IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LUTON
MRS RECORDER MAYALL
T20210075

CASE NO 202302986/B3

NCN: [2024] EWCA Crim 1763

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 27 November 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE LAVENDER

HIS HONOUR JUDGE LEONARD KC
(Sitting as a Judge of the CACD)

REX
V
PETER BROWN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR M SAHU appeared on behalf of the Applicant.
MR L GODDARD appeared on behalf of the Crown.

A P P R O V E D J U D G M E N T

MR JUSTICE LAVENDER:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. No matter relating to the victim of the applicant's offences (whom we will call "P") shall, during his lifetime, be included in any publication if it is likely to lead members of the public to identify him as the victim of these offences.

2. The single judge has referred to the full court the applicant's applications for an extension of time in which to apply for leave to appeal and, if time is extended, for permission to appeal against his conviction on 28 April 2023 in the Crown Court at Luton of two counts of indecent assault on a male person, contrary to section 15(1) of the Sexual Offences Act 1956 (counts 1 and 2), and two counts of indecency with a child, contrary to section 1(1) of the Indecency with Children Act 1960 (counts 3 and 4). The abuse was said to have taken place between 1979 and 1984, when P was aged between 12 and 16 years. The applicant was P's swimming instructor and also befriended P's family.

3. The Crown's case was that the applicant sexually abused P by masturbating him, which was the subject of counts 1 and 2, and by making P masturbate him, which was the subject of counts 3 and 4. The abuse was said to have occurred at various locations, namely in the changing cubicles at the swimming pool, in P's home, when P's parents were out, in a wooded area behind P's home, in the applicant's home and at a holiday cottage in Cornwall where the applicant took P on holiday. It was also alleged that the applicant would get P to pose in swimming trunks so that he could take indecent photographs of him (this was the subject of count 5).

4. Between 1985 and 2004, P was convicted of 98 offences. These included 22 offences of theft or attempted theft, four offences of burglary, five offences of obtaining or attempting to obtain property or services by deception, five offences of forgery, nine offences of using a false instrument and one offence of perjury as a witness. P also suffered from mental health issues. He was diagnosed with schizophrenia and bipolar disorder.

5. It was alleged that in about 2010 P told his sister (whom we will call "Q") that he had been abused by the applicant. It was also alleged that in 2016 P told the NSPCC that he had been sexually abused as a teenager by his swimming instructor. It was in early 2017 that P disclosed the alleged abuse to the police. P provided ABE interviews on 18 April and 3 October 2017. Meanwhile, Q provided a witness statement, dated 16 May 2017, in which she said that about seven or eight years earlier P had told her that, when he was 13, he had been sexually abused by the applicant when the applicant worked as a swimming instructor at the local swimming pool. According to Q, P said that he had been raped by the applicant, although P did not claim, in his interviews or his witness statements, to have been raped.

6. The applicant was arrested on 30 June 2017 and a laptop was seized. It was found to contain three photographs which were said to be of P depicted holding his erect penis. These were the subject of count 5. P had not mentioned photographs of him holding his penis in his interviews or statements. At various times P said that: he was 60 per cent

sure that one of these photographs was of him; that it was not of him; and that he was 100 per cent sure that it was him. Ten further indecent images, said to be of children, were found on the applicant's laptop computer. These were the subject of counts 6 and 7.

7. Q died on 7 April 2019. The appellant was interviewed on 16 October 2019. He provided a prepared statement, in which he said that he had no recollection of the allegations, although he later accepted that he knew P, to whom he provided swimming lessons. In 2020 the police took witness statements from P. The applicant first appeared in the Magistrates' Court on 31 March 2021. He was arraigned before the Crown Court on 9 June 2021 and he pleaded not guilty on that occasion to all seven counts. The applicant's trial was twice listed in 2022, but on each occasion was unable to proceed. P died on 15 November 2022.

