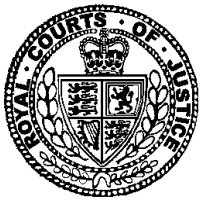

Neutral Citation Number: [2024] EWCA Crim 11

Case No: CA-2022-03305 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Norwich Crown Court
His Honour Judge A Bate
T20197281

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2024

Before :

LADY JUSTICE MACUR DBE
MR JUSTICE GOOSE
and
MR JUSTICE FREEMAN

- -

Between :

REX	**Respondent**
- and -	
AUV	**Appellant**

- -
- -

Mr Vullo KC (instructed by Twelve Tabulae) for the **Appellant**
Mr Paxton KC and Mr Brown (instructed by **the CPS**) for the **Respondent**

Hearing dates : 8 December 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

The provisions of the Sexual Offences (Amendments) Act 1992 apply to some of the offences charged in this case. 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 the relevant alleged crimes. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

Macur LJ :

Introduction

1. This application for an extension of time (377 days) in which to make an application for permission to appeal against conviction, the admission of fresh evidence and for permission to appeal and has been referred to the full Court by the single judge.

2. On 4 October 2021 after a trial lasting 18 days, the offender was convicted of 13 offences, namely cruelty to a person under 16 years contrary to section 1(1) of the Children and Young Persons Act 1933, two offences of sexual assault of a child under 13, contrary to section 7(1) of the Sexual Offences Act 2003, two offences of causing or inciting a child to engage in sexual activity, contrary to section 8(1) of the Sexual Offences Act 2003, two offences of sexual activity with a child contrary to section 9(1) of the Sexual Offences Act 2003, two offences of causing or inciting a child to engage in sexual activity, contrary to section 8(1) of the Sexual Offences Act when she was above the age of 13, two offences of sexual activity with a child family member, contrary to section 25(1) of the Sexual Offences Act 2003 and two offences of making indecent photographs of a child contrary to section 1(1)(a) of the Protection of Children Act 1978. The total sentence imposed was one of 9 years' imprisonment. The offender was also made subject to an indefinite Restraining Order and orders made for forfeiture of a laptop, iPhone, and camera.

3. This case has previously been before this Court on an application made by HM Attorney General pursuant to section 36 of the Criminal Justice Act 1988. The application for leave to refer the sentence as unduly lenient was heard on 17 February 2022 and refused.

The facts in summary

4. The applicant is the mother of S who is now aged 24. The offender was married to S's father for about 12 years. S was their only child. The Offender and her husband separated in about 2002 when S was aged 3. Thereafter S lived with her mother and had little contact with her father.

5. In November 2005, the offender took S (then aged 7) to a Diagnostic Centre in Nottingham. Dr Miller, a consultant and developmental psychology speech and language therapist, diagnosed S with Pathological Demand Avoidance Syndrome (a form of autism). In 2003, a different psychologist had made a diagnosis of a Neurodevelopmental Disorder.

6. In October 2018, S was assessed by Dr Cutler, a consultant forensic psychologist. Dr Cutler concluded that the victim had never suffered from Pathological Demand Avoidance Syndrome nor from an Autistic Spectrum Disorder. However, she did conclude that, by then, S suffered from Chronic Post Traumatic Stress Disorder. S had an average IQ but had possibly underachieved academically and, in Dr Cutler's opinion, S's demonstration of selective mutism as a child was highly likely to have ben contrived by the offender.

7. The prosecution case at trial was that the applicant exploited the diagnoses of Pathological Demand Avoidance Syndrome, for her own ends.

8. The applicant sought to control as much of S's life as possible and restricted her relationships and monitored her social media. The applicant used emotional blackmail to control S.

9. S grew up thinking that she suffered from a serious medical condition and that her relationship with her mother was normal and conventional. However, up until the age of 18, when S went to ballet school in the autumn of 2016, she would sleep in her mother's bed and bathe together with her every evening as the applicant told her had been the medical advice.

10. The first count on the indictment, cruelty to a child between April 2000 and April 2014, referred to the applicant's emotional and physical 'ill treatment' of S.

11. Other counts on the indictment represented the sexual assault of S when under 13, between the ages of 13 and 15 and between the ages of 16 and 18. The applicant simulated sex with S both when clothed and unclothed. Sexual assaults occurred during a game called "Count the veins", invented by the applicant during which, she would touch S and vice versa, counting visible veins on each other's body including breasts and vagina. On occasion the applicant would ask S to fondle the applicant's vagina and to suck her breasts.

