IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 1672

CASE NO 202100193/B5

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 19 October 2021

Before:

LORD JUSTICE COULSON
MR JUSTICE BRYAN
SIR RODERICK EVANS

REGINA
V
JOHN VICTOR ROBERTS

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MISS M SNOWDEN appeared on behalf of the Applicant

J U D G M E N T

LORD JUSTICE COULSON:

1 Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of the offence. In accordance with that ruling the names of the three victims have been anonymised in this judgment and we shall refer to them as complainant 1, complainant 2 and complainant 3. No discourtesy is intended thereby.

2. The applicant is now aged 86. On 18 December 2020 in the Crown Court at Liverpool (His Honour Judge Cummings QC and a jury) he was convicted of nine counts of indecent assault, contrary to section 15(1) of the Sexual Offences Act 1956. Counts 1 to 4 and 6 to 8 all concerned complainant 1; count 9 concerned complainant 2 and count 10 concerned complainant 3. The judge directed the jury to acquit the applicant on count 5, another count of indecent assault on complainant 1.

3. On 21 December 2020, Judge Cummings ("the judge") sentenced the applicant to a total of nine years' imprisonment. He applied for permission to appeal against his conviction, the principal complaint relating to the judge's ruling during the trial which allowed into the evidence as hearsay the ABE interview video of complainant 1. The application for permission to appeal was refused by the single judge and the applicant now seeks to renew that application to the full court. In addition, the applicant seeks to amend his Notice of Appeal to rely on what is said to be fresh evidence.

2 The Relevant Offending

2.1 Background

4. The applicant is a retired clergyman. All the offences took place when he was the vicar of Woolton in Liverpool or an Honorary Chaplain at Liverpool Cathedral. Although the prosecution made much at the trial of the failures of the Church of England in respect of safeguarding, the judge rightly focused instead on the individual victims of the applicant's offending over a 25-year period. All of the victims could be described as troubled teenage boys.

2.2 Counts 1 to 4 and 6 to 8

5. Complainant 1 was born in December 1968. The counts related to offences between 1984 and 1986 when he was between 15 and 17 years old. It was accepted that between the ages of 15 and 16 complainant 1 had spent time in care and was placed in the Strawberry Fields Children's Home which was close to the applicant's parish in Woolton. In an ABE interview dated 12 July 2018 he stated that he started to attend services at the church at the time he was struggling to understand why his parents had given him up to the care system. He said that the applicant offered him personal support to deal with those issues and on occasion invited him into his study. He said that the applicant engaged him in conversation about his family and said that the church was there to look after and love the children who were not receiving love or attention from their family.

6. Complainant 1 said that on one occasion he sat on the floor with the applicant who started to play with his hair and touch his face. The applicant then kissed him on the lips (count 1). On subsequent visits, complainant 1 alleged that the applicant would put his hands underneath his t-shirt and touch his chest, play with the waistband of his trousers and then

put his hand inside his trousers. He stated that the applicant would then touch his penis until he became erect (counts 2 and 6). Complainant 1 said that on occasion he would touch the applicant's penis (counts 3 and 7).

7. Complainant 1 stated that the applicant would sometimes take him out in his car and park up in the Calderstones Park car park. It was alleged that the applicant forced complainant 1 to perform oral sex on him and then he also tried to do this on one occasion at the vicarage. After one incident, complainant 1 said that he was angry and upset and the applicant promised that he would not try to do this again (count 4).

8. Complainant 1 said that he made disclosure to a Mr Botting, a manager at the children's home, and stated that, after that conversation, he was moved to another care home in Coventry. He said that, following the move, the applicant started to call him on a regular basis and suggested that he could come and visit his family. Complainant 1 stated that he accepted the applicant's offer. Whilst staying at the family's address he said that the applicant came into the room where he was sleeping, put his hand under his pyjamas and started to masturbate him (count 8). The following day the applicant took him shopping and bought him a jacket, colouring books, pencils and sweets.

