

ENGLAND AND WALES / JUDGMENT

R v Jerome Stephenson

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[2025] EWCA Crim 1600 IN THE COURT OF APPEAL CRIMINAL DIVISION ON APPEAL FROM THE CENTRAL CRIMINAL COURT (HIS HONOUR JUDGE MORRIS KC) [T20157218] Royal Courts of Justice The Strand London WC2A 2LL Case No 2025/01658/B4 Friday 31 October 2025 Before: THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION (Lord Justice Edis) MR JUSTICE MARTIN SPENCER MS JUSTICE NORTON

R E X

- v - JEROME STEPHENSON

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Miss E Marshall KC appeared on behalf of the Appellant Miss J Knight KC appeared on behalf of the Crown

J U D G M E N T

Friday 31 October 2025 LORD JUSTICE EDIS: 1. Jerome Stephenson is now 43 years of age. This appeal by him against conviction comes to this court by way of a reference by the Criminal Cases Review Commission. The conviction to which it relates was a conviction for rape. Accordingly, the provisions of the Sexual Offences (Amendment) Act 1992 apply to these proceedings. Under those provisions, where an allegation has been made that 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. The prohibition on the identification of the complainant in this case continues to apply. She has been referred to in previous proceedings in this court at "LW", and we shall use those initials in place of her name. The Conviction

2. On 17 June 2015, in the Central Criminal Court, the appellant was convicted, by a majority verdict of the jury, of rape of LW, contrary to section 1 of the Sexual Offences Act
2003. On 16 July 2015, he was sentenced to 12 years' imprisonment. We understand that under the early release provisions that applied to that sentence, he was released on or about 17 June 2021. Had the conviction lasted so long, he would have remained on licence until 17 June 2027. As we shall explain, the conviction will be quashed and that licence will now come to an end.
3. The referral by the Criminal Cases Review Commission is on the basis that there is fresh evidence to show that the complainant, LW, misled the jury at the trial about some highly material matters. The Criminal Cases Review Commission therefore conclude that there is a real possibility that this court will allow the appeal and quash the conviction because of that fresh evidence.
4. We give leave to adduce the fresh evidence and we admit that fresh evidence.
5. The fresh evidence comes from LW herself and arises in this way. The allegation of rape was made by LW in relation to events on a night in 2013 where she said that she was in a property with a number of men, including the appellant and a man named Byron Smith. She alleged sexual offences against all of the men who were present with her during most of that night. She said that Byron Smith and another committed offences against her first and that the appellant committed offences against her after that had happened.
6. The appellant was arrested, charged, tried and convicted on his own. Byron Smith was not arrested and charged until after the appellant's trial and conviction. Much later, he was due to stand trial in September 2023 on four counts of raping LW and one count of assault by penetration. Those allegations arose out of the same sequence of events and the same account that was given by LW, which had constituted the basis on which the appellant had earlier been convicted. 7. In preparation for her evidence at Byron Smith's trial, LW was shown a recording of her original Achieving Best Evidence interview. She then made a witness statement, dated 14 September 2023, to the police admitting that she had told a

number of lies in her evidence at the appellant's trial. Because of the content of that statement, and on the advice of Leading Counsel for the Crown, Miss Knight KC, a new video recorded interview with LW took place on 27 September 2023. In that video recorded interview, LW explained the falsehoods and omissions which had occurred in her first ABE interview. She identified them and gave her reasons for them. That material resulted in a decision by the prosecution in the case of Byron Smith that it would not be appropriate to rely upon LW as a witness of truth in the proceedings against him. Accordingly, those proceedings were discontinued.

8. At the same time, the prosecution took the appropriate step of disclosing this new material, namely the witness statement of 14 September and the new video recorded interview of 27 September 2023, to those representing the appellant so that he could invite the Criminal Cases Review Commission to consider the case and, if they thought it appropriate, as they have done, to refer it to this court. Those steps were, of course, entirely appropriate. The logical result of them is that the prosecution does not oppose this appeal. Just as it offered no evidence against Byron Smith, which resulted in not guilty verdicts in his case in March 2024, so here today Miss Knight has informed us that in these proceedings, too, the prosecution take the view that they could not rely upon LW as a witness of truth in any proceedings against the appellant. They submit: "The suggestion that the jury would undoubtedly have reached the same conclusion had they heard this evidence is untenable. The prosecution accepts that it may have impacted the jury's verdict. In those circumstances the prosecution do not seek to oppose this appeal."
9. Of course, it remains the case that it is a matter for this court and this court alone to consider the material placed before it and to take its own decision as to whether it renders the appellant's conviction unsafe. In reaching that decision, the court is of course influenced by, and assisted by, the approach of the prosecution, but the decision stays with the court.
The Facts
10. There was an earlier appeal in this case which was dismissed by the full court on 9 February 2017. The judgment of the court on that occasion can be found in *R v Stephenson* [2017] EWCA Crim 338. The facts are sufficiently in the public domain in that judgment, and for our present purposes it is not necessary to say very much more than that. We will need to say a little more when we come to identify the changes in LW's account in order to explain why they are of some significance.
11. The allegation of rape was made in the circumstances which appear in that judgment. The defence case at trial was that the act of vaginal intercourse, which the jury found to have been rape, had taken place with the complainant's consent. It was, therefore, of critical importance to the jury to decide whether LW's evidence was to be believed or not. In the end, they preferred her evidence to that of the appellant, and they convicted him.