12. In addition, the applicant's making of two indecent photographs of S in August 2013 and January 2017 was indicted.

13. The offending became known when S left the family home to attend ballet school. The applicant would repeatedly call S and threaten to take her own life. she would also attend at the school and threaten to remove S.

14. S complained to her father about the sexual and emotional abuse that she was suffering.

15. In January 2017, a police investigation began.

16. S and the recipients of her 'recent' complaint, a consultant in development psychology who assessed the complainant on 2nd November 2005 and a consultant in forensic psychology who assessed her in 2018, gave evidence. The prosecution also relied upon photographs and video clips.

17. At trial, the applicant denied any sexual activity or cruelty and continued to maintain that S suffered from PDAS. She admitted taking the photographs the subject of the two counts on the indictment but denied that they were indecent. She accepted that a video which she had taken showed S simulating sexual intercourse on a hotel bolster but said this had been S's spontaneous behaviour. She had bathed with S but denied any sexual 'overtones.' The applicant called character evidence from schoolteachers, a speech and language teaching assistant, a school dinner lady and, a contemporary of S.

The Trial

18. The applicant was represented at trial by Mr Evans of counsel, instructed by ITN solicitors, leading Mr Benthall. They are all accused of negligent handling of the applicant's case in terms that will become apparent below. Both Mr Evans and Ms Doherty of ITN solicitors, have responded to points made against them by counsel now instructed on behalf of the applicant, Mr Vullo KC.

19. The prosecution was represented by Mr Paxton KC. He appears on behalf of the respondent.

Extension of time.

20. The significant delay in making the application is sought to be explained by reference to a schedule of works undertaken by Mr Vullo and his "team." We have little doubt as to the industry and cost expended, as becomes apparent from the production of a 100 page, 212 paragraph 'application for leave to appeal against conviction' and an additional 16 page, 59 paragraph skeleton argument, as directed by the single Judge. However, we come to the certain conclusion that the industry detailed in the schedule has been largely focused on the way the applicant's new legal team would have conducted the criminal trial, and is wise after the event of conviction, and not on whether there is a realistically arguable ground of appeal. That is, the draft grounds of appeal are advanced in the context that trial counsel and solicitors were incompetent (ground 7), however, the fact the Mr Vullo and/or his "team" would have made different tactical decisions does not determine the legitimacy of the tactical decisions made by trial counsel; see *R v Day* [2003] EWCA Crim 1060 at paragraph 15:

> "… in order to establish lack of safety in an incompetence case the appellant has to go beyond the incompetence and show that the incompetence led to identifiable errors or irregularities in the trial, which themselves rendered the process unfair or unsafe…"

21. We are singularly unimpressed by reference in the application and amended skeleton argument and Mr Vullo's oral submissions that 'many other grounds could have been put forward.' They have not surfaced, and it is reasonable to assume that if there was any merit in them, they would have been deployed. Overall, it appears to us that the criticisms now made in the draft grounds of appeal, nit-pick at trial counsel's decisions as though it was possible to isolate them outside the dynamics of the unfolding evidence and the trial. However, in our certain view, they do not demonstrate impermissible error or irregularity. When considering Mr Evan's and Ms Doherty's responses, we note Mr Vullo's written rejoinders, a considerable number no doubt on instruction, but no application has been made to call either of Mr Evans or Ms Doherty to give evidence.

22. Nevertheless, we make clear we have necessarily considered the merit of the applications for the admission fresh evidence, and permission to appeal, for subject to exceptional and unwarranted delay, there is no good reason to visit what we consider to be the flaws in approach by the new legal team upon the applicant. Ultimately, we dismiss the applications in toto. The financial cost of these endeavours aside, we regret that it is unlikely that this applicant's expectations will have been managed by the process engaged, which will have incurred its own emotional cost.

Fresh evidence.

23. The explanation for the failure to adduce the 'fresh' evidence of eight witnesses who would speak positively of the applicant's behaviour towards S, S's 'controlling' behaviour of her environment and others and the lack of any suspicion as to the occurrence of sexual abuse or allegations by S, is attributed to the failings of the applicant's previous legal team to marshal the factual evidence.

24. We have assumed that the 'evidence' of each of these witnesses is capable of belief and find that it would have been admissible evidence, however there was a reasonable explanation not to call them and in any event their evidence does not provide any ground for allowing the appeal.