2.3 Count 9

9. In 1989 the applicant was convicted of sexual offences against a teenage boy, C. Surprisingly, however, after his conviction, the applicant was reinstated at his parish in Woolton. That brought him into contact with another teenage boy, complainant 2. In an ABE interview dated 17 September 2019, complainant 2 stated that in about 2001 he regularly attended Woolton Church with members of his family. He would have been about 15 or 16 years old. He stated that at the time he was struggling with only having a

few close friends and was having doubts about his sexuality. He stated that the applicant would engineer opportunities to be alone with him and would give him compliments about his looks. He said that on one occasion in June 2002 (when he was under 16) the applicant placed his hand on his back, ran it down the curve of his back and placed his thumb inside his waistband. The applicant then put his hand into his trousers and touched his naked buttocks with his thumb (count 9). Thereafter, complainant 2 said he tried to cut off all contact with the applicant but the applicant would continue to try and seek him out.

2.4 Count 10

10. Following his retirement, the applicant became an Honorary Chaplain at Liverpool Cathedral. That brought him into contact with complainant 3 who was born in February 1979. In an ABE interview dated 11 September 2019, complainant 3 stated that, whilst experiencing issues with alcoholism and low self-esteem, he turned to the church as a source of both spiritual and personal support. He said that the applicant gave him plenty of attention and sought to engineer opportunities to be alone with him. Complainant 3 stated that during one visit in 2011 the applicant said that he was handsome and touched him by running his fingers down his back and touching his buttocks in a sexual way (count 10). Complainant 3 said that he reacted angrily to this and subsequently cut off contact with the applicant.

3 The Trial

11. The prosecution relied on a wide range of evidence against the applicant. This included the evidence of complainant 1 set out in his ABE interview. Sadly complainant 1 had

died before the trial and the video of the ABE interview was admitted as hearsay.

12. The prosecution also relied on direct evidence from both complainant 2 and complainant 3 in relation to counts 9 and 10. They also relied on the direct evidence of C (the victim of the indecent assaults for which the applicant had been convicted in 1989).

13. Amongst other important evidence was evidence from the Reverend Robert Lewis who gave evidence that in the mid-1980s, shortly after the relevant offending, complainant 1 had told him that he had been abused by the applicant and, although he had not gone into detail as to the abuse, Reverend Lewis thought that it was clear that it was sexual abuse.

14. The defence case was that all the allegations had been fabricated. The applicant said that he had been wrongly convicted of the offences involving C in 1989 and blamed his legal representation at that trial. He denied the allegations of complainants 1, 2 and 3. He relied on a good deal of character-based evidence and also some evidence which cast doubt on the evidence of complainant 1 in various respects.

15. As we have said, the applicant was unanimously convicted at the end of the trial and sentenced to 9 years' imprisonment.

4 The Application for Permission to Appeal and its Renewal

16. The heart of the application for permission to appeal against conviction can be found in the useful summary at paragraph 13 of Ms Snowden's Grounds and Advice document. There she said:

> "For the reasons set out below I consider that there are arguable grounds that the convictions are unsafe on the basis that the judge: (i) was wrong to allow the hearsay application; (ii) having allowed the hearsay should have exercised the discretion pursuant to section 101(3) of the Criminal Justice Act 2003 [“the 2003 Act”]) to exclude the bad character evidence of C; (iii) having allowed the hearsay should have severed the counts involving

> [complainants 2 and 3] and; (iv) should have stopped the case pursuant to s.125 CJA 2003. There can be no criticism of the learned judge's legal directions pursuant to the rulings made."

17. The applicant's complaint about the judge's ruling which allowed in the hearsay evidence was that the evidence did not meet the test of being "potentially safely reliable" and therefore should not have been admitted. Much is made of the issues on which complainant 1 would otherwise have been cross-examined and how the lack of that evidence unfairly prejudiced the applicant. It is also said that, if the hearsay evidence was rightly admitted, the judge should have excluded the bad character evidence of C. This is because it was the applicant's case that complainant 1 had only made the allegations against the applicant because of the publicity afforded to his convictions for the indecent assaults of C in 1989. Since that matter could no longer be tested with complainant 1, the bad character evidence should have been rejected. Finally, it is said that the decision to allow in the hearsay evidence meant that the judge should also have severed the allegations involving complainants 2 and 3.

