

ENGLAND AND WALES / JUDGMENT

PT v R

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Neutral Citation Number: [2013] EWCA Crim 2398 IN THE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM CHELMSFORD CROWN COURT - MR JUSTICE OWEN Case No: 201300229 C1 Royal Courts of Justice Strand, London, WC2A 2LL Date: 20/12/2013 Before : LORD JUSTICE PITCHFORD MR JUSTICE MITTING and RECORDER OF LEEDS - HIS HONOUR JUDGE COLLIER QC

- ----- Between : PAUL BARRY TAYLOR

- and - REGINA

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- ----- Appellant Respondent O Pownall QC and A Rafferty (instructed by Devas, Lewis & James Solicitors) for the Appellant K S Khalil QC and C Morgan (instructed by CPS) for the Respondent Hearing date: 14 November 2013

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Judgment

Lord Justice Pitchford : The appeal 1. 2. 3. 4. This is an appeal against conviction brought with the leave of the single judge to raise four grounds all of which concern the fairness of a trial conducted some 33 years after the events that formed the subject matter of the indictment. The appellant, Paul Barry Taylor was born on 9 March 1952 and is now aged 61 years. In his early twenties he served for two years in the army. On his discharge he married his wife Beverley in 1974 and they and their family lived in Peterborough. The appellant worked as a jobbing builder. Between October 1968 and September 1983 he acquired several convictions for offences of dishonesty. On 3 March 1980 he was sentenced at Huntingdon Crown Court to a term of 3 years imprisonment for an offence of wounding, four offences of burglary, two offences of obtaining property by deception, an offence of theft and for breach of a suspended sentence. On 15 August 1980 he was sentenced to 3 months imprisonment consecutive for further offences of theft and obtaining by deception. Otherwise, the appellant received non-custodial penalties. He had never been convicted of a sexual offence and save for the offence of wounding had not been convicted of an offence of violence. In the 1980s the appellant left the Peterborough area. Subsequently, he settled in Devon and re-married. The complainants to whom we refer in the course of this judgment are entitled to anonymity under the provisions of the Sexual Offences (Amendment) Act 1992 and we shall use initials to identify them. Between 8 October and 4 December 2012 at

Chelmsford Crown Court before Owen J the appellant was tried on an indictment containing seven counts. The jury returned unanimous verdicts of guilty and on 5 December 2012 the appellant was sentenced as follows: Count 1: On 5 March 1979, rape of DD, contrary to section 1(1) of the Sexual Offences Act 1956: 16 years imprisonment; Count 2: On 15 March 1979, buggery with DD, contrary to section 12(1) of the Sexual Offences Act 1956: 16 years imprisonment; Count 3: On 15 March 1979, rape of DD, contrary to section 1(1) of the Sexual Offences Act 1956: 16 years imprisonment; Count 4: On 8 April 1979, attempted rape of LW, contrary to section 1(1) of the Criminal Attempts Act 1977: 9 years imprisonment; Count 5: (alternative to count 4): On 8 April 1979 indecent assault of LW, contrary to section 14(1) of the Sexual Offences Act 1956: no verdict taken; Count 6: On 28 June 1979, rape of ASF, contrary to section 1(1) of the Sexual Offences Act 1956: 14 years imprisonment; 5. 6. 7. Count 7: Between 10 July 1979 and 2 March 1980, murdered Sally Ann McGrath: imprisonment for life, minimum term 18 years. All sentences were ordered to be served concurrently. The time spent by the appellant on remand in custody (421 days) was ordered to count towards sentence. The prosecution case was that in his twenties the appellant was a sexual predator. He made no secret of the fact that he engaged in extra-marital sexual intercourse. In his social activities he had a certain easy charm that was attractive to some women. However, the prosecution set out to establish that once a woman was in his control he could turn into a dominant, frightening and violent man should his demand for sexual relations be met with reluctance or refusal; that he carried out a series of violent sexual attacks on women, both those the subject of counts in the indictment and, on 8 August 1974, upon a 17 year old girl, LB, and on 24 August 1979, upon his 15 year old sister-in-law, AF. The prosecution relied on features common to the attacks as supportive of the separate complaints and as evidence of propensity. As to count 7, Sally Ann McGrath, known as Sally, disappeared from home where she lived with her parents on 11 July 1979. It was the prosecution case that the appellant was the last person to be in Sally's company before she died. On 1 March 1980 Sally McGrath's body was discovered at Wild Boar Spinney in a remote wooded plantation called Castor Hanglands, some 9 miles to the north west of Peterborough town centre. Although the body was decomposed the pathologist at post-mortem found fractures to the right side of the skull and across the base of the skull. There was also found bruising to the right temple and a fractured nose. There had been at least two blunt force impacts to the head and another to the face. The body was found in the same remote area and within 600 metres of the position in which the prosecution asserted the appellant had, two weeks before Sally McGrath's disappearance, raped ASF. On 11 July 1979 the appellant was on bail for an alleged offence of burglary. He was required as a condition of his bail to report to Bridge Street police station in Peterborough each day at 6.00 pm and to remain at home each night between 9.00 pm and 6.00 am. Between 7 July and 19 August 1979 the appellant reported daily on time except on 11 July when he phoned the police station at 5.49 pm stating that his vehicle had broken down. He later appeared at the police station at 8.00 pm. At 9.00 pm a police officer received a call from the appellant asking to speak to DC Keith Chamberlain, the officer in charge of the burglary enquiry. At 10.30 pm DC Brooks was sent to the appellant's home at 70 Paynesholme in the Paston area of Peterborough. The door was answered by the appellant's wife, Beverley, who said that her husband was not at home. DC Brooks looked for but could not find the appellant's blue Bedford van. When the appellant was interviewed on 9 April 1980 he

claimed that he had all along been at home but had told his wife to say that he was not. The prosecution contended that the appellant must have had something important to conceal if he was prepared to take the risk of being summoned for a breach of his bail conditions. 8. At about 10.45 pm on the night of 11 July 1979 a van of similar appearance to that owned and used by the appellant was seen in the main street of the village of Castor. About 15-30 minutes later it was seen apparently emerging from a track leading into the woods. On Friday, 13 July 1979 the appellant advertised his blue Bedford van for 9. 10. 11. 12. sale in the Peterborough Evening Telegraph. He later told a fellow inmate in prison that he had cleaned his van thoroughly before he sold it. The prosecution adduced evidence that while he was in custody on remand awaiting trial for the offences for which, in August 1980, he was sentenced to 3 years imprisonment, when aware that the body of Sally McGrath had been found, the appellant wrote to his wife on three occasions directing her to recover his clothing from the police and to destroy it. While in custody he bragged about his sexual exploits, including his violence towards his sexual conquests, and admitted on more than one occasion to the murder of Sally McGrath. Application to stay the indictment On 31 May 2012 the trial judge, Owen J, considered the written and oral submissions made on behalf of the appellant and the prosecution upon the issue whether the indictment should be stayed on the ground of abuse of process of the court. In a written judgment, handed down on 5 July 2012, the judge refused the application. Ground 1 of the appeal is that the judge was wrong to do so. The appellant asserts that it was not possible after such a lengthy delay for a fair trial to take place. As it seemed to us, and as was acknowledged by Mr Pownall QC on behalf of the appellant, since the challenge is to the safety of the verdicts the emphasis in the appeal should be upon the question whether the appellant has been convicted following a fair trial. This, we apprehend, was the view of the single judge who concluded that ground 1 interlocked with the appellant's other grounds which assert that evidence was wrongly admitted during the trial. It was common ground before the judge that evidence available to the prosecution in 1980 was sufficient to establish a *prime facie* case of murder against the appellant. Nonetheless a decision had been made not to prosecute. It follows that the responsibility for the delay was, fairly and squarely, that of the prosecution. It is, however, well known that a stay of the indictment will not be granted in the absence of such prejudice to the defence that a fair trial cannot be held. When assessing whether there has been serious irremediable prejudice the court will bear in mind its power to regulate the admission of evidence and the ability of the trial process to ensure that all relevant factual issues arising from delay will be placed before the jury for their consideration in accordance with appropriate directions from the judge (see *Crown Prosecution Service v F*) [2011] EWCA Crim 1844 per Lord Judge CJ at paragraph 24). At paragraph 48, Lord Judge reiterated that justification for delay is relevant only to the extent that it bears upon the question whether a fair trial is no longer possible by reason of prejudice to the defendant occasioned by delay which cannot fairly be addressed in the trial process. The decision not to prosecute appears to have been based upon the advice of Treasury counsel. Without viewing the advice for himself Owen J accepted Mr Khalil QC's assurance on behalf of the respondent that the decision not to prosecute in 1980 was made upon a consideration of the available evidence. No misconduct was revealed. Mr Pownall QC invited this court, as he had invited the trial judge, to view the advice given by counsel in case there was material revealed that went to the issue of fault and might be relevant