8. To prove the case, the Crown relied on: the recordings of P's interviews and his subsequent witness statement; evidence from the NSPCC; Q's witness statement; evidence of the applicant's bad character, namely a conviction in 1993 for indecent assault against a boy under 16 and convictions in 2001 for three counts of indecent assault on a male and one count of gross indecency with a boy under 16; the fact that the applicant was a swimming instructor and admitted to teaching P; evidence that the applicant had been a photographer in the Royal Navy, which corresponded with a statement made by P in his interviews; evidence that photographs of boys in their swimming trunks in and around the pool were found during the search of the applicant's home; evidence that the applicant had an interest in model boats and that the applicant had a model boat on display in his home at the time of arrest, which was said to correspond with statements made by P in his interview; and adverse inferences from the applicant's failure to give evidence.

9. The applicant's case was that the alleged abuse did not take place, that P had lied, that the photographs were all of adults and that none of them were of P.

10. The applicant's trial started on Tuesday 18 April 2023, when the recorder decided to allow the Crown to rely on the recordings of P's interviews, on P's witness statements and on Q's witness statement. The trial continued on 19 and 20 April 2023, when the applicant, who had a confirmed diagnosis of heart failure and skin cancer, fell ill and was taken to hospital. The trial resumed on 25 April 2023, when the recorder heard and determined a number of applications. The recorder decided to allow the Crown to rely on the bad character evidence of the applicant's previous convictions. The Crown closed their case and the recorder rejected a submission of no case to answer made on behalf of the applicant and declined to stop the case pursuant to section 125 of the Criminal Justice Act 2003 ("the 2003 Act").

11. On 25 April 2023 the Crown offered no further evidence on counts 5 to 7 and the jury were directed to return not guilty verdicts on those counts. In the light of this development, the recorder was invited to discharge the jury, but she decided not to do so. On 26 April 2023 the applicant indicated his intention not to give evidence. He then fell ill and was taken into hospital again, where he remained until 5 May 2023. On 27 April 2023 the recorder declined to discharge the jury in the light of the applicant's illness and

decided to continue with the trial in the applicant's absence. As we have said, the applicant was convicted by the jury on counts 1 to 4 on 28 April 2023. He was sentenced on 4 August 2023.

12. The proposed grounds of appeal are that the recorder was wrong: to admit the hearsay evidence; to admit the bad character evidence; to find that there was a case to answer on counts 1 to 4; not to stop the trial pursuant to section 125 of the 2003 Act; not to discharge the jury on 25 April 2023; and to proceed with the trial in the absence of the applicant on 27 April 2023. No complaint is made about any of the legal directions which the recorder gave to the jury.

13. The time for appealing expired on 26 May 2023. The application for leave to appeal was not filed until 28 August 2023, which was 95 days out of time. As we have said, the applicant was in hospital until 5 May 2023. Thereafter, the applicant's solicitors could only contact him by letter. They wrote to him and advised him of the outcome of trial, but no response was received.

14. We are told that the applicant did not feel able to face matters because of his ill-health, although there is no medical evidence to support this. It was only when the applicant attended his sentencing hearing that he gave instructions with regard to his intention to appeal. In the absence of any medical evidence, we do not regard this as a good reason for the delay, but we have considered the merits of the proposed appeal.

15. We start with the recorder's decision to admit the hearsay evidence of P and Q. Since both of them were dead, their evidence was admissible pursuant to section 116 of the 2003 Act. Section 114(1)(a) of the 2003 Act provides as follows:

> "In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if—
>
> (a) any provision of this Chapter...makes it admissible."

16. Section 116 of the 2003 Act provides as follows:

> "(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if—
>
> (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter
>
> (b) the person who made the statement (the relevant person) is identified to the court's satisfaction, and
>
> (c) any of the five conditions mentioned in subsection

(2) is satisfied.

(2) The conditions are—

(a) that the relevant person is dead..."