18. When he refused the application for permission to appeal, the single judge said that, in his view, the judge's ruling admitting the hearsay was clear and detailed and took into account all relevant matters. He described it as an "impeccably reasoned judgment". As to the balancing exercise undertaken by the judge in his ruling (when he considered the question of the evidence that might otherwise support the hearsay evidence and the ability and practicability of that hearsay evidence being tested) the single judge said:

> "The judge identified the factors relied upon by the prosecution as indicating the reliability of the hearsay at para. 13 of his ruling. Some of those factors were dependent on the admissibility of other evidence. He therefore considered the arguments in relation to the admissibility of this other evidence. One such piece of evidence was that of [C]. As to that, the judge properly directed himself as to the test to be applied under s. 101(3) of the

> 2003 Act. Although the [applicant] would be unable to cross-examine [complainant 1] about whether he had been aware of the convictions in respect of [C], any unfairness arising from this could be dealt with by directions. In any event, as the judge found at para. 25, 'this whole line of enquiry was predominantly speculative in character' and 'it is not apparent to me from anything I have been told why there should be any particular reason to expect that valuable concessions or advances would have been secured by the Defence on this topic were the witness alive to answer questions'.
>
> The judge then addressed step 2, following the structured approach in *Riat* [2013] 1 Cr.App.R 2. At para. 29 [the judge] set out the material available to the Defence against which to test the reliability of the deceased witness's account. Against that background, he concluded that the hearsay evidence could safely be held reliable by the jury and that it was practicable for the jury to test and assess it (having regard to s. 124 of the 2003 Act). He noted at para. 31 that it was significant that the evidence was in the form of a videoed ABE interview..."

19. As to the point about severance in respect of complainants 2 and 3, the single judge said:

> "The decision to allow the counts concerning [complainant 1] to be tried together with those against [complainant 2] and [complainant 3] had been taken earlier by the Recorder of Liverpool. The grounds of appeal identify no basis on which that decision could properly be impugned. In any event, the later rulings of the trial judge show that he formed the view that it was not unfair for all counts to be tried together; that view was properly open to him; and the contrary is not arguable."

20. Subsequent to the failure of the section 31 application, the applicant sought to rely on fresh evidence in the form of a letter from complainant 1 dated 1 December 1993. It is said that if the judge had seen this letter he would or might not have allowed the hearsay application.

21. We propose to deal with this renewed application first by considering the original hearsay application and the judge's ruling on it and whether any proper criticism can be made of that ruling. We then go on to consider the separate points made about the evidence of recent complaint from the Reverend Lewis, the evidence of bad character involving the applicant's previous convictions for the assaults on C, and the allegations made by

complainants 2 and 3. Finally, we consider the fresh evidence. However, before doing that, there are some general points which we would wish to make at the outset.

22. First, we respectfully agree with the single judge as to the quality of the trial judge's written ruling on the hearsay application. Not only is it clear and cogent, but it has full regard to all the applicable legal principles. We note that it is not suggested, in any of the extensive documentation produced on behalf of the applicant, that (save in one respect which we shall come to) the trial judge made any error of law as he piloted his way through a whole series of competing checks and balances.

23. Secondly, we consider that, forcefully and clearly though they were advanced, Ms Snowden's submissions to this court are in reality an attempt to re-argue the points that she made to the judge but which he rejected. The various gateway provisions which were relevant under the 2003 Act relating to hearsay, bad character and the like, give the trial judge a relatively wide discretion. If, in exercising that discretion, the judge applies the right legal principles, then it would only be if he or she takes into account something irrelevant, or fails to have regard to something relevant, or simply arrives at a conclusion that no reasonable judge could reach, that this court could interfere in the result. Those are, as Miss Snowden accepted, high hurdles. In our view this renewed application falls a long way short of clearing them.

