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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

SHAUN HEGARTY

Applicant

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Mr Brian McCartney QC with Mr Sean Doherty (instructed by Quigley Grant & Kyle Solicitors) for the applicant
Mr John Orr QC with Mr Gary McCrudden (instructed by the Public Prosecution Service) for the prosecution

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Before: Keegan LCJ, Treacy LJ, Maguire LJ

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KEEGAN LCJ (*delivering the judgment of the court*)

The complainant is entitled to automatic lifetime anonymity in respect of this matter by virtue of section 1 of the Sexual Offences (Amendment) Act 1992, as amended. The judge referred to the complainant as M in his sentencing remarks and we will adopt that nomenclature in this judgment.

Introduction

[1] This is an application for leave to appeal against conviction for five counts relating to serious sexual assaults which occurred in April 2019. The single Judge, McFarland J, granted leave to appeal out of time but refused leave to appeal against conviction. The applicant now renews the application for leave to appeal.

[2] The trial commenced on 4 November 2020 and continued for nine days. The jury returned their verdicts on 19 November 2020, unanimously convicting the applicant on all counts, bar count 2 (administering a stupefying substance to enable sexual activity contrary to Article 65 of the Sexual Offences (NI) Order 2008) in respect of which he was acquitted. The applicant was sentenced on 28 May 2021 by

the Recorder of Londonderry His Honour Judge Babington in the terms set out below:

Count	Offence	Sentence
1	Developing a relationship with a female without disclosing his previous criminal convictions, contrary to section 113(1)(a) of the Sexual Offences Act 2003 Maximum sentence 5 years	3 years' imprisonment
3	Attempting to choke with intent to commit an indictable offence, namely rape, contrary to section 21 of the Offences Against the Person Act 1861 Maximum sentence life	12 years' imprisonment
4	Vaginal rape, contrary to Article 5(1) of the Sexual Offences (NI) Order 2008 Maximum sentence life	20 years' imprisonment
5	Anal rape, contrary to Article 5(1) of the Sexual Offences (NI) Order 2008 Maximum sentence life	20 years' imprisonment
6	Causing GBH with intent, contrary to section 18 of the Offences Against the Person Act 1861 Maximum sentence life	10 years' imprisonment
Total	All sentences to run concurrently	Extended custodial sentence of 20 years with 5 years extension

The applicant also has a pending appeal against sentence.

Summary of factual background

[3] The offending took place during the evening of Saturday 6 April 2019 and the early hours of the morning of Sunday 7 April 2019. M was known to the applicant as they had met at a friend's house on St Patrick's Day and she agreed to meet at the applicant's flat on the evening in question. They left the flat to go to an off licence to buy alcohol and then returned. After a time, having consumed a couple of drinks, M went to the toilet. When she returned to the living room, she took a sip of her drink and passed out.

[4] M's evidence was that she remembered nothing until later on. She woke to find herself on a mattress, with a rope around her neck. Marks were found on her neck and were photographed. It is apparent that M was later able to leave the flat. There is evidence of this from CCTV which shows M being let out of the flat by the

applicant. We have seen the photographic imagery of M at this stage of the evening and note that injuries and marks to M's face are apparent. This contrasts with the photographic imagery of M earlier in the evening in the off licence in which her face appears normal and unmarked.

[5] After leaving the flat M was then discovered lying on a bank, near traffic lights, on the Northland Road in Londonderry. The first person who came across her was a member of the public who was passing by. He reported that M was in a bad state and needed an ambulance. She was also very quiet, with injuries to her face and her hands were smeared in blood. Another man then stopped and police and ambulance services were called.

[6] When the police arrived M told them that she had been assaulted and raped. She was taken to Altnagelvin Hospital and treated by Dr Keating. Dr Keating gave evidence at trial that M had swelling to her left eye, swelling to her left jaw area and multiple abrasions around her neck. A CT scan showed a subarachnoid haemorrhage on the left side of her brain. M was in hospital for about a week. The scan also showed a fracture of the left orbital floor, described as "a blowout fracture." Dr Keating said that in her opinion these were usually caused by blunt trauma, such as a fist. A referral was made to the sexual assault referral unit, the Rowan Centre, because Dr Keating had noticed bleeding from M's vaginal area.