to the fairness of the trial. We acceded to that request and, having read a copy of the advice, which does not contain counsel's signature, we are quite satisfied that in the landscape of the administration of criminal justice in 1980 the advice given was appropriate. We saw no reason why the advice should not be disclosed to the appellant and disclosure took place. It is plain that no manipulation of the process of the Crown Court has taken place that would have justified a stay of proceedings upon the first of the grounds identified by Sir Roger Ormrod in *Derby Crown Court, ex parte Brooks* [1985] 80 Crim App R 164 at pages 168-169. A 'cold case' review took place in 2010 – 2011 into the evidence relating to the death of Sally McGrath the result of which was the indictment faced by the appellant in 2012. The judge concluded, rightly in our view, that the nature of the error in assessment of the merits of the prosecution case in 1980, if it was properly so called, did not in any event bear upon the question whether a fair trial could take place. He turned to examine the effect of delay and accepted that (1) many of the witnesses were dead; if on that account their evidence was read it could not be challenged in cross-examination; (2) witnesses giving oral evidence would rely to a significant extent upon the truth and accuracy of their witness statements and the scope for cross-examination was thus reduced; (3) lines of enquiry which may have been open to the defence in 1980 were now effectively closed; (4) the appellant himself said that his own recollection of events in 1979 was minimal; and (5) the appellant when interviewed during separate enquiries in 1979 and 1980 did not, if the police summaries were admitted in evidence, have the protection of contemporaneous recording that he would have had after the Police and Criminal Evidence Act 1984 and, furthermore, the summaries made after each interview were not presented to the appellant for his acknowledgement or denial. The judge proceeded to examine each of the counts in the indictment and to assess the impact of delay upon the defence case as he understood it to be. He concluded that the disadvantages suffered by the appellant were peripheral to the main issue between the defence and the prosecution and/or that the trial process would be able to deal with the issues arising, particularly by a consideration whether to admit evidence that could not be effectively challenged. The application to stay the indictment was refused. The judge was aware that at the time of his ruling he did not have such a grasp of the detail of the evidence as that he would acquire during the course of the trial. He would therefore keep his decision under review. No application was made to the judge during the trial to conduct that review. It is now submitted, however, that there remained short-comings in the investigation and in the availability of evidence that did in fact have a fatal impact upon the fairness of the trial. 13. 14. 15. Grounds of appeal 16. The appellant advances the following grounds of appeal:

- (1) Due to the passage of time the appellant could not, and did not, have a fair trial. It is now submitted as a new but un-pleaded ground of appeal that the judge's directions to the jury on the subject of delay should have included but did not include references to specific shortcomings in the available evidence disclosed in respect of each of the incidents on which the prosecution relied.

- (2) The trial judge wrongly permitted the prosecution to adduce the evidence of LB and AF, whose complaints of rape and attempted rape were said to support the counts in the indictment. The appellant had been tried and acquitted in 1975 and 1979 respectively. Important evidence was no longer available.
- (3) The trial judge wrongly permitted the prosecution to adduce evidence of 'cell' confessions made by the appellant. All but one of the witnesses had since died; the circumstances could not be investigated adequately and the evidence could not be challenged effectively.
- (4) The trial judge wrongly permitted the prosecution to adduce evidence of the appellant's responses to questions in an interview under caution held on 9 April 1980; the interviews were not recorded contemporaneously; nor were the summaries of interview shown to the appellant for acknowledgement or denial. The evidence at trial LB 17. The appellant was charged with an offence of rape upon LB for which he was tried at Leicester Crown Court in 1975. The jury returned a verdict of not guilty. The judge nonetheless permitted the prosecution to adduce in 2012 the evidence of LB, both as capable of supporting other complainants unconnected with her and as evidence of bad character going to the issue, under sections 101 and 103 of the Criminal Justice Act 2003, whether the appellant had a propensity for sexual violence towards young women. It is not submitted that the evidence was inadmissible for the purpose sought by the prosecution but that it should have been excluded for the following reasons:
 - (1) There was no transcript of the original proceedings available by which the defence could ascertain what it was that troubled the jury about LB's evidence;
 - (2) There were no witness statements available as to recent complaint, no exhibits and no defence solicitors' file;
 - (3) There were no statements available from investigating police officers, the doctor who examined the complainant, or from friends who had been in LB's company;
 - (4) There was no record of interview with the appellant;
 - (5) When questioned about these matters in evidence, the officer in the case, Detective Superintendent Hill, said that no attempt had been made to trace and interview witnesses referred to by LB in her witness statements. 18. LB said that on 8 August 1974 when she was aged 17 she was living in Peterborough. She went with the appellant in his MGB sports car to the Norfolk Public House in Peterborough. When they left he said they were driving to his place of work to fetch some money that he owed to LB. That was an excuse. When he stopped the car the appellant told her that he was going to rape her. He pulled up her dress; he pulled at her top causing her buttons to pop and marks to her breasts; he pulled off her tights and pants and inserted his penis into her vagina. It slipped out twice because of the rake of the seat and the confined space. Eventually he desisted and returned LB to her flat. On the following day she went to the police station with her friend. She took with her the clothes she had been wearing. The police recovered some of the buttons from her dress in

the appellant's car together with her tights and some jewellery. In cross-examination LB agreed that she had said in her witness statement dated 13 August 1974 that she and the appellant had been sharing a meal with others in a Chinese restaurant and the debt that the appellant said he was going to repay had arisen from the division and payment of the bill. She agreed she had said in her statement that when the appellant first stopped the car he leaned over and kissed her. She agreed that she had not minded that. It was pointed out that she had said nothing in her statement about being scratched on her chest when her dress was removed and that she had not been consistent as to whether the appellant had been physically able to penetrate her vagina in the confines of the car. It emerged in re-examination that in her 1974 statement LB had claimed that the appellant threatened to tie both the witness's hands and had produced a cord which he dropped when she pulled away. Then he started to kiss her. She did not resist at first but when she did the appellant said he was going to rape her. When he pulled off her dress and she started to cry the appellant became very angry. He forced his penis into her vagina but she pushed him away. However, during an interview in 2010 when the case was reviewed LB said that the appellant had not managed to penetrate her. As she put it, "I managed to talk him round so he didn't". In a later interview on 13 October 2010 she said he had inserted his penis. On 20 October 2010 she said he had not. She then changed to an assertion that his penis was inserted but "he couldn't do it because of the way the chair was". 19. At the trial in 2012 the prosecution called Joseph Cifaldi. Mr Cifaldi had made a statement to the police in June 1980, several years after the trial of LB's complaint. Mr Cifaldi fitted stereo systems in cars. He recalled that two men had been watching him work, Geoff Fry, who owned the garage, and the appellant. The appellant was talking about a trial which had taken place four years earlier in which he had been accused of raping a girl in an MGB. He told them that the jury could not believe it was possible to rape a girl in an MGB. He said he had "got off with it". Mr Cifaldi asked him, "Is it possible?". The appellant replied, "Yes".