17. There was no doubt that this condition for admissibility was satisfied in relation to both P and Q. Consequently, the focus of the rival submissions was on the question whether the recorder should decide not to admit the evidence of P and/or Q. We note that section 126(1) of the 2003 Act provides as follows:

> "In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if—
>
> (a) the statement was made otherwise than in oral evidence in the proceedings, and
>
> (b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence."

18. In addition, section 78(1) of the Police and Criminal Evidence Act 1984 provides as follows:

> "In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

19. It was submitted on behalf of the applicant that the admission of the hearsay evidence of P and Q would create overwhelming and irreparable prejudice for the applicant because he would be unable to test their evidence by cross-examination. Reliance was placed on the inconsistencies in and between the hearsay statements. It was submitted that P's evidence was the sole and decisive evidence against the applicant.

20. The Crown accepted that P's evidence was the decisive evidence against the applicant, but they did not accept that it was the sole evidence. The Crown relied on the circumstances of the making of P's hearsay statements, namely that they were recorded interviews and witness statements made to the police. As for supporting evidence, there was known contact between the applicant and P, so there was clear opportunity for the alleged offences to have taken place, P named the applicant (who was a swimming teacher at the material time) and photographs of P were found on the applicant's computer. Moreover, the applicant had similar previous convictions and the applicant had an interest in model ships.

21. The recorder referred to the cases of *R v Horncastle* [2010] 2 AC 373; *R v Ibrahim* [2012] 2 Cr App R 420 CA and *Riat* [2013] 1 WLR 2592. The recorder acknowledged that P's evidence was decisive, but held that it could safely be held to be reliable. In reaching that conclusion, the recorder had regard to the fact that P's hearsay evidence consisted of recorded police interviews and witness statements made to the police, that it was accepted that the applicant had been P's swimming instructor for a time during the relevant period, that there was support for P's statement that the applicant was a photographer, that photographs of young boys or young men were found on the applicant's devices, that P had said that there was a model ship on the applicant's mantelpiece and that a model of the Cutty Sark, albeit one which was purchased in 2017, was displayed in the applicant's home when he was arrested. The recorder also relied on the applicant's previous convictions, although she had not, at that stage, decided that they should be admitted into evidence.

22. Having regard to these matters and to the directions which she would give to the jury, the recorder concluded that the applicant could have a fair trial. The recorder considered how the reliability of P's evidence could be tested. As to that, the Crown accepted that some or all of P's convictions should go before the jury if his hearsay evidence was admitted. The recorder also acknowledged that inconsistencies in P's evidence could be relied on at trial. The recorder dealt briefly with Q's hearsay evidence, which she said would be admitted for substantially the same reasons as P's evidence.

23. In relation to the applicant's previous convictions, it was submitted on behalf of the Crown that these were admissible pursuant to section 101(1)(d) of the 2003 Act, which provides that:

> "In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—
>
> (d) it is relevant to an important matter in issue between the defendant and the prosecution."

24. This is expanded in section 103(1)(a) of the 2003 Act, which provides as follows:

> "For the purposes of section 101(1)(d) the matters in issue between the defendant and the prosecution include—
>
> (a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence..."

25. Subsections 101(3) and (4) of the 2003 Act provide as follows:

> "(3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence

would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged."

26. The Crown submitted that the applicant's previous convictions were admissible both because they were capable of being found by the jury to establish a propensity on the applicant's part to commit sexual offences against boys and because they went to rebut any suggestion that it was a coincidence that P had named the applicant as someone who had abused him. The particulars of the applicant's previous offences were that they related to three boys whom we will call "X", "Y" and "Z". The subject of the applicant's conviction in 1993 was that on 11 July 1992 the defendant took X back to his caravan after a swimming lesson and touched his penis, under his shorts, with his left hand. The applicant's convictions in 2001 concerned Y and X. The applicant was working as a sports therapy tutor when he was introduced to Y, who was 13. He became a trusted friend of Y's family. On a number of occasions the applicant stayed the night in their flat and he also arranged a holiday for himself and Y. The applicant had regular physiotherapy sessions with Y in which he would administer massages. The applicant touched Y's penis on a number of occasions and also made Y touch his penis. The applicant took Z to his flat for a photography session, after which he massaged Z, which included pulling down Z's shorts and massaging his buttocks.