[7] Dr Middleton from the Rowan Centre gave evidence at trial that there was fresh bleeding coming from a tear in the vagina, bruising in the genital area and brown liquid in the vagina. She said that there was also bruising and a tear in the anal area. Dr Middleton's opinion was that there had been a very aggressive sexual and physical assault perpetrated on M.

[8] It is common case that M initially lied about her contact with the applicant on the night in question. In her first Achieving Best Evidence ("ABE") interview on 18 April 2019 she said that she had met the applicant previously and on the night in question saw him again in a bar and went back to his flat. At this stage M also refused to hand over her mobile telephone to police although she did so subsequently. During a second ABE interview M changed her account and said that she had exchanged texts with the applicant and came to his flat on the evening in question by agreement.

[9] M also provided various accounts of what happened to her and how she came to sustain her injuries. The salient points highlighted by Mr McCartney in opening this appeal are as follows. When police arrived to where M was on the bank she is reported as having difficulty speaking as her tongue was swollen and her mouth numb. She said that more than one person had been involved in the attack on her and that she had been injected with something and a rope had been used. When M saw Dr Keating later on at the hospital she had no recollection of events.

[10] Police attended the applicant's house in the early hours of the morning after the rape occurred. He appeared at the door in his boxer shorts with wet hair and said he had just taken a bath. Police then discovered that the bath was full of water and some cleaning had clearly occurred in the flat. The premises were searched and some alcohol was found but no drugs or substances or syringes or rope was found. Toxicology samples were taken from the applicant some considerable time after the event at 4.20pm on 7 April 2019. These showed a low alcohol reading and no evidence of drugs in the applicant's system.

[11] The applicant's case was that all sexual activity had been consensual. During the trial at which he gave evidence he described the events as being "rough sex." It was suggested to M by the applicant's counsel that the injuries to her face had been caused when she walked into a door during her visit to the toilet.

[12] The applicant has a previous conviction for a rape and sexual assault which occurred in February 2010 for which he received a seven year prison sentence in June 2011. As part of this sentencing a Sexual Offences Prevention Order ("SOPO") was made until further order which stipulated that the applicant was not permitted to develop a relationship with a female without disclosing his criminal convictions to her. The circumstances of the previous rape were that the complainant was not aware of being raped until she woke and so in essence she was raped whilst in an unconscious state. Furthermore, when she woke up she found that she was naked from the waist down as her pyjama bottoms had been removed.

Grounds of Appeal

[13] The following five grounds of appeal are raised:

Ground 1

The prosecution opening was unfair, prejudicial and likely to engender undue sympathy towards the complainant, in particular, from the presentation of photographs of injuries to the complainant. The judge erred in refusing to discharge the jury.

Ground 2

The judge erred in admitting bad character evidence relating to convictions for rape and sexual assault which had occurred nine years previously. The convictions suggested propensity only, they were not probative to any issue in the case and any probative value was outweighed by the prejudicial effect.

Ground 3

The jury acquitted the applicant of the second count (administering a stupefying substance to enable sexual activity). Count 2 was so inextricably linked to the rapes

and the attempted choking that the verdict was logically inconsistent, rendering it unsafe.

Ground 4

The judge did not address the emotive language in the closing speech in relation to count six, nor make reference to matters which were not the subject of evidence.

Ground 5

The judge's direction to the jury was not sufficiently robust, adequate or balanced, the deceptive and inconsistent nature of the complainant was not properly dealt with.

[14] All of these grounds were put before the court in argument however Mr McCartney concentrated on ground 2 which relates to the admission of bad character.

The appellate test

[15] In *R v Pollock* [2004] NICA 34 the Court of Appeal considered the proper approach to be taken when considering the safety of a verdict and the following principles were established:

(i) The court should concentrate on the single and simple question: does it think that the verdict is unsafe?

(ii) This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence is being introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against the background.

(iii) The court should eschew speculation as to what may have influenced the jury or judge to its verdict.

(iv) The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasonable analysis of the evidence, it should allow the appeal.

Consideration of the grounds of appeal

Ground 1: The prosecution opening

[16] The law in relation to the obligations of prosecution counsel is well trodden. *Blackstone Criminal Practice 2022* summarises the relevant principles at D16.11 as follows:

> "In addressing the jury, prosecuting counsel's role is that of a minister of justice who ought not to strive over zealously for a conviction. Counsel should avoid using emotive language liable to prejudice the jury against the accused - see *R v Bank* [1916] 2KB 621 and *R v Solloway* [2019] EWCA Crim 454."

