IN THE CAYMAN ISLANDS COURT OF APPEAL ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS CRIMINAL DIVISION

CICA (Crim) APPEAL No. 0016 of 2022
(Grand Court Cause No. Ind. 0058 of 2021)

BETWEEN

ERICKA LYNCH

APPELLANT

V

HIS MAJESTY THE KING

RESPONDENT

BEFORE: **The Rt Hon Sir John Goldring, President**
The Hon Sir Michael Birt, Justice of Appeal
The Hon Clare Montgomery, Justice of Appeal

Appearances: **Mr. Michael Andrew Lashley KC instructed by Ms. Stacey-Ann Kelly of Kelly Law for the Appellant**

Ms. Nicole Petit of the Office of the Director of Public Prosecutions for the Respondent

Date of hearing: **9 September 2024**

Judgment delivered: **11 October 2024**

JUDGMENT

BIRT JA:

1. This is an application by the appellant Ericka Lynch for leave to appeal against her conviction on 13 May 2022, before Carter J sitting with a jury, of one count of indecent assault. She was subsequently sentenced to 4 ½ years imprisonment on 30 September 2022.

At the conclusion of the hearing on 9 September, we refused an application to amend the grounds of appeal, gave leave to appeal on the original grounds, but dismissed the appeal. We now give our reasons.

2. The appellant was tried together with Antonio Marshall, who was jointly charged with the indecent assault. He was also convicted and subsequently sentenced to 5 years imprisonment. He too has applied for leave to appeal against conviction but, for reasons which are not entirely clear, his appeal is still not ready to proceed.

3. In the circumstances, given that the two appeals arise out of the same incident and raise the same issues, the first decision for the court was whether the appellant's appeal should proceed before that of Marshall. Given that it is over 2 years since her conviction, we concluded that it would be wrong for her appeal to be further delayed and decided that it should proceed.

4. On the complainant's account the relevant facts were as follows.

5. At the material time the complainant was aged 32 and the appellant aged 34. The complainant had known the appellant for over 15 years and they were close friends. The appellant and Marshall were in a relationship together.

6. On 17 April 2021 the complainant telephoned the appellant to discuss a personal matter. The appellant invited her to Marshall's address. Having arrived at the address, the complainant was introduced to Marshall for the first time. The trio drank, ate and watched television together. The complainant left the address at around 11 pm. As she was leaving, the appellant told her that Marshall could perform oral sex on her. In response, she told the appellant that she did not want that.

7. On 18 April 2021, the appellant had planned a birthday celebration (referred to as a brunch) for Marshall at the White House restaurant. The complainant was invited to attend. The celebration involved food, drinking and dancing. At around 4:30 pm the party moved on

to the Power Supply Bar. The complainant, the appellant and Marshall made their way to the Power Supply Bar in Marshall's vehicle. He drove and the complainant sat in the back.

8. On arrival at the Power Supply Bar, Marshall parked the vehicle and reclined the driver's seat all the way back. As the complainant tried to get out of the rear of the vehicle, Marshall pulled her dress to hold her back and tried to put his head under her dress. She proceeded to open the door and exit the vehicle. She told the appellant to tell her boyfriend to stop.

9. Whilst at the Power Supply Bar, everyone was drinking, dancing, and having a good time. The complainant accepted that she danced with both Marshall and the appellant. When the complainant was ready to leave, because of the incident that had happened when she was trying to exit the vehicle upon arrival at the Power Supply Bar, she attempted to contact her boyfriend to ask him to collect her. She was unsuccessful in her attempts to contact him and so left with the appellant and Marshall.

10. When they got to the vehicle outside the Bar, the appellant got into the driver's seat and Marshall sat in the back seat with the complainant. As they approached the Camana Bay roundabout, Marshall started to hold the complainant down. She told him to stop but he pinned her down. She shouted to the appellant to tell him to stop. Marshall then pushed his head under the complainant's dress, pushed her underwear aside and started to perform oral sex on her by sucking on her vagina.

11. The complainant kept trying to push him off and continually told him to stop, but he kept pushing her down with force. She shouted to the appellant several times and told her to tell Marshall to stop. The appellant kept telling her that it was okay. The complainant was crying out as Marshall continued to suck her vagina. Marshall used both his hands to hold her waist and lower body whilst he used his head to keep her legs open. The incident lasted some 20 minutes.