20. When introducing the evidence of LB to the jury the judge reminded them of Mr Pownall QC's submission that all they could be sure about was that at the time when the evidence was considered by the jury in 1975 they had a doubt about the appellant's guilt. The judge reminded them that he had given them a direction as to the evidence of similar complaints made by women unknown to one another to the effect that the evidence of one complainant may be supportive of another. However, although they were not re-trying the allegation of rape made by LB, they could not act on her evidence unless they were sure of its truth and reliability. 21. During the course of his legal directions to the jury (provided also to the jury in writing) the judge, with the approval of the parties, gave a direction upon the exigencies of delay generally as follows: "We then come to a very important feature of this case, which is the question of delay. As you know there has been a delay of over 33 years between the events with which you are concerned and the trial of the defendant; in the case of the evidence of [LB], 38 years. You will all know from your experience that memory is fallible and fades with time. You must approach the evidence in this case with great care. You may only rely on the evidence of events so long ago if, bearing in mind the period that has

elapsed and the difficulty inherent in remembering events so far in the past, you are sure of it. But in this context you will also bear in mind that virtually all of the witnesses were seen by the police in 1980 [during the investigation into the murder of Sally McGrath], and then made witness statements. Those statements recorded their recollection at the time and, as each of those witnesses agreed, their recollection at the time and, as each of those witnesses agreed, their recollection was likely then to have been significantly better. But when assessing the reliance to place upon a witnesses' evidence, bear in mind and make due allowance for the difficulty faced by the defence in testing the evidence in cross-examination when a witness has no recollection of the events in question other than by reference to their witness statements made over 30 years ago. There is a second way in which the quality of the evidence may have been affected by the very lengthy delay in bringing this case to trial. Many witnesses, as you know, have died or can no longer be traced. Records have been lost or destroyed, with the consequence that some lines of enquiry are closed off. You must bear in mind that the delay may therefore have affected the ability of the prosecution to discharge the burden of proof and, secondly, handicapped the defence in the preparation and conduct of the defence." During his summary of LB's evidence the judge reverted to his direction on delay reminding them that the cross-examination of LB exemplified the difficulties that are inherent in giving evidence about events so long ago. The judge reminded the jury that they would have to ask themselves whether they were satisfied so that they could feel sure of LB's evidence as to the manner in which she said the defendant behaved towards her. Having completed his summary of the evidence relevant to LB the judge then drew the jury's attention to a series of admissions scheduled as agreed evidence. Those admissions itemised each of the documents which were no longer available to the parties by reason of the passage of time. AF The evidence of AF was in a similar category and the judge gave the jury the same warning that they could not act on her evidence unless they were sure of it. AF is the sister of the appellant's then wife, Beverley, and was living with the appellant's family. She was aged 16 at the time. The appellant argues that this evidence should not have been admitted. There was no transcript of the court proceedings. It was not known whether the jury had returned a verdict of not guilty on the judge's direction or after a retirement. AF admitted that she had lied on oath to the court on that occasion. It was, submitted Mr Pownall QC, essential to the fairness of the trial in 2012 that the appellant should know exactly what she had said on the earlier occasion. The defence case was that the appellant had assaulted AF causing her a wound. This was the offence of wounding in respect of which he had received a sentence of imprisonment in 1980 (paragraph 2 above). He denied, however, that there had been a sexual assault on her. However, the appellant had made a witness statement in Form MG11T about the incident to the police on 25 August 1979, the day after it occurred. In it the appellant said that he was in a public house. AF was there with her boyfriend. 22. 23. 24. After a while AF asked the appellant to give them a lift home. First, he dropped off the boyfriend. The statement continued: "While they were saying good night I had my fish and chips and when we pulled off I had a handful of tit off [AF], she didn't move away so I decided to go out of town to see about having a bit like. We drove to towards Helpston and

pulled up on the side of the road and I got out and filled the radiator up with water. Q: Where did you get the water from? R: It was in a gallon container in the back of the van. Go back in and had a bit of breast like. She didn't push away so I thought I would be alright for intercourse. I said, "Come on in the back of the van". She started saying, "No, no, no". I just lost my temper and hit her. She said, "Alright". We got in the back of the van and she took her trousers off and I took mine off and I went to put it in and I can't remember I burst out crying. She put her arm round me and said, "Alright, come on let's go home. I won't tell Bev". I had an old pullover laying in the van and I put some water from the can onto the jumper and then we both cleaned our faces up. She cut her lip bad. It had blood on it so I threw it out of the van. I can't remember anything about the bra. We went home where Bev asked what had happened. [AF] eventually told her what happened. Bev phoned for the police and I waited for them to come". 25. AF gave evidence that she moved in with her sister and the appellant during the summer of 1979, just before her 16th birthday on 7 June. From time to time the appellant would tell her that when she was 16 he was going to fuck her. On 24 August after the appellant had dropped off her boyfriend he drove them in his van to a dirt track. Then he claimed that he was out of petrol. He went to the back of the van and fetched a red can. He returned to the driver's seat and put the can in the foot well. At this point his attitude changed. He was no longer the man she had known. He ordered her into the back of the van. She asked the reason why. He said "I told you, I am going to fuck you". He grabbed the back of her hair and punched her in the face. He picked up the can and hit her with it. She said she thought that he was going to kill her. She begged him not to touch her and to take her back to Beverley. She was, however, forced into the back of the van where he ordered her to remove her clothes. He ripped off her bra and pulled down his own trousers and underwear. He lay on top of her while she was telling him that she was a virgin and begging him not to do it. He was telling her to shut up while pressing her neck with his thumbs. As he was about to insert his penis into AF's vagina he broke down saying that he and his wife were not getting on. The appellant appeared to revert, "just like that", and the witness demonstrated by clicking her fingers. The appellant bathed the wound to her mouth but there was blood everywhere. On the journey home he threw AF's damaged clothing out of the window. As soon as Beverley saw her sister she started to swear at the appellant repeatedly asking, "Did he do this to you?" The appellant, out of sight behind Beverley's back, was miming with his hands in prayer as though beseeching AF not to tell the truth. A complaint was made to the police. AF said that at the Crown Court she pretended she had suffered her injuries in a fight outside the chip 26. 27. 28. shop where they had stopped on the way home from the pub. The appellant pleaded guilty to wounding and a verdict of not guilty was returned upon the count of attempted rape. In cross-examination the witness admitted that she had in the past told lies, including a false allegation that she had been sexually abused by her father. She explained that she had lied about him in order to be taken away from her parental home. She had withdrawn the allegation not long afterwards. She agreed that in a statement dated 18 October 1979 she had withdrawn her allegations against the appellant. That was because, the witness said, she was protecting Beverley and the children. She denied that she had exaggerated the incident to others by claiming that the