[17] In pursuing this ground of appeal the applicant maintained that the prosecution opening was emotive and particularly that the photographs depicting M's injuries were presented to the jury in a manner which was prejudicial, rendering the trial unfair and the convictions unsafe. The applicant also asserted that the judge erred by refusing to discharge the jury when asked immediately after the prosecution opening.

[18] A useful starting place in examining this argument is the ruling of the judge on the application to discharge the jury. In response to the defence application the judge said that he did not consider the prosecution opening was overly emotive. In making this assessment the judge clearly viewed the prosecution opening as a whole and we agree with this assessment. This was a case involving serious allegations and unpleasant details which had to be explained to the jury. We do not think that counsel overstepped the mark in doing so. We can see that use of the phrase "planned attack" within the opening was something of an overstatement but that does not condemn the opening as a whole.

[19] In his ruling on the discharge application the judge also said that there was no reason not to give the photographs to the jury. We agree with his assessment. In our view it is perfectly proper to have the photographs presented to explain a case of this nature. In fact there was no defence objection to the admission of these photographs. Overall, the presentation of the photographs by the prosecution did not engender undue prejudice.

[20] The judge advised the jury in advance of the opening that what the prosecution said was not evidence, rather he said that it was a guide. The prosecution addressed the jury in the same way and stressed that they should make up their own minds on the evidence. The judge was also of the opinion that the prosecution opening was very fair, for example, inconsistencies in M's account had been referred to in some detail. We see no error in this approach.

[21] Furthermore, we are satisfied that in his charge to the jury, the judge made it clear on several occasions that the decisions about the facts of the case were for the jury and the jury alone to decide. He stated that while they may wish to take into account the prosecution and defence arguments, they were not bound to accept them. He also cautioned the jury to clear their minds of any sympathy or prejudice for or against the prosecution, the defendant or the complainant and her family. Therefore, even if there were any doubts in relation to prejudice arising from the prosecution opening, they are dispelled by the judge's charge. Accordingly, we find no merit in this ground of appeal.

Ground 2: The admission of bad character evidence

[22] The relevant legislative provisions from the Criminal Justice (Evidence) (NI) Order 2004 ("the Order") are set out below:

> "**Defendant's bad character**
>
> 6.—(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—
>
> (a) all parties to the proceedings agree to the evidence being admissible,
>
> (b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,
>
> (c) it is important explanatory evidence,
>
> (d) it is relevant to an important matter in issue between the defendant and the prosecution,
>
> …
>
> (2) Articles 7 to 11 contain provisions supplementing paragraph (1).
>
> (3) The court must not admit evidence under paragraph (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 paragraph (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.

…

Matter in issue between the defendant and the prosecution

8.—(1) For the purposes of Article 6(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;

(b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.

(2) Where paragraph (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of—

(a) an offence of the same description as the one with which he is charged, or

(b) an offence of the same category as the one with which he is charged."

[23] The prosecution relied on Article 6(1)(d) of the Order to admit evidence of the applicant's previous convictions for rape and sexual assault arising from an incident in 2010. Article 6(1)(d) states that evidence of the defendant's bad character is admissible if it is relevant to an important matter in issue between the defendant and the prosecution. Article 8(1)(a) states that such matters include 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. The prosecution sought to establish propensity to commit offences of the kind charged, with reference to his prior convictions, as a matter in issue between the parties.

[24] In *R v Edwards* [2005] EWCA Crim 1113 the key stages in applying the mirror provisions in England and Wales are summarised in *Blackstone Criminal Practice* F13.22 as follows:

> "(1) The judge determines admissibility under the relevant statutory gateway(s).
>
> (2) Where it is raised the judge also determines any question of exclusion in respect of prosecution evidence, for example under s101(3) or 103(3) of CJA 2003 or s 78 of PACE 1984.
>
> (3) Once evidence of bad character is admitted, questions of weight are for the jury, subject to the judge's power to stop the case where the evidence is contaminated and the judge's direction as to the use to which such evidence is put.
>
> (4) The direction on the evidence is of paramount importance. If the ground of the trial has shifted since the evidence was admitted, it may be necessary to tell the jury that it is of little weight."