24. Thirdly, notwithstanding the points of detail which we are about to address, the ultimate question, as Miss Snowden correctly reminded us, is whether this court considers that it is at least arguable that the applicant's convictions are unsafe. We should make it clear at the outset that we are in no doubt as to the safety of the applicant's convictions on these nine counts. Our reasons for that firm view are outlined below.

5 The Hearsay Application

5.1 The Law

25. Section 116 of the 2003 Act permits hearsay evidence if the person who made the statement is identified to the court's satisfaction and the relevant person is dead. In relation to complainant 1 both conditions were satisfied.

26. The next task for the court is to consider what, if any, material could be introduced at trial to assist the jury in testing or assessing the hearsay: see paragraphs 17 and 18 of *R v Riat*. This is because, as per *R v Ibrahim* [2012] EWCA Crim 837, it is a precondition that the untested hearsay evidence must be shown to be "potentially safely reliable". In that case the court went on to stress that the job of the judge is not to look for independent complete verification; it was to ensure that the hearsay could safely be held to be reliable. The critical wording of the test for these purposes is "potentially".

5.2 The Ruling

27. It is plain that the judge had these principles in mind when he delivered his ruling in writing on 25 November 2020, in which he explained his reasons for concluding that the hearsay was admissible. At paragraph 13 he identified the matters relied on by the prosecution which supported the reliability of the hearsay evidence. These included the fact that the hearsay was detailed, that it was supported by the admitted evidence of opportunity, that there was evidence from the Reverend Lewis of recent complaint consistent with complainant 1's evidence, that there were the two previous convictions relating to the similar indecent assaults on C, and the evidence of similar offences from complainants 2 and 3.

28. The judge recognised that the evidence from the Reverend Lewis and the evidence of the previous convictions were separate and contested matters, so he went through each of those elements of the prosecution case in detail and concluded that in both instances that the evidence was admissible.

29. As to the counterbalancing factors, namely the material which the applicant could deploy to test the reliability of complainant 1's account, it was properly accepted by Ms Snowden that there was material available to the defence for that purpose. The judge recorded those matters at paragraph 29 of his ruling. The material included complainant 1's convictions for dishonesty, the psychiatric assessment which showed a tendency on his part to fantasize, and evidence of complainant 1 making repeated telephone contact and writing letters to the applicant. There were also the inconsistencies between what he said in the ABE interview and what other witnesses said.

30. Drawing all those strands together, at paragraph 30 of his ruling the judge concluded that he was satisfied that the hearsay account contained in the ABE interview of complainant 1 could safely be found to be reliable by the jury and that it was practicable for the jury to test and assess that hearsay evidence, having regard to both the matters capable of supporting the reliability of the hearsay, and all those matters available for deployment by the defence.

31. At paragraph 31 the judge noted that it was not without significance that the hearsay was contained, not in a witness statement, but in a video interview, with the result that the jury would be able to assess the demeanour of complainant 1 at the time that he gave his account. The judge accepted that the defence had lost the opportunity to secure whatever advantages they might have achieved in cross-examination, but noted that there was no guarantee of any such advantages and that, in any event, those could be dealt with by

appropriate directions to the jury. The judge went through the other applicable steps in *R v Riat* and allowed in the evidence in the ABE interview.

5.3 The Section 125 ruling

32. The judge had very much in mind that he needed to keep his decision to allow in the ABE interview under review as the trial progressed, because it was still possible at a later point in the trial, pursuant to section 125 of the 2003 Act, for him to order acquittals on counts 1 to 4 and 6 to 8 or to discharge the jury. On 15 December 2020 the judge carried out that overall appraisal and concluded that there was no basis to direct an acquittal on any charge or charges or to discharge the jury. That ruling cannot now be sensibly challenged.