appellant had bathed her wound with a garment belonging to the deceased Sally McGrath. Evidence was called to rebut her denial and to suggest that the witness was prone to exaggeration. On the other hand, a neighbour Mrs Dot Stringer gave evidence which was read that shortly after the incident had occurred she visited the house and AF made a complaint to her that was consistent with the account both she and, later, the appellant had given. DD (Counts 1 – 3) The appellant contends that he was unable satisfactorily to investigate and challenge DD's evidence. She made a witness statement at the time saying that she had consensual sexual intercourse with the appellant. The circumstances of the making of that statement could not be investigated. She told the jury in the present trial that she had been advised by police officers not to proceed with her complaint. It was no longer possible to examine the car in which the first act of non-consensual sexual activity had allegedly taken place. Establishments to which DD was taken were not visited or, if they were, the results of any enquiries were not known. An important witness for the defence, Mrs Lang, was deceased at the time of trial. Dr Myska, who examined DD and gave evidence, had no independent recollection of the occasion. DD was aged 19 and lived in Peterborough with her parents, brother and sister. She worked in a boutique in Peterborough. Thursday, 15 March 1979 was her day off work. She said that at lunchtime she went to the Bull hotel in the centre of Peterborough to meet her friend Roseanna. There was other evidence that the Bull was a regular of the appellant. DD stayed with him until closing time. They were both drinking. DD's evidence was that Roseanna did not turn up. Roseanna Lester gave evidence that she did meet DD at the Bull but DD was still there when she left. DD said that at closing time she accepted the appellant's offer of a lift. He took her to a hired red Austin Princess in the car park of the Bull. He did not take her home. He took her to a place called The Ram Jam Inn several miles north west of Peterborough on the A1. DD said that she was confused and concerned and telephoned her friend, Janet Draper, who was working in the boutique, from a phone box. Ms Draper gave evidence that DD sounded distressed and scared and was asking for help. DD told her she had had a few drinks and was with a man called Paul. She wanted to go home. DD handed the phone to the appellant. She asked Paul to bring DD back to the Bull. By this time, said Ms Draper, Tony O'Rourke had arrived at the boutique. He took the phone and also spoke to the appellant. Ms Draper again took over and Paul agreed to bring DD back to the Bull. DD said the arrangement was that they would meet in the Bull at 7.30 pm. However, the appellant drove them to a deserted track and stopped the car. He was "snarling" and demanded that she suck his penis. He hit her and called 29. 30. 31. her a prostitute. He would kill her if she did not do what he told her. He was talking about being in the army and knowing about killing people. She obeyed him. The appellant was drinking from a whisky bottle. He put the bottle into DD's mouth; the whisky spilled and soaked her clothes. He told her to remove her pants. She pleaded with him to stop but he was adamant. He pushed her legs apart and inserted his penis into her vagina. He turned her over and used the whisky bottle in her vagina. He then penetrated her anus with his penis. DD said that the appellant then drove to the village where there was a pub called the Angel. The appellant said she would be killed if she told anyone what had happened. She spoke to a woman behind the bar saying, "This man has raped me and I need help". The landlady came

over, called her a whore and put her out into the street. She went to a phone box and took out her diary to find a number. The appellant followed her, seized the diary and dragged her to the car. The landlady of the Angel was Linda Macintosh who made a statement on 28 March 1980. The statement was read. She knew the appellant because he had been working on the barn at the premises. She said he arrived with a young woman who was sick in the toilets. In the bar she was becoming loud and excitable and the appellant, who was standing alongside, appeared to be embarrassed. The woman was drunk; she told her to get out and pulled her by the arm to the door. Outside, the woman was saying that she did not wish to go home with the appellant. According to Mrs Macintosh the woman made a telephone call for a taxi from the kiosk outside. Paul turned up in the car; he told her to get in and he would take her home. DD said that she was then taken to a house where the appellant's friends lived. She tried to convey that she needed help but there was none. She thought she had better be quiet so as not to anger the appellant. Maureen Lange's statement was read. In it she said that she and DD had been alone together. DD did not have a hair out of place. She just sat there. Ms Lange said in her statement that DD seemed a bit afraid to say anything to her and once or twice the appellant entered the room where they were sitting. However, Mrs Lange saw no marks on DD. As they were leaving, DD told her that the appellant would not take her home and she advised the appellant that he had better do so. The suggestion made on behalf of the appellant was that if she had a complaint of rape to make about him DD had ample opportunity. Mr Lange gave evidence that both DD and the appellant had been drinking. He got as much coffee into the appellant as he could because he was drunk and he was also driving. The appellant then drove to the Haycock Hotel where he booked a room. DD said that she was raped and he ejaculated. She agreed that she had asked for body lotion so that she could take a bath. Staff at the hotel gave evidence. Its effect was that there was nothing to indicate to them that anything was wrong with DD. Indeed in the hotel reception DD told the appellant to shut up. The appellant ordered a meal. When it was taken up he and DD appeared to be having sexual intercourse. The request for baby lotion was made about 15 minutes later. The following morning the appellant's manner had, according to DD, completely changed. He said he wanted to meet DD's parents. When he dropped her she tried to conceal where she lived by taking a round about route to her home. When DD arrived home her sister saw the state she was in and took her almost immediately to the doctor's surgery where DD was examined by Dr Myska, but it does not appear that a full medical examination took place. Dr Myska's note read: "16 March complaining of rape. Picked up by Paul Taylor at the Bull Hotel last night and went out to Wynford. Raped in car. Stayed at Haycock. Raped again. No joy in prosecution." Dr Myska gave evidence. He had made no note of any bruising to DD's face. He said in evidence that if he had seen bruising he would have made a note. He could not recall the reason why he had added the comment, "No joy in prosecution", but thought that might have been his judgment upon DD's account to him. 32. DD said that she was not in a mental or physical state to pursue her complaint against the appellant. Statements were taken but no prosecution followed. DD did reveal some of these events to her friends and evidence was given of her complaints. In cross-examination it was put to her that the only sexual activity that took place was at the Haycock

Hotel and that activity was entirely consensual. A short statement made on 19 March 1979 by DD was put to her. It read: "I understand that my father ... made a complaint to the police that I was raped. This in fact is not the case. I was in the company of Mr Paul Taylor ... on the afternoon and evening 15 March 1979 and I did book in with him and stay the night with him at the Haycock in Wansford. Whilst in the company of this man I had sexual intercourse with him on several occasions, each time with her consent. I do not wish the police to make any further enquiries into this matter on my behalf." Asked why she had made this statement DD replied that she had been advised not to pursue her complaint. She thought that "in the end the truth would out".

33. When, a year later, the police re-visited her, DD mentioned a place she thought the appellant had taken her, the Old Greetham Hotel. The evidence at trial was that the building had since been demolished. It had been situated opposite The Ram Jam Inn, the establishment referred to in DD's evidence. In her statement of March 1980 she said that at one point in a pub the appellant had picked her up so that she could look through a window to the kitchen. It was suggested that this activity would not imply coercion. DD made a further statement in 2010 in which she said, in relation to the alleged act of buggery in the car, that she felt as if she was being ripped open. On the contrary, in her March 1980 statement she said, "It didn't hurt too much". DD responded in evidence that she was at the time suffering from piles that had bled. 34. DD's sister, who had been a nurse, gave evidence that when DD arrived home she was near to collapse, stuttering and could barely talk. She took DD to the doctor but she was only with him for a minute or two. Two of DD's friends called the following morning when she repeated her claim of rape. DD's parents had died by the time of trial. Their statements were read. Mr D did not give details of his daughter's complaint. He said, however, that she was a different girl after the incident. Mrs D said her daughter had told her about parts of her experience but not all of it. On Friday, 16 March 1979 DD had given some details to Ms Draper and Mr O'Rourke. The complaint to Ms Draper was inconsistent. DD told her that she had been kept in a flat and it was there that the whisky bottle had been used. 35. The appellant was not interviewed about DD's allegations until 9 April 1980, after Sally McGrath's body had been found. He was then in Bedford prison. Detective Chief Superintendent Muirhead and Detective Superintendent Cooper interviewed the appellant. The interview was not recorded. After each interview a summary was prepared on a Dictaphone, the recording was transcribed into Mr Muirhead's notebook, and the notes were subsequently checked against the recording. That summary was not at the time shown to the appellant for agreement. According to the police officers they were following their normal procedure. The judge directed the jury that the required procedure for the recording of interviews and the presence of a solicitor had, for the protection of the suspect, changed very considerably following the introduction of the Police and Criminal Evidence Act 1984. The officers gave evidence that when interviewed on 9 April 1980 the appellant denied knowing DD, and denied that he had picked her up in the Bull. However, when the officers mentioned the Haycock Hotel the appellant recalled the occasion and said that, having been in the cocktail bar of the Bull with a woman, they went together to the Haycock Hotel where

overnight they had consensual sexual intercourse. He denied giving the girl a rough time, denied buggery and denied using a whisky bottle on her.