[25] In the case of *R v Hanson* [2005] EWCA Crim 824 propensity is discussed. This case is authority for the proposition that the calculation over whether to exclude a conviction involves a range of issues including the similarity between the conviction and the offence charged, the gravity and age of the offence and the weight of the other evidence to ensure that evidence is not used to bolster an otherwise weak case. See *Blackstone Criminal Practice* F13.41.

[26] In this case a similar fact argument was advanced by the prosecution in that both complainants were in a state of intoxication (the prosecution amended this to both complainants being "out of it") and the applicant removed the clothing of the complainants before raping them. The applicant submitted that there is nothing particularly probative in terms of the manner in which the earlier offences were committed. The applicant also argued that intoxication of a complainant is common in sexual assault cases. However, in the present case, M had relatively little to drink. Similarly, the point was made that removal of the victim's clothes is also a common feature in rape cases.

[27] Referring to the approach endorsed in the case of *R v Venn* [2002] EWCA Crim 236 at [35], the applicant submitted that it is necessary to invoke some identifiable common feature or features constituting a significant connection and going beyond mere propensity. The applicant also relied upon the case of *R v Benabbou* [2012] EWCA Crim 1256, in which evidence of a previous rape conviction was admitted. In that case the court found that the similarities between

the earlier and current offences were limited. Accordingly, the applicant contended that the probative value of the earlier rape in establishing propensity was also limited and the admission of the evidence had a highly prejudicial effect on the fairness of the trial.

[28] The question of the admissibility of similar fact evidence depends on the degree of its relevance. It cannot merely suggest propensity, it must be shown to be relevant to the matter in issue and its probative value must not be outweighed by its prejudicial effect. See *R v Nabi* [2015] NICA 11. The case of *DPP v P* [1991] 2 AC 447 clarified that the previous requirement of "striking similarity" was no longer necessary.

[29] In support of this appeal point the applicant also submitted that the time period between the cases, nine years, and the dissimilarities between the cases failed to establish the requisite significant connection in terms of common features (eg violence, use of rope, anal rape, and the applicant's home as the scene of crime were not features of the earlier offence). As a result, the applicant contended that there was insufficient probative weight attached to the bad character evidence to outweigh the prejudicial impact on the fairness of the trial. Therefore, it was contended that by admitting the previous conviction, the judge diminished the prospect of a fair trial and rendered the verdict unsafe.

[30] In order to examine the applicant's points we must first turn to the judge's ruling on this issue as follows. Having referred to the relevant legislation and case law, the judge decided to admit the bad character evidence on the basis of the similarities between the two cases. He said that the first similarity was that both victims were unconscious in the sense that they did not know at the time what was happening to them. It was only when they came out of their condition that they realised something had happened to them. In both cases, their clothing was removed without their knowledge.

[31] The judge acknowledged, as the defence had argued, that many rapes occur when the victim is under the influence of alcohol or some other substance. However, in both of these cases, neither woman knew anything about the attack at the time it happened. In relation to clothing being removed, the defence argued that this was a necessary pre-requisite to committing the offence. The judge responded that in some cases the victims remove their own clothes and the rape occurs later.

[32] The judge decided that the two similarities relied on by the prosecution were significant. In both cases, the victims were unconscious when the act giving rise to the charge occurred. They knew nothing about it. Similarly, both women had their clothes removed without their knowledge. On this basis, the judge was satisfied that the previous conviction should be adduced.

[33] Furthermore, the judge did not think that the previous conviction was too old to be admitted. In making this assessment he said that rape was not a "normal" or

"usual" offence – it was a violation of an individual's body. Overall he did not think that the time period of nine years should preclude the decision to allow the prosecution to adduce the previous conviction.

[34] The judge further stated, having considered the matter carefully, that the probative value of the evidence was substantial and outweighed any prejudicial effect. He also referred to Article 76 of the Police and Criminal Evidence (NI) Order 1989 and concluded that admitting the evidence would not prevent a fair trial. In his summing-up to the jury, the judge explained the bad character evidence in detail, listing both the similarities and the differences between the two cases.