25. We note that six 'character' witnesses were called. Of the eight additional witnesses now sought to be introduced to provide fresh evidence, Ms Doherty indicates that she received no instructions in relation to five of them; one has been 'spoken to in the early stages of the case and it was felt her evidence would not assist' and concerns has been raised by the applicant about her; attempts had been made to contact another without success and another has provided a letter but, "[i]t was felt her evidence would not have taken the defence case any further."

26. Mr Evans says that "Between the 6 witnesses, we were able to establish in reliable manner, many important points in favour of the applicant. The remaining witnesses would add little if anything and the repetition could have either provided an opening for an attack by the prosecution or swamped the better and more important points."

27. Further, is decision not to ask the witnesses of their opinion of S's behaviour when a child because it "carried with it limited benefit, if any, but risked evoking sympathy for her" was entirely reasonable.

28. We consider these to be well articulated and pragmatic decisions. We see nothing in the 'new evidence' that significantly undermines the prosecution case. The application to admit this evidence is refused and is completely without merit.

29. The application to adduce the evidence of Dr White, a consultant psychiatrist, who was provided with "detailed schedules pulling together all of the evidence both used and unused" is equally misguided. The defence had previously obtained two expert reports which were not relied upon at trial and of which decision no criticism is made. Mr Paxton submits that the attempt to introduce this specific 'fresh evidence' exemplifies "expert shopping." We agree.

30. Dr White was instructed to address twelve issues, including to "comment on the way in which Dr Cutler gave her opinion evidence. We are of the view that the language used was intemperate and the conclusions given failed to identify and give appropriate weight to other real possibilities. To assist us to identify whether this is an argument with merit we would ask that Dr White: (i) Provide us with his assessment of the veracity of each of Dr Cutler's findings detailed in the conclusion of her report. (ii) Identify any factors/alternatives that ought to have been considered by Dr Cutler; (iii) Comment on the appropriateness or otherwise of the language used by Dr Cutler to deliver her opinions. We set this instruction out in full since we return to this issue in considering one of the draft grounds of appeal below; however, it also serves to demonstrate an apparent lack of objectivity and an inappropriate method of instructing an expert that lays itself open to justified criticism of leading and undue influence.

31. As it is, the response of Dr White is to agree with Dr Cutler that S was misdiagnosed with an autistic spectrum disorder and that S may have PTSD. Further, he accepts that S's sexualised behaviour as a young child is "an alerting factor to the possibility that she has been/was being sexually abused" but posits alternative explanations such as inappropriate television viewing. He considered S's behaviour may be explained by an

attachment disorder which may have arisen in the context of her witnessing the alleged domestic violence against her mother inflicted by the father. Dr White regrets the "limited detail regarding S's account of clinical symptoms" in Dr Cutler's reports and says there is "no clear evidence that Dr Cutler considered the possibility that S's self-report of her symptoms was not accurate" but had no "specific concerns regarding the appropriateness of the language used by Dr Cutler to deliver her opinions".

32. Mr Vullo submits that this evidence is important for "the Complainant's account has never been fully and properly challenged at any stage throughout the trial process. Dr White's report now provides a rational and credible explanation that is consistent with the Applicant's case." However, whilst Dr White identifies deficiencies in the detail contained in Dr Cutler's reports, his own opinion assumes "the accuracy of the documents provided to me, including the evidence of the witnesses is true. However, the reliability of the evidence is ultimately a matter for the court to decide." In this latter regard we note that other than professional reports and the transcript of evidence of Dr Cutler, he "reviewed" only "extracts" from the applicant's undated proof of evidence, and "instructions regarding [S's] inappropriate/sexualised behaviour (received on 13.9.22)." There is no 'review' of S's evidence. His opinion is therefore circumscribed, and it is unsurprising that he provides an explanation that is consistent with the applicant's case, save of course, the applicant continues to maintain that S is on the autistic spectrum.

33. This 'fresh evidence' does not provide a ground of appeal. It is little better than speculative opinion. It provides no new relevant 'science.' It was an unnecessary aide to cross examination of S; indeed, we cannot comprehend how it would be utilised in formulation any question that could properly be put to S nor, in light of its own glaring deficiency of but a partial review of the materials, otherwise assist the jury in assessing Dr Cutler's professional opinion.

34. The application to admit this evidence is refused as totally without merit.

Grounds of appeal

35. Grounds 1, 2 and 3 relate to the drafting of Count 1 on the indictment, namely that relating to 'child cruelty', which it is argued, should have been challenged at the outset by defence counsel for it is insufficiently particularised, bad for duplicity and, if pursued in this form, calling for a 'Brown' direction. Mr Vullo realistically concedes that grounds 2 and 3 piggyback on ground 1 and cannot succeed independently.