33. During her oral submissions this morning, Ms Snowden confirmed that her case was not about that later ruling, but about the admission of the hearsay evidence in the first place. Although there are some changes in the evidence between that assessed by the judge in his ruling on 20 November and the evidence given in the trial thereafter, those changes were insignificant and have no overall effect on the course or outcome of the trial.

34. Accordingly, we come back to the judge's ruling on the hearsay evidence.

5.4 Discussion

35. As we have already said, we consider that there is no doubt that the judge applied the right legal tests. The criticism is that the judge should not have concluded that the evidence was potentially safely reliable. There are a number of reasons why in our view that submission is unsustainable.

36. First, as previously advertised, we consider that the submissions are no more than an attempt to re-argue the critical elements of the hearsay application. Ms Snowden is

effectively saying that the judge gave certain elements of the prosecution's case too much weight and did not give enough weight to the applicant's case that those elements were not as strong as had been presented. But what weight to ascribe to what element of the evidence was entirely a matter for the judge. In our view the judge was perfectly entitled to come to the conclusion that the material was "potentially safely reliable". The mere fact that the applicant is dissatisfied with his conclusion is no basis in law for an appeal.

37. Secondly, it is clear that the judge was right to conclude that there was a good deal of evidence which supported the apparent reliability of the prosecution evidence. We deal separately in the next three sections of this judgment with the three particular elements of the evidence that are in the spotlight in this case because they are all the subject of separate debate, namely (1) the evidence of recent complaint from Reverend Lewis, (2) the evidence of the applicant's convictions for the assault against C and (3) the evidence from the complainants 2 and 3. In each case we consider that the judge was right to find that this evidence was not only admissible but supported the potential reliability of complainant 1's ABE interview.

38. We said earlier that there was one exception to the general position that no criticism as a matter of law of the judge's hearsay ruling. The exception raised by Ms Snowden was that the judge dealt with the reliability of the evidence and the practicality of testing that evidence together, and said that essentially they were the same issue. She criticised that conclusion, saying that it could not be right. But it seems to us that, as is clear on the face of the ruling, what the judge did was to take together these two important aspects of what is sometimes called "step 2". In that way, he carefully set out all the matters which demonstrated the reliability, or at least the potential reliability, of the ABE interview and then all the matters by which the jury could test that reliability. There was obviously a

significant overlap between those matters, which is why the judge dealt with them together. The important thing is that the judge did not omit any important matter of detail.

39. Standing back and considering the video evidence in isolation, it seems to us that that evidence was strong. Complainant 1's hearsay account was detailed. It was inherently plausible. It set out what the prosecution rightly submitted was "a classic pattern of grooming and abuse". Most significantly of all, as the judge himself noted, it allowed the jury to see complainant 1 in person, sometimes clear, sometimes hesitant, which was likely to have a real human impact on them. That would not have been the case had it simply involved the reading of a transcript.

40. On the other side of the coin, there was, as Ms Snowden properly accepted, a good deal of material which she was able to place before the jury which undermined the reliability of complainant 1. The judge also addressed that in his ruling. That included complainant 1's own bad character and the evidence from others to whom complainant 1 said he had complained but who had no recollection of any such complaints.

41. Of course, we accept that there was material which Ms Snowden was unable to put to complainant 1 by way of cross-examination. That would have included, amongst other things, the applicant's case that complainant 1 had decided to fabricate his allegations after 1989, having become aware of the publicity engendered by the applicant's convictions for the assaults on C. But such limitations were inevitable given complainant 1's death and were in any event the subject of detailed directions to the jury at pages 12 to 13 of the summing-up. The judge went so far as to say to the jury that the applicant had been "seriously disadvantaged" as a result, so the jury would have had to have borne that very carefully in mind when considering their verdicts.