36. When interviewed again about the matter in December 2010 the appellant said he had no recollection of the occasion. LW (Counts 4 and 5) 37. 38. In 1979 LW was aged 24 and living in Peterborough. On 8 April her niece was christened. A party was held at 15 Caithwate in Peterborough. LW attended. Later she asked her sister to order a taxi but the appellant offered her a lift instead. He also offered a lift to others. Having dropped them off first, he did not take LW home but to a lay-by. LW said that he “came on to” her. She resisted and pushed him away. He lent over to the passenger side attempting to kiss and touch her. After the attack she ended up out of the car without her shoes and she ran, she thought, for her life. She went to a friend’s house. The police were not called. She made a statement in April 1980 in the course of the investigation into Sally McGrath’s death. In it she said that 8 August 1979 was not the first time that the appellant had made a grab for her. He was a show off. The child who was christened was Mr and Mrs Crown’s infant daughter. Mrs Crown was LW’s sister. Mr Crown could not recall the evening. Mrs Crown said that LW had a reputation for becoming upset and irritable in drink. That is why she went home. She said that the appellant was away for 45 minutes. His wife Beverley was angry with him when he returned. The appellant told his wife that LW was drunk and would not get out of the car. Next day LW made a complaint to Mrs Crown that the appellant had not taken her home. He attacked and tried to rape her. At first, Mrs Crown accused LW of lying to her. LW’s other sister was called to give evidence. She said that later on during the night of the christening she was alone with the appellant in the sitting room. He pulled her from the settee, sat across her chest, and pinned her arms with his knees. He tried to place his hand under her shirt but she fought him off. He responded, “Come on you slag, you know what I fucking want, you’re just like your sister, full of promises but you don’t put out”. When LW’s sister spoke to LW the following day she confirmed the appellant had attempted to rape her. 39. 40. 41. Christine Sturridge was the friend to whose house LW fled. She was unfit to attend court. She made a statement in March 2011 which was read. She described LW being dishevelled, very frightened and upset. She made a complaint that a man who had given her a lift had attacked her. She did not want the police called. Her husband Tony eventually walked LW home. The appellant makes the point that if Mrs Sturridge was correct, since the police were not called to her home, the complainant gave no account until a year later. However, in a later interview LW said that she thought that the police had attended. After LW’s statement was made some 32 years elapsed. There was no available medical evidence. The appellant was not interviewed about this matter until December 2010. He said that he had no recollection of such an incident. The witness claimed to have suffered a black eye. It is submitted that there was no means of challenging this assertion since the witness’s attention had not been drawn to the issue at the time and no independent recollections remained. ASF (Count 6) ASF was aged 17 in 1979. Her parents were Italian nationals. On 17 June ASF said she was walking along the riverbank in Peterborough when she came across two men. They were the appellant and Paul Stringer. They were launching a small boat from a trailer.

They got into conversation and ASF took a fancy to the appellant. They offered her a ride in the boat and she agreed. At the conclusion of the trip she thanked the appellant and was hoping to meet him again. On 28 June she finished work at 4 – 4.30 pm. As she was walking home she saw the appellant's Bedford van at a garage. Paul Stringer was sitting inside and the appellant had been filling up. The appellant saw her and asked if she wanted to go on his boat again. She said she did. She sat in the front of the van between the two men. The appellant told her that they needed to fetch parts for the boat but instead they ended up in a wooden area. When they stopped Paul Stringer got out. He seemed nervous. The appellant changed his manner towards ASF completely; he became menacing and nasty. He dragged ASF out of the van by her legs and told Stringer to fuck off with the van for half an hour. She found herself on the ground. The appellant grabbed her T-shirt which was ripped from top to bottom. She tried to struggle but he was too strong for her. He moved her jeans to her knees and, using a condom, penetrated her vagina. ASF was menstruating and told him so. It did not prevent the act. As Stringer was returning some minutes later the appellant stood up and threw the condom away. Again the appellant's manner appeared to switch suddenly. He was now saying that he was going to buy them an ice-cream. He gave ASF £2 to £3 to replace her damaged clothing. She was dropped near to Bridge Street police station and on her way home bought herself a new top. 42. On arrival home ASF told her mother what had happened. Her mother told her that she had to go out and find this man. For the sake of the family's honour she must marry him. ASF found out where the appellant lived, went to his home and knocked on the door. Beverley Taylor answered. When ASF realised that the appellant was married she left the house. Outside the gate she saw Paul Stringer who was the appellant's next door neighbour. He asked her into his house. There she met his mother, Dot. She told Dot what had happened. Dot encouraged her to go to the police. ASF did go to the police and a statement was taken but ASF did not wish to proceed with a complaint. 43. 44. 45. Nothing further happened until 1980 when, on 6 March, five days after the discovery of Sally McGrath's body, she was interviewed by DS Peck. She showed him the wood in the general area of which the rape had occurred but she could not be specific. ASF stated in evidence that during the investigation into Sally McGrath's death she had seen a 'photofit' picture (in fact an artist's impression) in the newspaper. She thought it fitted the man who attacked her except that she would have added a longer fringe. ASF knew exactly who her attacker was because she would see him from time to time and, she said, he would jeer at her because she had accused him of rape. The significance of ASF seeing the drawing in the newspaper in connection with the disappearance of Sally McGrath was that ASF thought the man sought by the police bore a strong resemblance to the man who had raped her. As a result she contacted the police. This recognition of the appellant took on added significance when the police re-interviewed Paul Stringer. Dot Stringer made a statement on 13 March 1980. She had in the meantime suffered two strokes and had no recollection of events. Her statement was read. In it she confirmed the complaint made by ASF. She said she challenged the appellant about it and he asked her to help him. He said that otherwise he would get 5 years. He wanted to see ASF. However ASF refused to see him. When Dot asked him why he had done it he replied, "I think it's the booze". Paul Stringer gave evidence. He was 16 in 1979

when he worked for the appellant. He confirmed ASF's evidence both about the boat trip and the subsequent drive to the woods. He said that the atmosphere changed when they arrived in the wood. The appellant told him to fuck off with the van. The appellant was kissing ASF and was pulling at her blouse. He knew ASF wanted him to help her but he could not. As he drove the van down the track away from them he was crying. When he returned 10 minutes later he saw that ASF's top was ripped. She was crying as she straightened her skirt. The appellant was alongside her with his jeans around his ankles. A condom was still attached to his penis which he removed and threw away. When they returned to Peterborough Stringer told ASF to get out of the van. When she had gone the appellant told him to keep his mouth shut. Stringer recalled the day ASF came looking for the appellant. He took her into his home and he started crying saying that he was sorry. ASF replied that it was not his fault. On 14 March DS Peck asked Stringer to take him to the place where the rape had occurred. Stringer, who had no regard for DC Peck who, he said, drank with his father, led him to the spot in Castor Hanglands. The place was marked on a plan for the jury. It was 600 metres away from the position in which Sally McGrath's body had been found. Stringer had made a statement on 15 April 1980 in which he had said that the sexual activity between the appellant and ASF was consensual. He had walked off so as not to be in the way. Asked why he had made that statement, he replied that he thought he was implicated in the rape and wanted "to keep it simple". He was also scared of the appellant. He said that he should have told the truth and still felt responsible for what had happened. He had told his father about it; his father had advised him not to inform the police.