36. Mr Vullo describes the drafting of the Particulars of Count 1 of the indictment, that charging cruelty to a child, as "cut and paste". By that he means that there was no editing undertaken to specify which of the five methods in which child cruelty can be occasioned, namely wilful assault, ill treatment, neglect, abandonment, or exposure, was alleged. He acknowledged orally that there was no "hard and fast rule" in drafting such a count but submits that Mr Evans should have required the count be 'split' to allege aspects of emotional and physical cruelty separately over the 14-year period. He cites *R v Cooper* [2019] EWCA Crim 43 and *R v Young* (1993) 97 Cr App R in support for this proposition. The failure of Mr Evans to do so, Mr Vullo says, is "emblematic of a lack of preparation."

37. We regard that criticism to be unwarranted and unfair. *R v Hayles* (1969) 53 Cr.App.R. 36, 40, [1969] 1 Q.B. 364, is authority for the proposition 'assaults ill-treats, neglects, abandons or exposes' does not create five separate and distinct offences in "watertight compartments." The evidence led in this case alleged isolation and physical and verbal assaults, all of which may comprise ill treatment. In *R v Young* (supra) the Court dismissed the submission that a *Brown* (1984) 79 CR.App.R 115 direction was necessary in every case requiring the jury to be unanimous as to the specific evidence which leads them to find a defendant guilty.

38. In this case the judge in summing up directed the jury to consider wilful assault, ill treatment or neglect, saying "those are disputed and have to be proved by the prosecution, one or more of them…in a manner likely to cause [person A1] suffering or injury to health…This is the disputed issue. [the applicant], as set out at page 9 of my directions, denies ever wilfully behaving in the various cruel ways alleged which are said by the prosecution to amount to assault, ill treatment and/or neglect".

39. Unlike *Cooper*, in which the Court was troubled by the 'inconsistent verdicts' returned, or *Young*, a case in which two defendants ran cutthroat defences each blaming the other and in which the judge had given similar directions as here, the applicant denied all such behaviour.

40. In *R v Chilvers (Peter)* 2021 EWCA Crim 1311, a case involving a course of conduct of controlling and coercive behaviour, Fulford LJ giving the judgment of the Court said at

> "63. It is clear from the authorities set out above that the jury must be agreed that every ingredient necessary to constitute the offence has been established. This court has, nonetheless, repeatedly stated, and we yet again emphasise, that a *Brown* direction is only necessary in comparatively rare situations. … when the individual particulars are not said to be coterminous with an essential element or ingredient of the offence and when the individual particulars do not involve different defences, a direction in accordance with *Brown* is unnecessary."

41. He went on in paragraph 71 to identify the actus reus of the offence charged to be "the applicant's repeated engagement in behaviour towards [the victim] that was controlling or coercive". The particulars that had been given were to assist the jury in understanding the nature of the case but were not suggested to be coterminous with the actus reus. "The jury's task was to evaluate the entirety of the behaviour in question and decide whether not was controlling or coercive in the light of all evidence. it was not necessary for the jury to be agreed as to the parts of the evidence which led them to the conclusion that the actus reus of the offence had been made out."

42. The situation in tis case is directly analogous. We find that count 1 of the indictment was not bad for duplicity. The framing of the count was in accordance with Criminal Procedure Rules r.14.2(2), alleging a course of conduct. That is, "(2) More than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission". The defence was a straightforward and complete factual denial. We do not regard the applicant to have been compromised, nor identify any realistic prospect of an unsafe conviction in the circumstances of this case.

43. Grounds 1 to 3 are unarguable.

44. Grounds 4 and 5 relate to what is submitted to be 'inadmissible' evidence placed before the jury without objection by defence counsel.

Dr Cutler:

45. Although there is considerable commentary upon the contents of Dr Cutler's report in the written application, the only focus should be what oral evidence she gave, for the obvious reason that neither the report, nor the prosecution reliance upon it in opening constitute evidence before the jury. Mr Vullo asserts that Dr Cutler "gave evidence which tended either expressly or implicitly to convey to the jury her opinion that: a. the complainant's allegations about her mother's abuse were true; b. the cause of features of the complainant's behaviour in the past was the very abuse by her mother that the complainant was alleging; c. the cause of the psychiatric/psychological condition (PTSD) which she diagnosed that the complainant was currently suffering, was again caused by the very abuse by her mother that the complainant was alleging."