12. Having arrived at Marshall's home, the appellant got out of the driver's seat and opened the back door of the vehicle. The complainant was begging the appellant to tell Marshall

to stop. However, the appellant pulled the complainant's upper body down on the back seat and started to suck on her breast whilst repeating that she (the complainant) was okay. The appellant went on to ask Marshall if the complainant's 'clit' was hard, but the complainant did not hear his response.

13. The complainant continued to beg both Marshall and the appellant to stop. She told the appellant that people would see. In response the appellant said that no one was outside. Eventually the assault stopped. The appellant and Marshall went inside and the complainant followed them inside. She called her boyfriend to come and collect her. When the boyfriend attended he was told by the appellant that the complainant was not in her right mind and had drunk too much.

14. The complainant told her boyfriend and her mother what had happened that same evening and informed her boss the next day, as she was very upset at work.

15. On 19 April 2021, the complainant messaged the appellant relating all that happened and telling her that the appellant had broken her trust. The appellant apologised and stated that she was drunk. In one message the appellant said that she "*should have stopped it and I'm really sorry*." She went on to say that she was "*truly sorry and hurt what I allowed or engaged in*" and "*If you don't forgive me and choose not to trust me again I understand and hope that you find it within your heart to forgive me*".

16. The complainant made a formal report of the incident on 19 April 2021. The appellant and Marshall were each interviewed under caution. They both claimed in interview and subsequently at trial that the complainant had consented to the sexual activity which had taken place. Apart from Marshall denying any digital penetration, they did not deny that the sexual activity in the back of the vehicle described by the appellant had taken place. Their case was that the complainant had been flirtatious at the brunch and at the Power Supply Bar and had participated enthusiastically in the sexual activity in the vehicle.

17. The jury rejected their evidence that the complainant had consented and convicted them both of indecent assault. We should, however, for the sake of completeness, record that Marshall was also charged with a separate count of assault by penetration. This arose from the complainant's evidence that at some point when the sexual activity was taking place in the back of the vehicle, Marshall penetrated her vagina with his fingers. Marshall denied that this had occurred, and the jury acquitted him of this count.

Events at Trial

18. The complainant's evidence in chief was given by way of her ABE interview. She was present in court whilst it was played. This appears to have taken from after lunch on 8 March 2022 until the morning of 10 March, following which she was examined fairly briefly by prosecuting counsel on a few supplementary matters.

19. Mr Barton was representing Marshall. His cross-examination of the complainant began after lunch on 10 March. With occasional short breaks, it continued for the rest of that day, the whole of 11 March and for half an hour on 14 March. In broad terms, he cross-examined the complainant for some five hours less occasional short breaks.

20. Mr Myers represented the appellant. He began his cross-examination at 10.46 on 14 March. It continued for the rest of the day until the court adjourned at approximately 4 PM. The judge enquired of Mr Myers how much longer he would be and Mr Myers indicated that he would need another two hours or perhaps until lunch the next day. At the adjournment, prosecuting counsel expressed some concern about the length of the cross-examination, but this was strongly contested by both defence counsel.

21. Cross-examination by Mr Myers continued the next morning (15 March) for a further one hour before the court took a short break. During the break the judge was informed that the jurors were concerned that one of their number was displaying possible symptoms of covid. After discussion, the judge decided that the trial would have to be adjourned until the next day in order for the juror to have a PCR test. When the judge explained to the complainant

that she would have to come back the next day, the complainant became distressed. She said she didn't think she could do another day; she was not eating and not sleeping and just needed the case to finish.

22. The following day, the complainant did not return and the court received a medical report to the effect that she was currently not capable of providing any further testimony and would need adequate opportunity to recover before she could do so; this might also entail therapeutic intervention.

23. Having heard submissions from counsel as to how to proceed in the light of this development, the judge decided to continue the trial but to give a clear direction to the jury in her summing up about the fact that cross-examination of the complainant had been curtailed. She obtained from counsel a list of areas which they said they would have wished to explore with the complainant had the cross-examination continued. These were about the fact that she had stated to other witnesses shortly after the incident that she did not wish to go to the police; that she had said to other witnesses that she did not have proof of the alleged incident; that, according to her boyfriend, Marshall had been sitting on the sofa only in his underpants when the boyfriend arrived to collect her shortly after the incident; the content of some of the WhatsApp messages sent by the complainant to the appellant after the incident; whether she had a motive for lying because she wanted to cover up the fact that the sexual activity was consensual but she had been caught out when her boyfriend had come to pick her up and had seen Marshall sitting on the sofa in only his underpants; and the fact that she had deleted her Instagram page. Marshall and the appellant subsequently gave evidence and were cross-examined by the prosecution.