46. When ASF first described the route taken into the wood she referred to a tractor sign she had seen. She also recalled seeing a mobile library. Complaint is made that no attempt was made to identify the sign or the mobile library. Since she had not followed up her complaint no-one took ASF to the wood in 1979. By 1980 she could not identify it. Mr Stringer senior was deceased. The defence would have wanted to explore with Mr Stringer what his son had told him, if anything, about the alleged rape, his relationship with DS Peck and his son's knowledge of the murder of Sally McGrath. Mrs Stringer had suffered strokes, did not have a recollection independent of her statement, and could not be cross-examined. The police officers who received ASF's first complaint could not be asked about the conversation that led to her decision not to proceed with the complaint.
47. When the appellant was interviewed about ASF in December 2010 he denied the occasion and circumstances put to him. His case at trial was that if intercourse had taken place it was consensual. 48. No statements were taken from the parents and family of ASF. Sally Ann McGrath (Count 7) 49. 50. The preponderance of the evidence was that Sally McGrath signed on at the employment exchange in Peterborough at around lunchtime on 11 July 1979 and then went to the Bull hotel. She did not return home on 11 July and on Saturday 14 July she was reported missing. Melanie Atkin gave evidence that she was in the Bull hotel with a man named John Collins. She knew the appellant and his wife. The appellant was in the Bull that afternoon and came over to the table where Ms Atkin and John Collins were sitting. She introduced Mr Collins as her father because her regular boyfriend was Harvey Gibbs. They

spoke together for about 15 minutes. She also said that she saw Sally McGrath in the Bull, although she had not before mentioned that in her statement. Ms McGrath was seen in the Bull that day by other witnesses: Nina Krall, a member of the bar staff; Patricia Hills, one of Sally's friends; Ursula Hay, an acquaintance who had known Sally for nine years; and Peter Choradostki, the head porter at the Hotel. Patricia Hills said that she had seen Sally McGrath in the back bar of the Bull on 11 July talking to "two blokes". Ursula Hay was an important witness. She too had been to the employment exchange, in her case to sign off because she was about to go to Dubai to visit her sister. When she arrived at the Bull with her boyfriend she saw Sally McGrath sitting on a stool at the bar. Ursula knew one of the group, Brian May, who was talking about working in Germany. Mr May also gave evidence. He agreed that he was in conversation with Ursula. Ursula Hay said that Sally was talking to another man in the group, not known to Ms Hay. She got the impression that this man liked Sally. Brian May and the second man seemed to know one another. They may have been in the same line of work; it was just the four of them. At about 2.30 – 2.45 pm. Ms Hay left the Bull. Her boyfriend had already gone. Ms Hay made a witness statement in which she had described the man talking to Sally. He was quite scruffy, and had quite long, dark hair. He was wearing a black leather jacket. He had quite high prominent cheek bones. Subsequently she sat down with an artist at the police station, provided her description and an impression of the man she described was produced. It was on that drawing, published in a local newspaper, that AF later superimposed a fringe so as to produce a likeness to the man who had raped her. 51. On 10 July 1980 Ursula Hay attended an identification parade in an attempt to identify the man in the Bull who had been with Sally. Ms Hay said in evidence that shortly before she attended the parade, either the day before or on the morning of the parade, she was shown by Detective Sergeant ("DS") Waling, the officer who had 52. 53. 54. been taking her statement, a photograph of the suspect; by implication, it was a photograph of the appellant. Ms Hay said the person in the photograph did indeed resemble the man she had seen with Sally. When DS Waling gave evidence he said he did not "think" that he had shown the witness a photograph. He agreed that it would have been quite wrong to have done so. However, Ms Hay says she was profoundly affected by what had occurred. She said it was morally wrong. When she attended the parade she deliberately picked out a person whom she knew was not the person she had seen in the Bull. She is recorded at the time as saying "I am not sure but I think it is this gentleman". In evidence she said, "I pulled someone out who looked nothing like that". She continued that the man who had been sitting with Sally was in fact on the parade. He was the man standing third from the left. It was established that the person standing in that position was the appellant. Brian May gave evidence that he was working in Germany, four weeks on and one week off. He recalled being in conversation with Ursula Hay. There was another man present who was talking to Sally and chatting her up. The man appeared to be in the building game, like him. Sally and the man got up together to go. Mr May said that, months later, when he was at Heathrow Airport on his return from Germany, he was arrested for Sally's murder. He was in custody for three days during which time he made three witness statements. On 19 March he had given a description of the man in whose company he had been at the Bull as aged about 35 - 40, 5'9

to 5'10, reasonably slim, clean shaven, no spectacles, fair to blondish hair, receding slightly in the front and fairly short, sallow complexion, reasonably smart. In his second statement, made on 20 March, he said he had recognised the man when he was standing at the bar but he appeared to have changed his appearance. Before he had been scruffy now he was clean and tidy, well groomed and wearing a suit. In his third statement, however, he said he was shown 12 photographs of males by Detective Superintendent Heppleston. He positively identified photograph number 8 as the man talking to Sally McGrath in the Bull. That person was the appellant. However, the appearance of the appellant in the photograph selected by Mr May bore no resemblance to the description he had given in his statements. He was taxed about this in cross examination but denied that he had been put under any pressure to identify Paul Taylor. He confirmed in re-examination that when he was making his identification from the photographic line up he was telling the truth. Brian Harris owned a garage. He said that he had employed the appellant as a part time welder, he thought in the summer of 1976 for a period of 6 weeks. The only vehicle the appellant worked on was an MGB Roadster which belonged to Brian May. May brought the car to the garage because he was a friend of the appellant's. Brian May gave evidence that he could not afford to pay for the repair and re-spray and had simply handed over the log book. When asked by Mr Pownall QC whether the man who worked on his car was the same man he had seen in the Bull on 11 July he said he thought not. Nonetheless, as we have said, he confirmed that when he picked out the man in photograph 8 as the man in the Bull he was telling the truth. Detective Superintendent Hepplestone gave evidence that he had shown the album and photographs to Mr May. Detective Superintendent Heppelstone did not know the identity of anyone in the album. He was performing the task simply because he was standing in for another officer. When Detective Chief Superintendent Muirhead gave evidence he accepted that there was a suspicious similarity between the first two 55. 56. statements made by Brian May on 19 and 20 March 1980 respectively. The second was a longer version of the first. It was put to him that only one of them was intended to see the light of day. Mr Muirhead said that he certainly would have wanted to ask the officer who took the statements what was happening. It would, he accepted, have been quite wrong to have shown photograph 8 to Brian May before the identification procedure took place. However, Brian May had not alleged that he had been shown any photograph of the appellant before he made his identification. Of relevance to the resolution of the truth of this evidence was the appellant's own account in interview. On 25 March 1980 he was visited in prison by Detective Sergeant Siwicki who completed a questionnaire signed by the appellant. In it he said that he had only visited the Bull in the evenings with his wife, the last occasion being in 1973 or 1974. He was seen again on 9 April. This was, of course, some days after Mr May had identified him from the photographs and the same day on which the appellant was interviewed about DD. The appellant was reminded that he had done a welding job for Mr Harris on a car owned by a man he had seen again in 1979. The appellant replied that he remembered the man. He had been working in Germany and was the owner of the MGB. The next time he saw him was in the Bull. He agreed that it was a lunchtime. The appellant was asked if he could recall on that occasion speaking to a man and a woman sitting at a table. He replied that it was