27. It was submitted on behalf of the applicant that the convictions did not establish the alleged propensity and/or that it was unfair for them to be admitted. Reliance was placed in particular on the shortness of the particulars of the offence against X, the significant gap in time between the alleged offences against P, which were said to have been committed between 1979 and 1984, and the offences against Y and Z and the fact that the offence against Z was a one-off.

28. The recorder held that the previous convictions were admissible, both on the ground of propensity and on the ground of rebutting coincidence. She also concluded that it would not be unfair to admit the evidence of these convictions. In particular, she held that the admission of evidence of these offences would not amount to bolstering a weak case.

29. We turn next to submissions that the recorder should have stopped the trial or held that there was no case for the applicant to answer. It is unnecessary to restate the familiar test in *Galbraith*. Section 125(1) of the 2003 Act provides as follows:

> "If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that—
>
> (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in

> the proceedings, and
>
> (b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,
>
> the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury."

30. The submission of no case to answer made on behalf of the applicant and the submission that the recorder should stop the case relied on substantially the same matters. These included P's previous convictions, especially his many convictions for offences of dishonesty, his mental health issues and the inconsistencies in his evidence, such as Q's evidence that he had told her that he had been raped, and the various statements which he had made about the photographs which were said to be of him.

31. The recorder held that the hearsay evidence was not so unconvincing as to require her to stop the case, but that it was supported by the applicant's previous convictions, and that there was evidence on which a properly directed jury could properly convict the applicant on counts 1 to 4.

32. Once the Crown had decided to offer no further evidence on counts 5 to 7, it was submitted on behalf of the applicant that the jury should be discharged on the basis that they would be unable to put those allegations out of their minds when considering counts 1 to 4. However, the recorder decided that it was unnecessary to discharge the jury, since she would direct the jury that the Crown no longer suggested that the jury could be sure that the images were of P or of people under 18 and that, in those circumstances, they had no relevance whatsoever to the issues arising on counts 1 to 4.

33. On 27 April 2023 it was submitted on behalf of the applicant that the jury should be discharged because there was a real risk that the jury would conclude that the applicant's illness was not genuine, but that he was malingering. The jury sent a note to the judge asking, "Why can't we just crack on with the trial?" It was submitted that the applicant, if he had been at court, might have responded to this note by changing his mind about giving evidence, but the recorder did not consider this to be realistic and there is no evidence before us to support this submission.

34. The recorder considered the case of *R v Jones* [2003] 1 AC 1. In deciding that the trial should continue in the applicant's absence, she concluded that it was difficult to see what prejudice would be caused by the applicant's absence, given the stage which the trial had reached, and that the jury would be told that the applicant had been admitted to hospital and directed not to hold it against him.

35. We turn next to the parties' submissions on this appeal. In relation to the recorder's decision to admit P's and Q's hearsay evidence, it is submitted on behalf of the applicant that: the recorder failed to follow the procedure set out in *Riat*; in assessing the potential

reliability of P's evidence, the recorder erred in giving insufficient weight to P's previous convictions and to the fact that the offences were alleged to have taken place about 40 years before the trial; that P's allegations had not been made until many years after the alleged offences; that the recorder erred in relying on the photographs found on the applicant's computer as evidence which supported P's account; and, further, that the recorder erred in failing to give separate consideration to the question of whether Q's hearsay evidence should be admitted and erred in deciding that it should be admitted so as to create a counterbalance to P's evidence.

36. On behalf of the Crown, it is submitted that the recorder correctly considered the potential reliability of P's evidence and how it could be challenged, for instance by reference to P's convictions and inconsistencies, such as Q's evidence that P said that he had been raped. It was also submitted that the recorder could only deal with the evidence about the images as it stood at the time of her decision and that she was entitled to conclude that the applicant could have a fair trial.