42. Looking at the question of the prejudice to the applicant, therefore, we consider that, whilst

of course the fact that a particular line of inquiry could not be pursued by way of cross-examination of complainant 1 was a factor for the jury to consider, it was a matter which was to be weighed in the balance when considering the hearsay application. It most certainly could not be definitive. Moreover, the answers that complainant 1 might have given to those questions were not guaranteed to help the applicant, and indeed may actually have made for a stronger case against him. That explains in our view why the judge treated that part of Ms Snowden's submissions as speculative.

43. Accordingly, for all those reasons we conclude that the judge dealt impeccably with the hearsay application and reached a conclusion which cannot now be impugned.

6 The Evidence of Recent Complaint from Reverend Lewis

44. It is not entirely clear to us whether any separate objection is now taken to the judge's decision (set out at paragraphs 15 to 17 of his ruling) that the Reverend Lewis' recent complaint evidence was admissible. However, we address that point head on, particularly because it was one of the building blocks in the judge's ruling on the hearsay evidence.

45. Whether or not the evidence from the Reverend Lewis was admissible turned on the gateway provisions of section 114(1)(d) of the 2003 Act (the interests of justice). The court had to consider whether or not that evidence should be admitted in accordance with the test in section 114(2). In our view the judge was right to allow in this evidence. Reverend Lewis' evidence had in our view very significant probative value. We note that Ms Snowden again realistically accepted at paragraph 4 of her advice that it was supporting evidence of complainant 1 and therefore supporting evidence on counts 1 to 4 and 6 to 8.

46. The Reverend Lewis said that the complainant complained to the Bishop of Warrington

and that he was asked to deal with the complaint. Complainant 1 told the Reverend Lewis that the applicant had abused him some time in the early/mid-1980s. Reverend Lewis believed that the assault was sexual in nature. Other evidence explained that the complaint had been made contemporaneously, shortly after the abuse (for the reasons explained by the judge at page 7 of his summing-up), and certainly by 1988, when the Reverend Lewis moved to another job. In addition, on making further inquiries, Reverend Lewis discovered a postcard written to complainant 1 by the applicant and addressed to him in Coventry where he had gone in January 1986. Reverend Lewis remembered the content of the postcard because it included a request by the applicant that complainant 1 should call him at home, but that if anyone other than the applicant answered he should hang up. The unusual nature of that message caused it to stick in Reverend Lewis' memory.

47. Importantly, therefore, the timing of these events, all before 1989, significantly undermined the applicant's case that complainant 1 had only made these allegations as a result of the publicity surrounding the trial of C's allegations against the applicant in 1989. This evidence as to timing suggested that the defence on this issue was, as the judge put it, speculative in nature. But the judge recognised that, despite this, the issue of contamination of evidence had been properly raised by the applicant, and so he dealt with it by way of clear directions to the jury at pages 6 to 8 of his summing-up.

48. For those reasons, we consider that the judge was right to conclude that the evidence of the Reverend Lewis was plainly capable of supporting the reliability of complainant 1's hearsay evidence. Again, that is at least partially conceded by Ms Snowden at paragraph 5 of her advice. Whilst we accept that there were matters which could be deployed by the defence in relation to the evidence of Reverend Lewis (and they were),

none of that could affect both the admissibility of his evidence and what we consider to be its significant support for the reliability of the video evidence of complainant 1.

7 The Evidence of the Applicant's Bad Character

49. It was very regrettable that because, as we understand it, formal records of the 1989 trial had been lost, C had to come and give evidence all over again 30 years later at this trial. It is not clear the extent to which the complaint is now maintained that the judge's decision to allow in C's evidence as to the applicant's assaults upon him (which led to the 1989 convictions) was wrong or that it should not have been taken into account when assessing the reliability of the hearsay evidence. Ms Snowden accepted that it was properly evidence of bad character.

50. In our view the judge properly addressed the bad character evidence at paragraphs 18 to 20 of his ruling. It was accepted that gateway 101(1)(d) in the 2003 Act had been made out. During the original arguments the applicant suggested that it would have an adverse effect on the fairness of the proceedings to such an extent that the court should not admit it. However, as we have said, that appears to have been put solely on the basis that, because of the death of complainant 1, it was now impossible for Ms Snowden to explore with him when he became aware of the detail of the applicant's previous convictions.