24. The judge gave a very detailed summing up. On a number of occasions she reminded the jury that it was for the prosecution to make them sure of guilt and that, if they did not believe the complainant's evidence, that was the end of the matter as there was no other evidence from which they could find the prosecution case proved.

25. Having summarised in detail the evidence of the complainant and what she had said in answer to cross-examination by both defence counsel, the judge, on the first day of her summing up, turned to the fact that cross-examination of the complainant had not been completed. She listed (p 136-141) the areas which we have mentioned and which defence counsel had said they would have wished to explore with the complainant if cross-examination had continued and she then directed the jury in the following terms (at p 141 on the first day):

> "*If you feel, members of the jury, that because counsel was not able to put these matters to the complainant in cross-examination, the matters that I have just recited and laid out for you, that counsel for the defendants were … deprived of the opportunity of properly testing and probing the complainant's evidence, and as a result you, the jury, are not in a position to make a proper assessment as to the complainant's credibility in order that you can be sure of what the complainant has related to you, then you should acquit both these defendants*."

She then immediately repeated that direction before going on to say:

> "*Now, however, if you feel, members of the jury, that during the time that the complainant was present and answering questions put to her by Mr Barton and Mr Myers that you did have a fair and complete opportunity of judging her credibility, then you may go on to consider whether her evidence has made you sure of the prosecution's case*....".
>
> She immediately went on to remind the jury that if they did not believe the complainant's evidence, that was the end of the matter as there was no other evidence from which they could find the essential elements of the offences to have been proved.

26. Having rehearsed in detail for the jury the evidence given by the appellant and by Marshall, very shortly before sending the jury out to consider their verdict, the judge returned to the fact that cross-examination of the complainant had been curtailed. She repeated the listed

areas where counsel felt they had not had the opportunity of exploring matters with the complainant and then directed the jury that the first matter which they should consider was whether, despite the fact that cross-examination had not been completed, they felt they were in a position to make a proper assessment of the complainant's credibility. She then repeated the direction she had given earlier and which we have quoted above.

Grounds of Appeal

27. On the day of the hearing of the appeal, counsel applied to amend the appellant's grounds of appeal. Although initially made only orally, at the court's direction, the amended grounds were reduced to writing after a short adjournment. The amendment sought to add two new grounds. The first alleged material non-disclosure by the prosecution in respect of 'relevant material'. On further questioning of counsel, the relevant material transpired to be two photos and a video taken by the appellant of events in Marshall's vehicle on the way to the Power Supply Bar. It is said that these were not disclosed during the trial and showed the complainant being very flirtatious. We were informed that the appellant only saw these when her phone was returned to her in May 2022 after the conclusion of the trial. The second ground was closely related and alleged that Mr Myers had failed to follow her instructions to request the above material from the Crown. There was, however, no evidence before us as to this latter allegation.

28. Mr Barton had written to the prosecution on 1 June 2022 enclosing copies of the two photos and demanding an explanation as to why the two photos – no mention was made at this stage of any video – had not been disclosed in the trial process. On 1 September 2022, the Director provided a detailed response explaining the technical reasons why the photos had not been found by the prosecution's computer expert when investigating the appellant's phone and accordingly had not been disclosed, as the prosecution were unaware of them. He also said that the two photo images appeared to have been taken at the same time as the video of the appellant and the complainant in the vehicle, which was already an exhibit in the case.

29. At the hearing, we were shown the video which the appellant was relying on. It showed part of the trip to the Power Supply Bar after the brunch and did indeed show the complainant acting in a happy manner, dancing and posing in the back of the car. On detailed examination the complainant's breast could be seen in 2 photos to be exposed.

30. We have to say that, despite seeking clarification at the hearing, we remain unclear as to exactly what was disclosed during the trial. The complainant referred in her ABE interview to the fact that she had danced in the back of the car on the way to the Power Supply Bar and the appellant had taken a video of that. The trial bundle which we were shown refers to a nine second video of which two still photos were also in the bundle. However, counsel were unable to assist us as to whether, as would appear at first sight, this nine second video was, or was part of, the video which we were shown and whether these were the two photos in question.