12. The account that the complainant gave of the interaction which took place that night between her and the three men in the premises – the appellant, Byron Smith and another – described a threatening environment from the start, in which they plied her with alcohol and drugs which made her sick. She denied that she had played any part in instigating any sexual activity with any of them and she said that the sexual activity began when they touched her after they had watched pornography on a laptop computer together. She said that there was some level of violence before she was raped on the first occasion. She was then hauled upstairs by all three men, held against her attempts to flee, and raped repeatedly over the course of the next couple of hours. She said that she made it clear throughout that she did not consent to any of it, but that she was overborne by violence and perhaps also by the effect of the drugs which she had taken.
13. Byron Smith and the other man then left the house. She was left alone with the appellant, who raped her.
14. It is important to set out that detail because her new account continues to assert that she was the victim of very serious sexual offending during that episode. She has not retracted those allegations. Her new account, though, is very different in its description of the nature of the first part of the sexual encounter between her and the three men in that property. Those differences are material and significant, as we shall explain, but it is important, in fairness to LW, that we record that she has not said that her allegations of sexual offending were lies. The Law
15. We have referred in passing to the principle that the power to quash a conviction in these circumstances rests with the court and not with the prosecution or, indeed, the Criminal Cases Review Commission. The proper approach to a fresh evidence appeal in these circumstances was identified in a series of decisions, culminating in *Dial and Dottin v The State of Trinidad and Tobago* [2005] UKPC 4 at [42], where Lord Brown said: "Wherever fresh evidence establishes that a material prosecution witness has told a lie, the question arising for the Appeal Court's determination is whether that realistically places the appellant's guilt in reasonable doubt – whether, in other words, the verdict is now to be regarded as unsafe. That necessarily must depend upon all the evidence in the case. However barefaced the lie and however central to the prosecution case the witness who told it, the Court of Appeal is bound in law to address that question. Even in a case of capital murder it cannot be right to allow an appeal, without more, simply on the basis that the State's main witness has later been shown to have told an outright lie."
16. In this case LW's evidence at trial described an atmosphere of fear, oppression, dominance and coercion. She said that she was forced, against her will, to consume large quantities of drugs and alcohol which incapacitated her; that she was forced to watch pornography; and that these were the circumstances in which the sexual activity took place.
17. LW was cross-examined on behalf of the appellant at his trial in which it was suggested that, far from that being the case, she had in fact herself instigated sexual activity.

18. Her new account creates an entirely different picture of the events which started the sexual behaviour in that property. She now accepts that she had intentionally behaved in a sexually provocative or flirtatious manner. She had knowingly and willingly taken the drugs and alcohol and that what took place at that stage of their confrontation was "a party atmosphere".
19. The Criminal Cases Review Commission have analysed with care and in detail the differences between LW's account at trial and her statement and video recorded interview in September 2023. In the statement talking of the "party atmosphere", she said: "Things were flirtatious. I was high and getting attention by these men. I was enjoying it at that point. I was just at a party, trying to have fun. I remember everyone becoming aroused. Everyone was giving me attention, and I thought we were having a nice time. I may have danced seductively, I can't be certain. Then I walked towards the door, I bent over provocatively and I touched my legs. The defence asked me about this in court and I said that I did not do that, but I did. I didn't want anyone to think that I had led them on."
20. She gave further detail in which she explained that behaviour on her part at that time. It was a very different picture from that which was presented to the jury, as she accepted. She edited out of her account that part of her conduct, deliberately, because she thought that the jury might think worse of her because of the way that she has behaved. That related to her sexual conduct; and her description of the way in which she came to consume alcohol in large quantities and to take controlled drugs, including MDMA and cocaine, also changed dramatically in the way we have already described.
21. A further issue arose at trial about the use of pornography during this episode. The appellant's case had been that it was LW who had put the pornographic film on. But when this was put to her in cross-examination, she firmly denied it. In her witness statement in September 2023, she said: "I did actually put pornography on, on the computer. I was asked to put the porn on, and I did. They asked me what porn I liked and I said that I liked Latino girls." Again, that was a very different picture from that which was presented to the jury.
22. Further, the appellant's case at trial was that LW had willingly come over to him to sit on his lap whilst the pornography was playing on the computer. This was put to her and she denied it. In the statement she said that she had done that. She thought that it was probably the appellant on whose lap she had sat, and she described how she was "grinding on him", and she remembered everyone becoming aroused. That is a further significant change.
23. There had been some evidence at the trial about the use of condoms. At trial, LW denied that she had asked the men to use condoms in the context of any sexual activity. In her statement she admitted that that was a lie. She thought that if she told the truth, people might think that she was consenting to all of the sexual activity which then took place. She was very clear that she did not consent to all of that sexual activity, but she changed her account in relation to the use of condoms.