[35] In our view the above approach adopted by the judge is impeccable and accords with the guidance given in *R v Edwards* [2005] EWCA Crim 1813 and *R v Hanson* [2005] EWCA Crim 824. Clearly, the prosecution was correct to apply to admit the evidence on the basis of the two similarities namely that the complainants were in a state of unconsciousness and had clothing removed. This was relevant to a matter in issue and was of sufficient similarity and distinguishable from the facts in *R v Benabbou*.

[36] Mr McCartney understandably made reference to the fact that the previous conviction was from nine years previously. There is an obligation to consider this matter flowing from Article 6(4) of the Order however there is no absolute bar as regards old offences. Each case will turn upon its own facts. The judge took this into account and given the nature of the offence we see no error in his overall calculation on this issue applying the principles found in *R v Hanson*.

[37] We reject Mr McCartney's submissions that this evidence was admitted only to bolster a weak case. We accept that there were inconsistencies in the complainant's account. However, these were highlighted by the prosecution and the judge throughout the trial. In addition, there was medical evidence and evidence from civilian witnesses. All of this evidence was properly left to the jury to determine.

[38] We also reject Mr McCartney's argument that the application to admit the bad character evidence was too early in the trial. We do not discern any real or robust objection to this at trial. In any event we think that it was correct to have the matter dealt with at the stage it was particularly given that the applicant was charged with a breach of his SOPO. Therefore, we dismiss this ground of appeal.

Ground 3: Inconsistent verdict

[39] In relation to this issue the approach of Devlin J in *R v Stone* in 1955 was formally adopted by the Court of Appeal in England and Wales in *R v Durante* [1972] 56 Cr App R 708 and was expressed as follows:

> "Where an appellant seeks to persuade this court as his ground of appeal that the jury had returned a repugnant or inconsistent verdict, the burden is plainly upon him. He must satisfy the court that the two verdicts cannot stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion, and once one assumes that they are an unreasonable jury, or they could not have reasonably come to the conclusion, then the convictions cannot stand. But the burden is upon the defence to establish that."

[40] The Court of Appeal in England and Wales in *R v Fanning* [2016] EWCA Crim 550 reaffirmed the earlier approach of the cases noted above. This line was reiterated in *R v Dhillon* [2011] 2 Cr App R 10 in which Elias LJ stated at [33]:

> "It is notoriously difficult successfully to challenge a jury's verdict on the grounds that inconsistent verdicts have been returned."

The approach to this issue in the English cases refered to above has been consistently followed in this jurisdiction: see *R v J* [2012] NICA 39, *R v H* [2016] NICA 41 and *R v Murphy* [2021] NICA 16.

[41] Mr McCartney readily accepted that the test places a heavy burden on the applicant. The overriding question is whether the verdict is safe. A logical inconsistency between the verdicts is a necessary but not sufficient condition to find a conviction unsafe. It is only in the absence of any explanation for the inconsistency that the court is entitled to conclude that the jury was wrong. In support of this ground the applicant asserts that M's account that she was "drugged" and thereby rendered unconscious by the applicant was fundamental to her narrative.

[40] It is accepted by the applicant that the jury's acquittal in respect of count 2 makes sense given the lack of corroborating evidence to support the charge. However, the applicant's skeleton argument poses the following question: if the jury did not accept that the applicant rendered M unconscious, and there is no other explanation for her condition, then how can her account regarding the absence of consent due to unconsciousness be accepted?

[41] In our view there is a logical answer to this question which the jury was entitled to find. On the facts of the case, including the nature of the injuries sustained by M and the medical opinion that she had been subjected to a "very aggressive sexual and physical assault", it seems entirely logical that the jury reached guilty verdicts in relation to the rape and attempted choking counts while acquitting the applicant in relation to count 2. Count 2 was not a necessary pre-requisite to proving the charges of rape and attempted choking. In relation to

the rapes, the injuries sustained by M which were supported by medical evidence could have led the jury to conclude that there was a lack of consent, whether she had been rendered unconscious or not.

[42] Furthermore, it was open to the jury to conclude that M was rendered unconscious by the applicant as a result of a physical assault, such as a blow to the head, for which there was ample evidence (for example, the blowout fracture to the left orbital floor and the brain haemorrhage). In relation to the attempted choking, there was photographic evidence of multiple abrasion marks to M's neck, which provided support for her account. Therefore, count 2 is not so inextricably linked to the other counts that the guilty verdicts were logically inconsistent and unsafe. We dismiss this ground of appeal.