31. In the circumstances, there was simply no proper evidential basis to support the two new grounds, nor was there any satisfactory explanation as to why the point was only being raised at the eleventh hour when the phone had been back in the possession of the appellant since May 2022 and Mr Barton had raised the issue in respect of the photos as long ago as June 2022.

32. Furthermore, even on the assumption that the video we were shown is not the same as the video referred to in the trial bundle or by the Director in his response and that the two photos referred to by Mr Barton and forming the basis of the new grounds of appeal were additional photos taken by the appellant during the journey in Marshall's vehicle to the Power Supply Bar, we do not consider that the video and the two photos could have had any effect on the trial.

33. It is true that they show the complainant acting in a happy manner on the way to the Power Supply Bar. However, the complainant accepted in her evidence that she was dancing in the back of the car and was feeding chips to Marshall as the video shows. The visual evidence of the video added nothing of significance to the evidence already before the jury

and in any event, concerned events well before the alleged assault. Accordingly, any failure by the prosecution to disclose the same and any failure by Mr Myers to follow the appellant's instructions to request disclosure of the same – assuming that either of these events occurred - could not conceivably have made any difference to the jury's verdict.

34. In these circumstances, we refused this very late application to amend the grounds of appeal.

35. Reverting to the original grounds of appeal, although expressed as three grounds, the appellant essentially raises one argument. She contends that, because her counsel was unable to complete his cross-examination of the complainant by reason of the complainant's failure to return to the trial, she had been deprived of her constitutional right to cross-examine and to a fair trial, as a result of which the verdict was unsafe and unsatisfactory. The judge should have discharged the jury on ascertaining that the complainant would not be returning for cross-examination to be completed. Alternatively, it is now said that (despite this not being suggested at the trial) the judge should have taken steps to secure the continuation of cross-examination by seeking further medical information or imposing further special measures.

36. Section 7 of the Cayman Islands Constitution provides, so far as relevant, as follows:

> *(1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.*
> *(2) Everyone charged with a criminal offence has the following minimum rights:*
> .....
> *(e) to examine or have examined witnesses against him or her.....*"

37. It is well established that a conviction obtained following an unfair trial cannot stand: see for example *R v A (No 2)* [2001] 2 Cr App R 351 per Lord Steyn at [38]. However, as Lord Bingham stated in *R v Forbes* [2001] 1 Cr App R 430, whilst the right to a fair trial is an

absolute right, the violation of which will result in an unsafe conviction, violation of the subsidiary rights under article 6 ECHR (which, in respect of the right to cross-examine, are the same as the subsidiary rights in section 7(2) of the Cayman Islands Constitution) will not necessarily have the same effect. It is always necessary to consider all the facts and the whole history of the proceedings in a particular case to judge whether a defendant's right to a fair trial has been infringed or not.

38. Lord Bingham considered this aspect further in *Randall v R* [2012] 2 Cr App R 17 where he stated:

> *".... It is not every departure from good practice which renders a trial unfair..... but the right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial*."

39. The issue therefore in the present case is whether the fact that Mr Myers was not able to complete cross-examination of the complainant because of her absence resulted in an unfair trial. We were referred to a number of cases where a similar issue has been considered and would refer specifically to the following.

40. In *R v Stretton and McCallion* (1988) 86 Cr App R 7, the victim was mentally handicapped and an epileptic. The defendants were convicted of various sexual offences against her. She was cross examined for a total of 3 ½ hours but then became ill and unfit to continue. The trial judge decided that the trial should continue and gave a direction to the jury in terms which were adopted by the judge in the present case. In other words, he said that the jury should acquit unless they were satisfied that the cross-examination which had taken place had sufficiently probed and tested the victim's evidence so as to enable the jury to

judge fairly her credibility. The Court of Appeal dismissed the appeal, concluding that the judge had reached a discretionary decision which was open to him and which in fact was correct.