24. There were other significant changes as well which it is perhaps unnecessary to describe in detail. One aspect which should be mentioned is the reference which occurred in evidence at trial to an escort agency. There had been some conversation, according to the appellant at trial, about procuring another female to come and join them. In his evidence the appellant said that they were searching for local escorts in the area, but LW said that she knew somebody who would be able to come over, and she made a telephone call to them.
25. In her evidence at the trial, LW said that she had been told by the appellant to order an escort. It was put to her that it was her idea to order the escort, and she denied it. There was some further conversation, it was said, about Latin American girls at that stage.
26. That was the state of the evidence before the jury at trial.
27. In the video recorded interview, LW said that she had told the appellant that she was a prostitute and accepted that she may have suggested that they should call the agency that she worked for in order to secure another participant in the sexual activity which was by then taking place. That also is a significant change.
28. As we have said, there were also other changes of account about matters of significant detail which took place at the start of the sexual activity and which it is not necessary for the purposes of this judgment to explain any further. It is apparent, in our judgment, from what we have already said that these changes of account were significant. LW accepts that at least some of them were deliberate lies by her, although she also says that some of the changes in account were attributable to her misremembering things.
29. For these reasons we agree with the prosecution, having exercised our own independent judgment on the matter, that the evidence as presented in the video recorded interview would have created a different picture of the events in that property, had it been presented in that way at the appellant's trial. It was not presented in that way because of the deliberate decision of LW to be dishonest and selective in the evidence that she gave for her own

reasons.

30. Had the jury had her present account, the allegations of sexual offending would still have been present in it. But the circumstances in which that arose may have caused the jury to take a different approach to the issue in relation to the conviction of the appellant for rape. In that respect the issue was consent.
31. In those circumstances we take the view that this conviction is unsafe and must be quashed by reason of that fresh evidence.
32. There is, of course, in the circumstances no application for a retrial. This decision will therefore conclude these proceedings. That means that although the anonymity of the complainant remains in place, there is no other reporting restriction in relation to the proceedings which are now culminating this morning.

33. We should say, in order to complete the account of what has taken place, that the appeal which failed in 2017 was brought on different grounds. Those grounds did complain that some material relevant to LW's credibility had been wrongly excluded under section 41 of the Youth Justice and Criminal Evidence Act 1999, and also sought to rely on fresh evidence to show that LW was a fantasist. The court concluded in 2017 that section 41 had been correctly applied and that the fresh evidence would have carried little weight because the relevant witness was refusing to attend court. That court, of course, had no inkling of the fresh evidence which we have considered because it was not to come into existence for six years after that hearing.
34. It is right also in this context to record the fact that in 2017, after the failure of his appeal, the appellant made his first request to the Criminal Cases Review Commission, inviting them to refer his case to this court. That reference also raised points about LW's credibility, but, of course, was limited to the material then available. That reference to the Criminal Cases Review Commission was in the end rejected by a decision on 25 February 2021, when a decision not to refer the case to this court became final.
35. The circumstances, therefore, which have led to this conviction and to the appellant having served the whole of his custodial sentence are a matter of profound regret. We have sought to explain what has happened in this case. The position which has prevailed this morning did not become apparent until September 2023, by which time the appellant had been released. Matters have proceeded thereafter in an appropriate way, leading to the quashing of the conviction by this court today.
36. Having expressed our collective regret at the outcome and the history of this case, we leave it now simply by quashing the conviction.
37. Miss Marshall, thank you for your help and for your persistence during the entire course of these proceedings. It has been a long time.
38. Miss Knight, we should also convey our thanks to you, to those who instruct you and to the police for the entirely appropriate way in which they reacted to what they discovered in September 2023.

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Prepared on 24 October 2026 · Esheria