities:

> "[...] It is generally desirable and necessary for the judge to put before the jury a coherent list of defence points against a correct identification, whilst recognising that it is not necessary to catalogue every minor divergence."

39 The Crown Court Compendium 2018, current at the time of this trial, put the position if anything more strongly. It stated at paragraph 10 of the relevant section that:

> *"Any weaknesses in the identification evidence must be drawn to the attention of the jury."*

Paragraph 11 stated that:

> *"Evidence which is capable and, if applicable, evidence which is not capable of supporting and/or is capable of undermining the identification must be identified."*

Paragraph 15 stated that:

> *"In every case, the direction must be tailored to the evidence and to the arguments raised by the parties in respect of that evidence."*

In all these quotations the emphasis is ours.

40 We add that if general, of course, it is *not* satisfactory for the trial judge to leave it to Counsel to make points that require a judicial direction. In *R v I* at [17] this court emphasised the further point, namely that:

> *"It is never enough in this topic merely to identify weaknesses in the identification evidence without also explaining clearly to the jury why they are weaknesses".*

41 For the Crown, Ms Melly KC has pointed out that the first part of the summing up did not draw together the pieces of evidence that supported the Crown's case. That however seems to us to emphasise the appellant's point rather than to undermine it. We agree that the judge should be even-handed but we do not consider that a failure to lay out sufficiently the specific points that could undermine an identification is cured or negated by a corresponding failure to identify the points that could support it.

42 Ms Melly has also made submissions in relation to the list of factors we have set out as potentially undermining the identification. Her overall submission is that they are all weak points. Specifically, she submits first that when having sex K was drunk and thus less likely to have observed the appellant's distinctive bodily characteristics. Secondly, that what K said about recognition in her 2016 ABE interview may be explained by her overall reticence and low self-esteem. Thirdly, that in other respects K's accounts were very clear and confident. Fourthly, Ms Melly submits that Carruthers's evidence had a number of weaknesses. We find ourselves unpersuaded by this line of argument. We accept that these may be fair counterpoints on the facts but if so they are points that could and should in our judgment have been drawn to the jury's attention by the judge in legal directions, at least by way of brief summary.

43 The authorities indicate that the absence of an adequate *Turnbull* direction, tailored to the facts of the case, is likely to require a conviction to be quashed as unsafe. In *Holmes* [2014] EWCA Crim 420, a constitution of this court comprising Fulford LJ, Holroyde J (as he then was) and HHJ Lakin quashed a conviction on the ground that the summing up did not adequately summarise the specific weaknesses in the identification evidence, which was the only evidence against the appellant. This was held to be a "*significant defect [...] such as to render the verdict unsafe*": See [28].

44 All that said, the significance of a shortcoming of this kind will vary from case to case, depending on the circumstances. The relevant circumstances are likely to include the nature and complexity of the case, including whether it involved multiple defendants and multiple counts; the significance of the issue of identification to the case against and for the defendant; the strength of the identification and the supporting factors; and the number, nature, complexity and force of the points that are capable of undermining the reliability of the identification.

45 Another circumstance that may, in our judgment, be relevant is any gap in time between the legal direction and any summary of the relevant evidence. In a short and straightforward case with a single composite summing-up, the jury may be reminded of the evidence relevant to identification very shortly after the legal directions on the topic, minimising any risk that an omission of the kind that occurred in this case will work any real prejudice. Even then, there may be a risk; the trial in *Holmes* was a short one. But where a split summing up is given the gap will always be longer than it would otherwise be. In a case of complexity the gap may be quite a long one. In this case, a weekend and two court days passed between the conclusion of the legal directions and the start of the judge's summing up of the evidence. There was nothing untoward about that. But in our judgment, a gap of that length calls for still more anxious consideration of the risk of unfair prejudice.

46 This was a relatively complex multi-handed case. The central issue in the case against and for this appellant was identification. That was reflected in the prosecution opening which told the jury that the first issue when considering the case against any defendant was *"does the Crown have the right man?"*. It would, we think, have aided clarity for the judge to spell this out himself to the jury at some point in his summing up and to highlight it in the route to verdict. That was not done. The route to verdict relating to counts 6 and 7 began by asking the jury to decide "*Did the defendant penetrate the vagina of [K] with his penis?*". It went on to deal with consent or reasonable belief in consent.

47 These are by no means matters that would ground a successful appeal. Indeed, they are not relied on as grounds. But we do regard them as relevant aspects of the context in which we need to consider the significance of the imperfections in the legal directions. The same is true of the fact that the identification directions were given orally only, and not in writing, and the fact that they dealt compendiously with three defendants rather than addressing the case of each of those defendants separately.