37. In relation to Q's statement, it is submitted on behalf of the Crown that the recorder did not admit this simply in order to provide a counterbalance to P's evidence and that the recorder was entitled to conclude that Q's statement should be admitted.

38. In relation to the recorder's decision to admit the evidence of the applicant's previous convictions, it is submitted on behalf of the applicant that the prejudicial effect of this evidence would far outweigh its probative value, especially in a case where the decisive evidence consisted of hearsay. On behalf of the Crown, it is submitted that the application made under section 101(1)(d) was not limited to propensity. The Crown also sought to rely on the previous convictions in order to rebut any suggestion that it was a coincidence that P had fabricated evidence so similar to other offences of which the applicant had later been convicted. It is clear from the ruling that the recorder had full regard to section 78 and the recorder's decision was one which she was entitled to make on the facts of the case, applying the established case law and principles.

39. In relation to the recorder's decision not to stop the case, her decision that there was a case for the applicant to answer and her decision on 25 April 2023 not to discharge the jury, it is submitted on behalf of the applicant that the recorder failed to consider either properly or at all that the Crown's abandonment of counts 5 to 7 fundamentally undermined the fairness of continuing the trial on counts 1 to 4. It is submitted on behalf of the Crown that there was evidence which provided some support for P's account and that a reasonable jury, properly directed, could properly convict the applicant. It was also submitted that the recorder made it clear in her ruling on the hearsay evidence that she was aware of her duty to stop the case at any point under section 125 in the interests of justice.

40. As for the Crown's decision to offer no further evidence on counts 5 to 7, it was submitted that the recorder had already taken into consideration the fact that P had flip-flopped in his evidence in relation to the photographs said to be of him, but she was entitled to conclude that the trial should proceed.

41. Finally, in relation to the recorder's decision not to discharge the jury on 27 April 2023 following the applicant's admission to hospital, it is submitted on behalf of the applicant that it was unfair to proceed in the applicant's absence, particularly given that the Crown sought to suggest that the applicant's sudden need to go to hospital might be indicative of the fact that he could not account for the evidence that was being presented. On behalf of the Crown, it is submitted that, when the applicant was taken ill, he had already indicated that he was not going to give evidence and there was to be no further defence evidence. It had also been made clear to the court that he was not going to play an active part in the proceedings and he had indicated that he had wished for the proceedings to continue in his absence. In view of the recorder's direction to the jury not to hold his absence against him, it was difficult to ascertain the nature of any prejudice suffered by the applicant.

42. Having considered these submissions, we start with the recorder's decision to admit P's hearsay evidence. We see no basis for the allegation that the recorder did not follow the procedure set out by the Court of Appeal in *Riat*. In paragraph 7 of its judgment in that case the Court of Appeal said:

> "The statutory framework provided for hearsay evidence by the CJA 03 can usefully be considered in these successive steps.
>
> i) Is there a specific statutory justification (or 'gateway') permitting the admission of hearsay evidence (s 116–118) ?
>
> ii) What material is there which can help to test or assess the hearsay (s 124) ?
>
> iii) Is there a specific 'interests of justice' test at the admissibility stage ?
>
> iv) If there is no other justification or gateway, should the evidence nevertheless be considered for admission on the grounds that admission is, despite the difficulties, in the interests of justice (s 114(1)(d)) ?
>
> v) Even if prima facie admissible, ought the evidence to be ruled inadmissible (s 78 PACE and/or s 126 CJA) ?
>
> vi) If the evidence is admitted, then should the case subsequently be stopped under section 125 ?"

43. In the present case, the answer to question 1 was "yes" and the recorder rightly focused on questions 2 and 5, since questions 3 and 4 did not arise and question 6 was for a later stage in the trial. The crucial question for the recorder was whether P's hearsay evidence was potentially safely reliable. As to that, the Court of Appeal said as follows in

paragraph 33 of its judgment in *Riat*:

> "The critical word is 'potentially'. The job of the judge is not to look for independent complete verification. It is to ensure that the hearsay can safely be held to be reliable. That means looking, in the manner we have endeavoured to set out, at its strengths and weaknesses, at the tools available to the jury for testing it, and at its importance to the case as a whole."