Harvey's girlfriend. She was there with the man she was calling her dad. When asked if he could recall the father the appellant replied that he did not really think that he was her father and he told Harvey that when he saw him later. A good deal of further evidence was either called or read upon the issue whether any sighting of Sally McGrath had taken place on the afternoon of the 11 July 1979 elsewhere than at the Bull and at any later time on or after 11 July. Peter Thompson worked as a doorman and lived in a bedsit. He gave evidence that he had spent the Saturday night before 11 July 1979 with Sally McGrath. They arranged to meet again on Tuesday 10 July but that night they did not stay together. They had agreed to meet in the Fleece Public House on the evening of Wednesday, 11 July. He went there but Sally did not turn up. He never saw Sally again. When he was first interviewed by the police as to Sally's movements it was put to him that he had been seen on the Wednesday evening with Sally at another public house, confusingly called the Bull and Dolphin. He said he could have been but it was definitely the evening before Sally was going to sign on. Peter Thompson was also arrested for the murder of Sally McGrath. When interviewed under caution he said he had been with her on either the Tuesday or the Wednesday night. However he was still referring to the evening before Sally was going to sign on at the employment exchange. There is no doubt that the date Sally signed on was Wednesday, 11 July. Found in the back garden of the property where Thompson had his bedsit were the remains of a fire. In the ashes were found two keys which fitted the lock in Sally McGrath's home. They were, however, identical and fairly common keys, looked new, and neither of them appeared to have been used with any frequency. Thompson said he had no knowledge of the keys and had never been into the garden which served a number of separate units in the building. 57. It emerged that on 18 August 2010, in the course of the cold case review, DS Peck (since deceased) had spoken to WDC Bowen about the day of Sally's disappearance. He said he recalled seeing and being with the appellant on that day. A contemporaneous note of the conversation made by another officer implied that DS Peck may have been saying that the sighting could have taken place in the evening of 11 July 1979. However, on 15 May 1980 DS Peck had made a witness statement about the sighting in which he said that from 2 pm on 11 July 1979 he had been on duty. He described his movements and concluded that he had not seen either the appellant or Sally McGrath that afternoon or evening. The appellant now contends that an avenue of enquiry had been lost to the appellant in the course of time. The judge reminded the jury in detail of this evidence during the course of his summing up. Paul Stringer and Michael Stallion gave evidence to the effect that Sally McGrath was known to the appellant. Each of them had made inconsistent statements about this subject in March 1980 and they were cross examined upon their statements. The judge directed the jury that they must consider the explanations given by the witnesses for their inconsistencies. The appellant now contends that the judge should, in this context, have given the jury a further direction to the effect that when, so long after their statements were made, witnesses change their accounts they should treat their retraction with caution. Cell confessions The prosecution sought leave to adduce the evidence of witnesses to whom it was alleged the appellant had made damaging admissions while in prison. The appellant objected to the admission of the evidence on the grounds that it was inherently unreliable and he had no

means of challenging its truth. The judge heard submissions on 24 October 2012. It was thought that two of the witnesses were available to give evidence; six others were dead. Of the latter, in two cases the prosecution was unable to identify any evidence that might support the account they had given in witness statements. The judge excluded their evidence under section 78 of the Police and Criminal Evidence Act 1984. As to the rest the judge postponed his ruling until he could better assess the risk of unfair prejudice to the appellant. On 30 October 2012 the judge ruled in favour of the prosecution as to the remaining witnesses and gave his reasons on 8 November 2012. Robert France's witness statement was taken by DS Waling on 17 February 1981. Mr Pownall QC submitted that DS Waling was a discredited witness who had shown Ursula Hay a photograph of the appellant before asking her to attend an identification in which he was the suspect. The judge ruled that the reliability of the evidence could be explored in cross examination. In the event the witness was unavailable and the evidence was not adduced. 58. 59. 60.

61. Mark Thomsett made a witness statement to Detective Chief Superintendent Muirhead on 11 February 1981. The judge ruled that the reliability of his evidence could be tested in cross-examination. 62. The judge turned to those witnesses who had since died. Although the interests of justice test in section 116 (4) of the Criminal Justice Act 2003 did not apply to the evidence of witnesses who had died (only to those who were not present through fear) the judge examined the terms of subsection (4) in order to reach a conclusion upon the reliability of the evidence and the ability of the appellant to challenge it. In this context the judge considered relevant the question whether a pattern of behaviour by 63. 64. the appellant was revealed by the evidence. The effect of the evidence, the judge found, was that the appellant would brag to fellow inmates about his violent sexual exploits. The evidence as to what the appellant said was, on the other hand, fragmentary and not always consistent. This tended to undermine the appellant's objection that it was unreliable because it may have been fed to the witnesses by corrupt police officers. The judge ruled admissible the evidence of four of the deceased witnesses: Keith Shaw, Bruce Pope, Robert Brown and Frederick Clarke. Keith Shaw's statement dated 17 March 1980 was read. He said he had known the appellant since March 1979. He was friendly with the Stringer family who lived next door to the appellant. They became friends when Mr Shaw moved in with the Stringers for a week while he was separated from his wife. He next saw him in November 1979 when they were on remand together in Bedford prison. Both men were sentenced to three years imprisonment. They would walk together on exercise. By this stage Sally McGrath's body had been found and the appellant raised the investigation in conversation. On 4 March 1980, three days after the body was discovered, the appellant wrote to his wife, Beverley, from prison, "Arrange with Mr H to get my clothes back from the police and then burn the lot, boots as well, okay?" He sent her a reminder on 10 March. On 10 March Keith Shaw wrote a letter to his own wife telling her that the appellant was talking about the murder. Shaw said in his statement that the appellant seemed relieved when Peter Thompson had been arrested. The appellant observed, "That will keep them off my back", When Thompson was released Shaw told the appellant that he should not have left the girl under the leaves. The

appellant “went white” but denied that he had known the girl. On 14 March the appellant wrote to his wife that Shaw was winding him up. He asked again whether his clothes had been collected from the police. Keith Shaw made a further statement on 28 March 1980. In it he said that since he had made his first statement he had told the appellant (from information provided by his probation officer) that his blue van had been sent for forensic examination. The appellant responded that they would find nothing because he had cleaned the van before he had sold it. The appellant was visited by police officers. After the visit the appellant became cocky and seemed relieved, saying, “They’ve got fuck all on me for the murder”. In a further statement Shaw said that at about 4.30 pm on 3 April 1980 he and the appellant had fallen out. In anger Shaw said, “I know you killed that girl in Peterborough and so do the police”. The appellant responded, “Yes, but just let them try proving it”.

65. Mark Thomsett gave evidence that he was in prison with the appellant and Shaw. Shaw told him that the appellant was a murder suspect. The police had visited Shaw and wanted to know what Shaw could “get out of” the appellant. On one occasion when Thomsett was walking in the exercise yard with a prisoner called “Twiggy”, Thomsett said to the appellant, “You did do it, didn’t you?” The appellant replied, “Yeah”, and walked off. Thomsett denied that he had been offered any inducement to provide this information and said that he had received none.
66. Robert Brown’s evidence was read. He shared a cell with the appellant for over four months. The appellant boasted of beating and raping women on three or four occasions. He also told him that he took his sister-in-law in a van to some “spare” ground, the same area where he had taken an earlier woman. He had beaten her when she decided she did not want sex.
67. 68. In October 1979 Bruce Pope had been remanded in custody to Bedford prison for a week. One of his cell mates was the appellant. The appellant told him that he taken a girl he had met in Peterborough in his van to some waste ground where there were bushes. They got out of the van. He removed her clothes down to her bra and pants and then she resisted intercourse. He gave her “a good fucking hiding” and left her there. Pope said he did not believe the story because if it was true the appellant would not be telling him. Pope thought the girl was called Sally Ann. The only other women he mentioned were his wife, Beverley, and his sister-in-law. After a week Pope was granted bail.
- Frederick Clarke made a statement in August 1981. He said he shared a cell with the appellant in about September 1980 for six weeks when serving a sentence of 9 years imprisonment for robbery. Clarke was aware that the appellant was suspected of the murder of a girl in some woods. It was clear from the appellant’s conversation that he had known the girl. She was “a bit of a slag, a pub pick up”. Clarke would pump the appellant for information. The appellant said the police could never prove it. He told Clarke that he had met the girl in the Bull. She was talking to an army bloke who was on leave. This was the last day she was seen. On other occasions the appellant told him contradictory things, including that she had gone off with the army bloke.
69. In the course of providing his legal directions to the jury at the commencement of his summing up the judge explained (Transcript page 27C): “The cell confession evidence. Approach this evidence with considerable care. If you are sure that the defendant said what he is reported as having said, then plainly it represents important