46. We have read the entire transcript of Dr Cutler's evidence. We do not agree with the assertions above. The criticised evidence is reported out of context. Specifically, Dr Cutler's expert evidence regarding a previous diagnosis of selective mutism was admissible and, contrary to Mr Vullo's submissions, entirely fair and balanced. Dr Cutler queried whether it had ever been present, or whether it was an "artefact of other things going on in her life," that is an anxiety state. She reported S's account but did not opine as to its veracity. Likewise, her evidence regarding the possible implications of "sexualised behaviour" in children, and specifically as reported in S's history, including by the applicant, was admissible expert opinion. She referred to such behaviour as "a red flag of sexual abuse." Such evidence did not transgress permissible evidence of expert opinion nor suggest that she believed S's allegations against her mother. In fact, she gave examples of children who had been abused as infants without cognitive memory of the same. In reporting her differential diagnosis of PTSD, Dr Cutler explicitly said "if the facts of this case are true, as alleged…" on more than one occasion. Her evidence concerning delay was entirely in keeping with orthodox published views, now often a feature of a judge's direction to the jury, and certainly did not trespass into expressing an opinion about the veracity of S's allegations.

47. We consider the criticism of Mr Evan's cross examination of Dr Cutler to be unfair. Mr Vullo's extensive written critique over 28 paragraphs is florid, biased, and subjective.

48. Ground 4, which relates to this evidence, is unarguable.

Sarah Jessup

49. Ground 5 relates to the insertion of a document created by Sarah Jessup into the jury bundle. That is, her evidence was that after S told Sarah Jessup that the police were coming to talk to S, she had typed up a document to send to S's father to help him understand "because S was finding it really difficult to talk to her dad…."

50. In the advice and grounds of appeal, Mr Vullo states that "It is beyond any sensible argument that this document should not have gone into the jury bundle even in part, let alone in its entirety. The reason for its inclusion is clearly lack of any effective

preparation. Any competent counsel who was on top of the papers would have asked for the document to be removed from the bundle. From the answers given to the questions posed we have further evidence that this was an issue not properly prepared. It was never established at any stage, by the Crown or the Defence, as to when SJ/4 was drafted. This is a case where the defence was that Sarah Jessop had inappropriately agitated a vulnerable teenager into making what was a false allegation sexual abuse. It is clear from the evidence of the Complainant and Sarah Jessop that [S] was complaining about her mother's behaviour for some time but that those complaints were typical teenager complaints that did not involve criminality. When that was said to have changed and sexual allegations were made was never satisfactorily established at trial. SJ/4 was said to have been drafted by Sarah Jessop on her computer. Computer files and their dates of creation are easily established. No effort was made by the defence to seek disclosure as to the creation date of this document throughout the entire trial process."

51. He maintained this line in his oral submissions and dismissed Mr Evan's explanation for his wish to have the document inserted into the jury bundle.

52. Mr Paxton submits that the document was admissible, whether as a 'memory refreshing document' or evidence of complaint. We reject this submission as baldly stated. That is, it would become admissible as a stand-alone document if Sarah Jessup had been cross examined on the basis of 'recent fabrication', and would be 'admissible' as a memory refreshing document if used by Sarah Jessup to refresh her memory while giving evidence on which she was cross examined and which as a consequence is received in evidence in the proceedings as if it concerns matters of which oral evidence by Sarah Jessup was admissible. See s 120 Criminal Justice Act 2023.

53. Therefore, it was admissible since Mr Evans did 'cross examine' Sarah Jessup upon it. Mr Evans says in his written response that it was not through "error or negligence that the exhibit was not objected to. Instead, it set out the ambit of the conversations between S and Sarah Jessup, some of which was not discernible from the incomplete chatlog." This in the context that he considered "there was material in the chatlogs and in the statements referred to, which would form a basis for the reasonable assertion that [S's] complaints about her mother's behaviour had their genesis in the conversations between her and Sarah Jessop. As the conversations continued, S escalated matters, sometimes in response to questions by Sarah Jessop but also, it was asserted, in order to ensure that Sarah Jessop would not detach through fatigue, something feared by [S.}"

54. We have read the transcript of Sarah Jessup's evidence. It appears clear to us that Mr Evans pursued his 'strategy,' which he says he had discussed with the applicant, with some skill. Mr Evan's approach was obviously not combative, but the more effective for that. That is, Sarah Jessup confirmed that disclosed messages between her and S did not contain any sexual allegations. Further, that in January and March 2016 Sarah Jessup had informed S that she could not message her back all the time and that S's contact was persistent and "a massive drain" on her time. At that time S had not made any disclosures as to sexual abuse. Subsequently, Sarah Jessup confirmed in the text messages that she had made clear to S her poor opinion of the applicant. She had enjoyed "feeling needed" by S and had not attempted to hide her poor opinion of the applicant or to dissuade S from distancing herself from the applicant. Thereafter, Mr Evans cross examined Sarah Jessup about the sexual abuse allegations and established

that she had not made a contemporaneous note. Thereafter the document in issue had been prepared. It contained no 'particulars' of the allegations she said she had received.