Ground 4: The prosecution closing

[43] The applicant submits that the emotive tone of the closing speech and reference to matters for which evidence had not been established rendered the convictions unsafe. In particular, objection was taken to prosecution counsel referring to the "merciless beating" the applicant had subjected the complainant to. In support of this ground of appeal the applicant relies upon a Privy Council decision in *R v Ramdhanie* [2005] UKPC 47.

[44] Having examined this authority it is immediately obvious that the factual circumstances of that case were markedly different. In that case prosecution counsel clearly overstepped the mark in terms of the comments he made at trial, see in particular the highly pejorative comments made about the defence summarised at paragraph [34] of the judgment. Here the criticism is much more modest and focussed on one particular phrase referred to above.

[45] The closing speech must be viewed in its totality. We can see that the one phrase picked out by Mr McCartney may not have been the best way to put the case however that does not mean that the entire closing was so skewed or unfair to establish this ground of appeal. Given the injuries sustained by M, it does not seem unreasonable for the prosecution to put the prosecution case to the jury that the applicant had caused them and to reject the applicant's claim that M had "walked into a door" during a visit to the bathroom.

[46] Furthermore, in his charge to the jury, the judge made it clear on several occasions that the decisions about the facts of the case were for the jury and the jury alone to decide. He stated that while they may wish to take into account the prosecution and defence arguments, they were not bound to accept them. He also cautioned the jury to clear their minds of any sympathy or prejudice for or against the prosecution, the applicant or the complainant and her family.

[47] The judge also specifically addressed M's injuries in his charge to the jury. He said at p.27:

> "Well, members of the jury, she sustained injuries somewhere. Was it at the hands of the defendant? Was it by falling? Was it something else? This is a matter for you."

[48] Thus, the judge made it patently clear that the cause of the injuries was a matter of evidence on which the jury were free to reach their own conclusion. We dismiss this ground of appeal.

Ground 5: The judge's charge

[49] The height of the case made in support of this ground of appeal was that the judge failed to present a sufficiently balanced summing-up and did not deal with the complainant's dishonest and inconsistent evidence adequately. This is a difficult starting point for the applicant especially as there were no requisitions made to the judge in relation to his charge. In addition, the judge produced some written directions including a two page explanation of the bad character evidence. Mr McCartney did not take any issue with the content of these documents. In answer to questions raised directly by this court he could not point to any non-direction or misdirection by the judge.

[50] In *R v Amado-Taylor* [2000] EWCA Crim 25 at paragraph 5, the Court of Appeal in England & Wales commented that:

> "Closing speeches [are] no substitute for a judicial review of the facts from the trial judge, who was responsible for ensuring a fair trial."

In that case, the Court of Appeal was considering a situation wherein the trial judge had, without discussion with the legal representatives, taken the decision that he would not sum up the facts of the case to the jury at all. The guidance at paragraphs 8-9 of this case contains the following:

> "Lastly, the suggestion that what good judicial practice requires of a judge is to ... embark ... upon a sort of safety net exercise to ensure that you've been reminded of every single salient point in the case is neither an accurate nor a fair description of the judge's task in summing up."

[51] It is not essential that a judge should make every point that can be made for the defence. The fundamental requirements are correct directions on points of law, an accurate review of the main facts and alleged facts, and a general impression of fairness.

[52] In the present case, the judge referred to the complainant's inconsistencies on several occasions throughout the summing-up. He directed the jury as follows:

> "But do carefully scrutinise her evidence because she has admitted lying about how she came to be there.
>
> And it's clear, very clear that there are inconsistencies in her evidence and of what she told people. You should consider these very carefully. Do you believe what she said happened to her? That is up to you."

[53] Thus, the judge issued cautions in relation to the complainant's evidence on two separate occasions. The judge also highlighted the inconsistency in M's evidence in sufficient detail. In more general terms, over the course of his detailed charge to the jury, which runs to nearly 30 pages, the judge provided directions on points of law and a comprehensive review of the main facts and the evidence adduced. In our view this charge was of high quality. We see no merit in any of the criticisms made of it and so we dismiss this ground of appeal.

Conclusion

[54] Accordingly, we find no merit in any of the grounds of appeal. In our view this conviction is safe. We therefore refuse leave to appeal and dismiss the application.