44. P's hearsay evidence consisted largely of recordings of his interviews, which meant that the jury could assess his demeanour. His delay in making his allegations was a matter on which juries are routinely directed in cases of this nature. His convictions and his mental illness were matters which the applicant's counsel could use to cast doubt on P's hearsay evidence. The recorder rightly considered the evidence which provided some support for what P said in interview, while recognising that it was for the jury to assess that evidence and its impact on their assessment of the reliability of P's evidence. On 18 April 2023 the recorder could only consider the state of the evidence in relation to the images as it stood at that time. It would have been preferable for the recorder to decide whether to admit evidence of the applicant's previous convictions at the same time as deciding whether to admit P's hearsay evidence, but in the present case this made no difference since the recorder decided to admit evidence of the applicant's previous convictions. Accordingly, we do not consider that the applicant's conviction was unsafe by reason of the recorder's decision to admit P's hearsay evidence.

45. Although the recorder could certainly have dealt with Q's evidence at greater length, we consider that she was entitled to admit that evidence. We share the recorder's sentiment that, once the recorder had decided to admit P's evidence, it was to be expected that the applicant would want Q's evidence to be admitted, since her reference to an allegation of rape made by P was one of the means by which the applicant could challenge the reliability of P's hearsay evidence. Indeed, Mr Sahu has helpfully confirmed to us today that, although this was not explored in detail before the recorder, if P's hearsay evidence had been admitted, he would have wanted to rely on Q's evidence, which would have been admissible as a previous inconsistent statement pursuant to section 124(2)(c) of the 2003 Act. In any event, Q's evidence was admissible in its own right as potentially safely reliable evidence of an earlier complaint made by P.

46. We consider that the recorder was entitled to admit evidence of the applicant's previous convictions, which were sufficiently similar to the alleged offences against P to be capable of being regarded by the jury as evidencing a propensity to commit sexual offences against boys or as rebutting any suggestion that it was a coincidence that P had named the applicant as his abuser.

47. We do not consider that the evidence of the applicant's convictions was rendered unsafe by any of the decisions made by the recorder at the close of the Crown's case. It was a matter for the jury whether matters such as P's previous convictions, his mental health issues or any inconsistencies in his accounts meant that they were unsure of his allegations that the applicant had abused him. The Crown's decision to offer no further

evidence on counts 5 to 7 was capable of being dealt with by directions to the jury. We repeat that there has been no complaint about any of the recorder's directions to the jury. It is true that the evidence as to the images said to be of P had formed part of the recorder's assessment on 18 April 2023 whether to admit P's hearsay evidence. Once the Crown abandoned its allegation that those images were photographs of P or of boys, rather than young men, it was appropriate for the recorder to review the position in relation to P's hearsay evidence. She did so, and she concluded that the evidence was not sufficient to make the hearsay evidence so unconvincing as to require her to stop the case. That was, in our judgment, a conclusion which was open to the recorder on the facts of this case.

48. Finally, we consider that the recorder was entitled to decide to complete the trial in the absence of the applicant. Whether or not the applicant expressed the wish for this to happen, it was clearly an option which was open to the recorder once the trial had reached the stage where no further evidence was to be called, even though the applicant's absence from the trial was involuntary. Again, any risk of prejudice was capable of being dealt with by suitable directions to the jury and no complaint has been made about the directions given to the jury. We are not prepared to assume that the jury did not follow these directions.

49. For all of these reasons, we have concluded that it is unarguable that the applicant's convictions were unsafe. It follows that the merits of the proposed appeal are not such as to justify overlooking the absence of good reason for the applicant's delay in appealing. Accordingly, we refuse the application for an extension of time and we refuse leave to appeal against conviction.