51. It is important therefore to take this in stages. First, there is no dispute that the evidence of the previous convictions was of itself admissible. There were marked similarities between the alleged assaults on complainant 1 and the proven assaults on C. Furthermore, absent any question of when complainant 1 first learnt of the allegations of the assault involving C, it cannot be said that the previous convictions had the significantly adverse effect required by section 101(3). In our view, the previous convictions were simply

another element of what was already a strong case against the applicant. The judge's directions as to bad character at pages 14 to 15 of his summing-up were again exemplary.

52. We reject the submission that the evidence of bad character ought to have been excluded once the hearsay evidence was admitted from complainant 1 (because it was impossible for the applicant to establish when complainant 1 first learnt of the assaults on C). We consider that that strand of the applicant's defence has been overstated. The fact of the previous convictions in 1989 was not rendered somehow unfairly prejudicial merely because Ms Snowden could not ask complainant 1 when he first learnt of those allegations. Since no one knows for sure what complainant 1's answers would have been, the exercise is at best speculative. Furthermore, and very tellingly, as we have already said, the Reverend Lewis' evidence of recent complaint significantly undermined, indeed contradicted in the plainest terms, the suggestion that complainant 1 only made his own allegations against the applicant as a result of the trial in 1989.

53. Thus, in our view there is nothing in the criticism that if complainant 1's hearsay evidence went before the jury, the evidence of the previous convictions should not have been admitted. There was no link between these two separate strands of evidence. Both were properly admissible as part of the prosecution's strong evidential case against the applicant.

8 The Evidence of Complainants 2 and 3

54. Again, the criticism is that, having allowed in the hearsay evidence, the judge should have severed the counts involving complainants 2 and 3. In our view that submission also suffers from the same difficulties as those that we have already set out in relation to the applicant's bad character.

55. The judge dealt with the question of complainants 2 and 3 and cross-admissibility in his

ruling at paragraphs 21 and 22. No criticism is now made of those paragraphs. Thus, the only point left is that, once the video evidence was ruled as admissible, the counts involving complainants 2 and 3 should somehow have been severed. However, in our view there was no possible basis for that. As the single judge noted, there had already been an application to sever these charges and that had been unsuccessful. The mere fact that, sadly, complainant 1 had died before the trial, so his evidence was reduced to the video only, could not justify a reconsideration of that case management decision. Furthermore, in our view, justice required that the pattern of the applicant's offending over 25 years, involving all three complainants and C, needed to be considered and determined by the jury.

56. Accordingly, in our view there is nothing in the complaint now made about complainants 2 and 3. But for the fresh evidence application, that would be the end of this renewed application for permission to appeal.

9 The Fresh Evidence

9.1 The Law

57. An applicant or an appellant who wishes to rely on fresh evidence in the Court of Appeal has to satisfy section 23 of the Criminal Appeal Act 1968. Section 23(2) of that Act provides as follows:

> "The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to—
>
> (a) whether the evidence appears to the Court to be capable of belief;
>
> (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and

(d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings."

9.2 The Evidence Relied On

58. The fresh evidence is made up of a letter dated 1 December 1993 and apparently sent by complainant 1 to the applicant. It reads as follows:

> "Dear Reverend Roberts, just a short note to wish you a happy Christmas and New Year. Hope Jean and the children are all fine. How are things at St. Peters? I thought I'd write to you to try and put things right after so many years. I do not really think there is anything I can say but sorry for everything. It was a stage in my life where everything was going wrong. My parents do not care and I was placed in Strawberry Fields children's home. John I'm sorry I hate not being able to write to you. As you may have been told I got married in 1991 and my marriage is now over. I filed for divorce and have been granted a certificate of satisfaction by the county courts. Now I must just get on and live my life. Once again I am sorry for the past I hope as a Christian you will be able to forgive me."