55. We are satisfied that trial counsel's decision was well within the band of reasonable strategical decisions open to him. This ground of appeal is unarguable.

56. Further, we note that no criticism is made of the judge's summing up of this evidence up to the jury, or the directions that he gave. That is, the judge made clear that the "accuracy of the underlying reports is hotly contentious and you have my directions about that. …"

57. The directions to which the judge referred relate to previous consistent statements of S. They are entirely orthodox and sound.

58. Ground 6 relates to trial counsel 'agreeing' evidence "contrary to written and verbal instructions."

59. Mr Evans agrees that he did so, indicating in his written response to the criticism made:

> "It is correct that I advised the applicant that it may not profit her to challenge [three named] witnesses … The first two witnesses were unlikely to be disposed to assist the applicant. The evidence of [two of them] predominantly consisted of their views of the applicant, S, and their interaction. Any unusual behaviour demonstrated by [S] or the applicant would have been directly attributable to the belief that the applicant has that [S] required protecting because of her PDA. That point was firmly established through the trial. The evidence of [another witness], of events, in Manchester did not require a challenge. In the circumstances I cautioned the applicant against seeking to challenge peripheral evidence because the potential harm to her case could outweigh any probative force for the prosecution." (Emphasis added)

60. Mr Vullo takes exception to the description "peripheral" or "marginal," the latter expression as used by Mr Paxton in the Respondent's Notice. He submits in writing that whilst some issues were "minor…. [and]…little would have turned on them…. there were several that were clearly significant to her case." Mr Vullo then provides various factual issues arising from the witness statements, namely: the applicant sitting in lessons and constantly telling S what she was and was not capable of doing; where precisely she lived; the size of packed lunches provided to S and the quantity of food in the family home; the reason why S left a dance class and did not return ; what had been said to one witness regarding S's autism; where a dance show was and whether the applicant used a uniform list.

61. We agree with Mr Vullo that some of the disputed factual issues should, as a matter of course, have been challenged or a redaction of the relevant witness statement sought, at least. We disagree with Mr Vullo that it was relevant where the family lived or where the location of the dance school or shows were, or whether the applicant had recourse to a uniform list. We are also conscious of the imprecise framing of the challenges made in the applicant's written instructions to her trial solicitors which suggests a literal critique of expressions of opinion rather than the factual basis of the same. However, and in any event, we are not persuaded that the lack of challenge on the identified points arguably undermines the safety of the convictions when seen in the light of the other considerable evidence on the point.

62. The final ground is said to identify "3 further examples" which reflect lack of preparation and trial strategy. That is, the failure to (i) properly challenge recent complaint evidence; (ii) put the defence case concisely/correctly and (iii) adduce/obtain relevant evidence.

63. The first further complaint relates to the evidence of Sarah Jessup. We say no more than appears in [54] – [57] above.

64. An example given in relation to the second further complaint relates to the suggestion made in cross examination that one of the photographs deemed indecent was in fact 'artistic' when in fact the applicant insists that it was taken at the imperative demand of her minor daughter. We consider this criticism to border on the ridiculous. The charge against the applicant was the making of an indecent photograph. The applicant admitted taking the photograph. She had retained it. The context she gave that she and S were often naked in each other's company whilst at home did not undermine the 'suggestion' of the description to be applied to the image. The defence of 'duress' was not relevant.

65. Further, and in support of the third further complaint, Mr Vullo suggested in writing, and sought to rely in oral submissions that Mr Evans accepted he "instructed [witnesses] not to give evidence as to the complainant's behaviours." We challenged him on this categorisation of Mr Evans response. That is, he does not accept that he instructed witnesses in the evidence they should give. To do so would be entirely improper. What Mr Evans does indicate is that he advised the applicant that it would not be constructive to question witnesses on this issue.

Conclusion

66. We are not persuaded that any of these criticisms are made out in any realistic sense to arguably undermine the safety of the convictions. As indicated above, the applications are refused.