41. In *R v Wyatt* [1990] Lexis Citation 1724, [1990] Crim LR 343, the defendant was convicted of indecent assault of a female child. The child gave her evidence in chief and was then cross-examined for some 15 to 20 minutes, at which point she became too distressed to continue. The trial judge allowed the trial to continue and, following conviction, the defendant appealed on the ground that the cross-examination had been curtailed. The judge had not given the sort of direction referred to in *Stretton* but his counsel accepted that, in the short time available to him, he had put almost everything which he was in a position to put by way of cross-examination apart from one point. There was also some corroborating evidence of the child's evidence. The Court of Appeal dismissed the appeal.

42. In *R v Lawless* (1993) 98 Cr App R 342, the defendant was charged with conspiracy corruptly to give and make gifts. The prosecution called a co-accused, who had pleaded guilty. He gave some evidence in chief, but then suffered a heart attack and was unable to complete his evidence in chief or be cross examined at all. The Court of Appeal allowed the appeal against conviction on the basis that the witness's evidence was completely untested. It concluded that it was doubtful whether any direction, however strongly expressed, would have overcome the powerful prejudice of the witness's damning evidence being unchallenged and untested by cross-examination.

43. In *PM v The Queen* [2008] EWCA Crim 2787, the defendant was convicted of sexual offences against three children. One of them, referred to as L, gave evidence in chief over a day but then, after a short passage of cross-examination, was unable to continue. The judge allowed the trial to continue. Following conviction, the defendant appealed on a number of grounds, including that the judge should not have allowed the trial to continue and had failed to give a proper direction to the jury about the fact that cross-examination had been limited.

44. In a judgment delivered by Moses LJ, the Court of Appeal held that the judge's direction to the jury had indeed been inadequate. Having reviewed the cases of *Stretton* and *Lawless*, Moses LJ stated at [24] that, as a bare minimum, the jury should have been warned to be cautious about acting on the basis of L's evidence when they had been deprived of the opportunity of seeing the consequences, both to the witness herself and her evidence, of the test of rigorous cross-examination. Having then quoted the judge's direction to the jury in *Stretton,* Moses LJ said:

> "*We do not suggest that the precise terms of that direction is of universal application. But the virtue of a direction with a similar thrust is that it warns the jury that it should not act upon evidence which the defence has been unable properly to challenge. But we add this word of caution. In many cases it ought to be clear to the judge whether the defence had been deprived of a fair opportunity to challenge a witness's evidence. If the judge comes to the conclusion that the witness(sic) has been deprived of that opportunity then the jury should either be directed to ignore that evidence or if it is crucial to the case, discharged. Save in cases similar to that of Stretton and McCallion where the cross-examination was almost complete, the likely conclusion will be that which was reached in Lawless and Basford namely, that the judge should have discharged the jury*."

45. On the facts of the case, despite the very limited cross-examination and the failure of the judge to give a proper direction, the Court of Appeal had regard to other evidence which the defence could argue undermined or contradicted L's evidence and concluded that the trial was not unfair and the conviction not unsafe.

46. We were also referred to the case of *R v Muir*, (App 50 of 2007, 2 May 2008), a decision of the Court of Appeal of Jamaica. In that case, the defendant was convicted of possession of a firearm and wounding with intent. The victim of the wounding was called as a prosecution witness but was unable to identify his assailant. Cross-examination was accordingly limited to a couple of questions. Subsequently, the prosecution was given leave to adduce additional evidence which, as far as one can tell from the judgment, linked the

defendant for the first time to the firearm used at the scene. As the defence was one of self defence, defence counsel applied for the witness to be recalled for further cross-examination and the trial judge agreed. However, the witness did not attend, and no further cross-examination was possible. In the circumstances no cross-examination on the topic of self defence had taken place and the Court of Appeal concluded, having referred to *Lawless*, that the appeal should be allowed.

47. In our judgment, the consistent theme of these cases is that, where cross-examination of a prosecution witness is curtailed because the witness becomes unavailable, an appellate court has to consider all the circumstances of the case when considering whether the limitation of cross-examination has led to an unfair trial. Important aspects will include the extent to which cross-examination has occurred and the significance of the witness's evidence to the prosecution case. Furthermore, as Moses LJ made clear in *PM v The Queen* at [18], the trial judge is in the best position to determine whether a fair trial is possible despite the limitation on cross-examination and an appellate court should only interfere where the judge's decision not to discharge the jury is plainly wrong.

48. Mr Lashley KC submits that in this case the complainant's evidence was the sole evidence against both defendants and that, as shown by the list of matters defence counsel still wished to raise with the complainant, the appellant was seriously prejudiced by the inability of her counsel to complete his cross-examination. The trial was therefore unfair.