9.3 Admissibility and Credibility

59. It seems to us that the letter would have been admissible as evidence at the trial. It is also capable of belief. It appears to have been written and signed by complainant 1. In this way, we would accept for present purposes that subsections 23(2)(a) and (c) of the 1968 Act have been made out.

9.4 Reasonable Explanation

60. It is much more difficult to say that there is a reasonable explanation for the failure to adduce this evidence in the proceedings. There are statements from the applicant and his wife about the letter and its discovery. The applicant's wife discovered the letter because she went into a back bedroom to look in the filing cabinet for something else and in getting

the file out a number of loose papers fell to the floor, including this letter. The applicant had no recollection of receiving the letter at all but talks in his statement about the filing cabinet in the back bedroom which housed the documents that he had retained relating to his time as a parish priest.

61. Having carefully considered this evidence, we are not at all persuaded that there is a reasonable explanation for the failure to adduce the letter at trial. There is no explanation for why this letter was not identified before. There is no explanation of what search the applicant undertook of his own documents before the original trial, and how this document was missed. Since there was evidence at the trial of communications, both oral and in writing, from complainant 1 to the applicant (because the applicant was relying on it as part of his defence) it was reasonable to assume that all of the relevant exchanges in the applicant's possession had been provided. It is not therefore clear how this letter was missed, particularly as it subsequently come out of the filing cabinet so easily.

62. Accordingly, we are not persuaded as to the 'reasonable explanation' limb of the test. However, these are important matters to the applicant. We would not want to decide this part of the appeal on that basis alone. We therefore turn to the key point, which is whether this letter is an arguable ground for giving permission to appeal.

9.5 Arguable Ground for Allowing the Appeal

63. The most important subsection of those that we have just read is section 23(2)(b): does this letter afford any ground for allowing the appeal? On a proper analysis, on our view, it does not.

64. The letter makes no mention of the events relevant to the trial. It makes no reference to the assaults. Crucially it does not say that they did not happen or that complainant 1 lied when he made his complaint to Reverend Lewis. It does not say that complainant 1 was

withdrawing the allegations, and we know much later in time he repeated the allegations in his ABE interview. The letter was plainly written by a man who had undergone a difficult time. The whole tone and tenor of the letter is consistent with the other evidence about complainant 1 and his fragile mental state. More specifically, the fact that there is an apology in the letter is in many ways unsurprising. Victims who have been carefully groomed by the perpetrators of this sort of abuse often feel in a subservient or inferior position in the relationship and will repeatedly adopt an apologetic and self-blaming attitude. That, in our view, is what is on display here.

65. The other telling point is this. The applicant's evidence is that he had no recollection of receiving this letter. In our view, if the applicant had thought at the time that the letter that had been sent by complainant 1 was apologising for making false allegations to Reverend Lewis and the Bishop of Warrington, he would obviously have remembered it. It would have meant that he had been wrongly accused. So it is clear that that is not how the applicant read the letter at the time. For the applicant now in his statement to speculate about the link between the apology and the complaint that complainant 1 had made to the Bishop and Reverend Lewis is plainly not how he saw it at the time.

66. In our view, if this letter had been available to the judge at the trial it would have made no difference whatsoever, either to the outcome of the hearsay application or to the outcome of the trial itself. For those reasons, therefore, we do not allow in the fresh evidence.

10 Conclusions

67. For the reasons that we have given, we reject the renewed application for permission to appeal. We repeat what we have said above: that the judge's hearsay ruling was impeccable, and in our view plainly correct. But standing back, again for the reasons we

have given, we are in no doubt that the applicant's convictions for these multiple offences were entirely safe.

68. Finally, we should add this. In 1989, the applicant's complaint was that he had not been properly represented at his trial. Having heard Mis Snowden's detailed submissions this morning, and having read her detailed written submissions, both to the judge on the various applications with which he had to deal, and her written submissions to us, the applicant can have no such complaint on this occasion. The court is extremely grateful to her.