48 Here, K's identification does appear on the face of it to have been confident. For well-known reasons that is not worth a great deal. The judge was right not to draw attention to it. There were on a proper analysis few independent considerations that lent support to the identification. The judge referred in this regard to K's evidence that she had many meetings with the two men of whom she spoke, and that she would have been able to observe them closely. This was capable of supporting her identification evidence, <u>if</u> her evidence of what happened in the flat was accepted, but <u>only if</u> that was so.

49 In the light of Carruthers' evidence the first issue which the jury had to consider was whether K's evidence on that point was or might be unreliable. The judge gave no direction on that issue in the legal directions. It may be that strictly speaking this is not a *Turnbull* point, properly so-called. It goes to identification of the location not the appellant. But in the context of this case it was a point of real weight. That was so not least because K's identification of the location and the appellant's ownership of the premises were both factors on which the prosecution relied as supportive of K's identification of the appellant.

50 We think Mr Magarian put it rather too strongly when he suggested that the appropriate direction was that if Carruthers' evidence was accepted then K's account must be wrong. There are ways in which the two or parts of them might be reconciled, or only part of K's account might have been called into question. But that is not the main point. This important clash of evidence was not drawn to the attention of the jury as part of the legal direction, nor was its significance highlighted.

51 It is in this context that it was critical, in our judgment, for the jury to consider Carruthers'

credibility. The judge dealt with this in a separate part of his summing up, as we have said. We do not find Mr Magarian's criticism of the way the judge dealt with it then particularly persuasive. But we do consider it was a material flaw for the judge not to deal with this topic earlier, as part of the legal directions on identification, when he should have made reference to the potential impact of Miss Carruthers' evidence.

52 If the jury did accept K's account of what had happened at the flat, then the extent of the opportunities she had to observe her assailants was obviously relevant. It was fair and proper for the judge to identify this as a specific point that might support her identification of the appellant and Basharat. But it was at best an equivocal or double-edged point. The defence case was that if K's account was true she would have had plenty of opportunity to notice one or both of the appellant's two distinctive physical characteristics and would have mentioned them in her ABE interviews. She did neither. No mention was made of this in the legal directions. In that respect, those directions were unbalanced and incomplete.

53 This defence argument was mentioned as part of the summing up, but in part 2, which came five days after the legal directions. It was also dealt with somewhat generically, as a point raised by several defendants. The judge did refer to the medical records of the appellant's eczema quite briefly, summarising the defence case thus:

> *"It is not mentioned by [K] in the sort of detail you would perhaps expect if she had seen me in this state."*

He went on to say this:

> *"So that material is there for you, ladies and gentlemen. Please do not think that because I'm not going through it, it is irrelevant. It's relevant or irrelevant depending on your view on it and I don't think I need to take you through it."*

This was a somewhat unfortunate way to put the matter, as the point could not be considered irrelevant. It was a point for the jury to assess, to decide what weight to attach to it.

54 The one matter mentioned in the legal directions as capable of undermining the reliability of the identification was the length of time that had passed between the events that happened and the identification. It was, as the judge said, almost a decade. But he left it at that. The delay was significant because K's memory might have faded, but not only for that reason. The delay gave K plenty of opportunities to visit the shop or the area around it and to see the appellant, leading perhaps to contamination of her memory and a mistaken identification. She lived in Keighley and accepted that at the age of 15 she had spent time in and around Highfield Road and that later on she had passed the address frequently. These were points of potential significance that in our judgment ought to have been mentioned to the jury as part of the legal directions.

55 Then there are the two points about inconsistencies between K's identification and her ABE interviews. Mr Magarian fairly concedes that the mistaken identification of the appellant as having been at the derelict house may have flowed from a leading question from a police officer, based on a misunderstanding of some rather ambiguous statements in one of K's ABE interviews. Even so, these two points - and particularly the second - seem to us to be matters to which the jury could properly have attached significant weight, when viewed in combination with one another and in conjunction with the other points. Neither was referred to in the legal directions.

56 Again, these were matters that the judge did mention in part 2 of the summing up, but they did not feature prominently. Nor were they expressly identified at that stage as matters going to the reliability of the identification evidence. It is true that trial counsel did not highlight the potential significance of K's 2016 interview in which she professed an inability to identify the older man. But in our view, it was nonetheless incumbent on the judge to pick that matter up.

57 Reviewing these points in the circumstances of this particular case, we have concluded that the failure to draw these matters together and present them as a coherent collection, explaining their significance, was a serious flaw. It had the effect identified in *Elliott* of dissipating the combined force of the points.

58 Taking account of the overall context, we find ourselves left with a distinct unease about the way the key issue in the case against this appellant was addressed in the summing up, and we have concluded that the conviction is unsafe.

59 For those reasons we allow this appeal and quash the appellant's conviction.

CERTIFICATE

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This transcript has been approved by the Judge.