49. He further submitted that, before deciding that the trial should continue without further evidence from the complainant, the judge should have called the doctor who had provided the report to give evidence so that there could be exploration of how long it might take for the complainant to recover sufficiently to resume giving evidence and/or whether special measures, such as her giving evidence by live link, would enable her to continue.

50. We have carefully considered Mr Lashley's submissions, but we have no hesitation in concluding that, on the facts of this case, the fact that cross-examination of the complainant

could not be completed has not led to the trial of the appellant being unfair. We would summarise our reasons for this conclusion as follows:

(i) This was not a complex case. The allegation of indecent assault related to events during the journey from the Power Supply Bar to Marshall's home and immediately upon arrival outside his home.

(ii) As Mr Lashley accepted, the complainant had been cross-examined for some 10 hours (less periodic short breaks) by two counsel, approximately 5 hours by Mr Barton on behalf of Marshall and some 5 hours by Mr Myers on behalf of the appellant. The cross-examination had been spread over some four days.

(iii) Mr Barton, on behalf Marshall, cross-examined the complainant at length about the events the previous evening at Marshall's home, at the brunch, at the Power Supply Bar and in the vehicle on the way to Marshall's home. Although he said that he was leaving certain matters for Mr Myers to deal with, he nevertheless put fully and in detail his client's case about the events in the back seat of the vehicle and had full opportunity to probe and test the complainant's evidence in that respect.

(iv) Mr Myers then took over. We have to say that there appears to have been a considerable degree of repetition in the matters raised with the complainant. Thus, Mr Myers cross examined her about events the evening before, at the brunch, on the journey to the Power Supply Bar, at the Power Supply Bar, and the complainant's decision to leave with the appellant and Marshall despite what had happened when Marshall tried to put his head under her dress. He further questioned the complainant in very considerable detail about exactly how the alleged indecent assault by Marshall and by the appellant had occurred in the back seat of Marshall's vehicle. He further questioned her about her decision nevertheless then to go into Marshall's home despite, on her case, having just been indecently assaulted.

(v) We accept Mr Lashley's point that the prosecution case was entirely dependent upon the complainant's evidence. However, the judge reminded the jury of this fact. In relation to the curtailment of the cross-examination, she directed the jury in accordance with the direction in *Stretton*, namely that they should acquit unless they were satisfied that they had had sufficient opportunity, during the cross-examination which had occurred, to assess the credibility of the complainant. By their verdict, the jury clearly concluded that they had had sufficient opportunity. This is hardly surprising. In our judgment the jury had had ample opportunity over the lengthy cross-examination which had occurred to assess her credibility and during that period defence counsel had been able to probe the complainant's evidence in considerable detail and had been able to put their respective cases. Indeed, in our view, the cross-examination in this case had been repetitive and over lengthy. A trial judge may, and indeed should properly intervene to limit repetitive and over lengthy cross-examination.

(vi) The only matters counsel had not raised with the complainant were those listed earlier. These were essentially peripheral points; the essential defence case had been clearly and repeatedly put and explored with the complainant. Furthermore, the jury were alerted to the points which Mr Myers had wished to raise and the judge listed them twice during her summing up. It is also clear from the summing up (p136) that Mr Myers addressed the jury about these matters in his closing speech and submitted that, as a result, he had not been able to effectively test the complainant's credibility.

(vii) We do not accept Mr Lashley's criticism of the judge for not calling the doctor to give evidence in order to explore how long the complainant might be unfit or the practicability of possible special measures. The judge had a medical report stating that the complainant was unfit to continue and that she

needed adequate opportunity to recover, possibly including therapeutic intervention. It was for the judge to decide how best to proceed and, in the face of the report which she had, there can be no criticism of her conclusion to reach a decision on the basis of the report.

51. In summary, cross-examination in relation to the essential points of the defence case had been completed and the jury was given a strong direction concerning the fact that cross-examination had been curtailed and that the jury should first consider whether they had had a proper opportunity to assess the complainant's credibility. In our judgment, the judge's decision to continue the trial cannot be criticised and her direction to the jury on this aspect was impeccable.

52. In the circumstances we do not consider that the trial of the appellant was unfair nor is her conviction unsafe or unsatisfactory. We gave leave to appeal but dismissed the appeal.