evidence in support of the prosecution case. But if you are left in any doubt that these statements were made, then they can be of no assistance to the prosecution and you must ignore them. Bear in mind in particular that there may be reasons why a prisoner would wish to be seen to be assisting the police. As one of the officers who gave evidence agreed in cross examination, people in custody are in a vulnerable position, possibly looking for favours, capable of telling lies for their own gain. But also bear in mind when assessing such evidence that the reported conversations occurred over a period of months, and that the content of each was both fragmentary and different, one from the other.” In common with all other of the judge’s legal directions to the jury, this direction was disclosed to counsel in writing in advance and approved. The written direction accompanied the jury into their retirement. Interviews 9 April 1980 70. As we have noted at paragraphs 34 and 53 above, the prosecution relied upon two interviews under caution conducted with the appellant on 9 April 1980 at HMP Bedford for the appellant’s response to questions about DD and 11 July 1979 when Sally McGrath went missing after visiting the Bull hotel. The prosecution also adduced the evidence of the appellant’s admission to sexual intercourse with ASF to whom the appellant referred as “the Italian girl” in the woods at Castor Hanglands. He maintained in interview that ASF “was all for it”. 71. The appellant contends that the judge should have excluded this evidence because it was gathered in contravention even of the standards for police interviews with suspects that prevailed in 1980. The appellant could not reasonably have been expected to remember the contents of the interviews after such an interval of time and could not, accordingly, mount an effective challenge to evidence that was inherently unsafe. The appellant could not remember events put to him in interview in 2010. 72. Having heard argument on 10 October 2012 the judge ruled as follows: “Mr Pownall QC contends that judged by contemporary standards, the interviews would clearly be inadmissible in that they contravene the provisions of PACE and the current Codes, in that they were not tape recorded, and there is no evidence to suggest that he was advised that he had the right to have a solicitor present. That is plainly the case; and I also accept his submission that prior to the implementation of PACE it was the practice to prepare contemporaneous notes, which were then offered to an accused for signature, but that did not happen in this case. But I am not persuaded that the admission of the evidence would have such an adverse effect upon the fairness of the proceedings that I ought not to admit it. The records of interviews, such as they are, contain a robust denial of the offences and, as I have already observed, nothing amounting to a confession. The relevant officers are available for cross examination and can be questioned upon any passages with which the defendant takes issue. If and insofar as there is challenge to the content of the interviews, the jury will be directed that since 1980, and in particular since the implementation of PACE, practice has changed for the protection of the rights of the individual the subject of questioning by the police, and that they should approach such evidence with caution.” 73. As before, the judge prepared his direction to the jury in writing and gave it to counsel for approval. It concluded: “But I direct you to exercise considerable caution when considering the evidence that you heard as to the content of those interviews, and in deciding what reliance you can place on it.” It is submitted that the judge did not go far enough to warn the

jury of the dangers arising from specific aspects of the evidence. He should have referred to the risk of miscarriage of justice arising from deliberate or unconscious manipulation of questions and answers re-constructed after interview (or “verballing”). Discussion Stay of prosecution For the reasons given by the judge in his ruling on 5 July 2012 we are satisfied that he was fully justified in refusing the application to stay the indictment. We have already expressed our view that the decision not to prosecute for these offences in 1980 was understandable by application of the rules of evidence which prevailed at that time. 74. 75. 76. 77. 78. 79. DD (counts 1 -3) was available to give evidence and a wealth of material had been served on or disclosed to the defence with which to challenge her account. The appellant’s interview in April 1980 was self-serving. His account that intercourse was consensual was in some measure supported by the evidence, written and oral, of others. There had been no investigation into the attempted rape of LW (counts 4 and 5). However, her complaint was investigated a year later, following the discovery of Sally McGrath’s body, and statements were taken. The complainant, LW, was available to give evidence; so also was LW’s sister, Mrs Crown, who hosted the christening party, and MW, another sister, who described the appellant’s behaviour towards her on the same night. Pamela Gregus gave oral evidence evidence of identity. Mrs Sturridge, the friend to whom the complaint was made, had made witness statements in 1980 and 2011. She was unfit to attend court to give evidence and her evidence was read. However, in her case the jury received the usual direction of law to the effect that her evidence of the complaint made to her did not constitute independent support for the prosecution case; further, that the evidence was over 30 years old, “when attitudes to talking about such matters and complaining to the police may have been very different”. There had been no contemporaneous investigation into the allegation of rape made by ASF (count 6). Mrs Dot Stringer had taken ASF to the police station where she reported her complaint of rape but she did not wish to proceed with it. On 6 March 1980, shortly after the discovery of Sally McGrath’s body, she was interviewed by DC Peck. She made a complaint of rape subsequently recorded in a statement of August 1980. On 7 March 1980 ASF took DC Peck to the general area in which she had been assaulted. Again she did not wish to proceed with her complaint. Members of the Stringer family were also interviewed in 1980 and made witness statements. It was Paul Stringer who showed DC Peck the spot where he had left ASF and the appellant to have sexual intercourse. The crucial witnesses, ASF and Paul Stringer, were available to give evidence; so also were Terry Stringer and Lesley White who gave live evidence of the complaint of rape made by ASF to their mother and Paul. There had been a full investigation into the murder of Sally McGrath (count 7) in 1980 and many statements, some of which assisted the defence, were taken in the course of it. The main witnesses, Melanie Atkin, Patricia Hills, Ursula Hay, DS Waling, Peter Choradotski, Brian May and Peter Thompson were available to give evidence. A great deal of evidence was available to be adduced orally and read to the jury at the request of the defence for the purpose of (i) casting doubt upon the prosecution’s assertion that the appellant was the last person to be in Sally McGrath’s company while she was alive and (ii) establishing that Sally McGrath had a risky lifestyle that may have exposed her to harm from a number of sources. It is, we accept, undoubtedly true that the very considerable interval

between the events covered by the indictment and the trial created disadvantages for the appellant. However, the trial process was fully capable of making due allowance for those difficulties and, properly directed, the jury was able, if appropriate, to reflect their judgment upon those difficulties in their verdicts. Hearsay evidence in general

80. We accept Mr Pownall QC's submission that care was required to ensure that evidence should only be admitted if it was fair to do so having regard to the difficulties presented to the defence in challenging it. This acceptance embraces with particular force the evidence of witnesses who had died or who could not be expected to have any present recollection of events described in witness statements made over 30 years previously. Those statements became admissible as evidence of the matters stated in the circumstances provided by section 120 (4) of the Criminal Justice Act
2003. The fact that the rules of evidence had changed in favour of the introduction of hearsay statements does not, in our view, have any adverse bearing on the justification for bringing the prosecution. What mattered was whether, under the rules as they became, the evidence was fairly admitted. 81. 82. This court examined the state of Strasbourg and Supreme Court authority upon the admission of hearsay evidence in *Riaz and others* [2012] EWCA Crim 1509, [2013] 1 WLR 2592 (Hughes LJ, Vice President, Dobbs and Globe JJ). The court re-iterated that the importance of the hearsay evidence to the case remained a vital consideration when deciding upon its admissibility (judgment, paragraph 2) but there was no overarching rule that "sole or decisive" evidence was inadmissible. It was not submitted by the appellant in the present case that any of the evidence admitted as hearsay under section 116 of the 2003 Act was sole or decisive and no such submission could have succeeded. The court further explained (judgment, paragraphs 5 and 6) that the Supreme Court in *Horncastle* [2010] 2 AC 373 had not ruled that hearsay evidence was only to be admitted if it was demonstrably reliable. Article 6 ECHR required a fair trial. The test was whether either the evidence was demonstrably reliable or there existed sufficient tools available to the jury to make the assessment whether it was reliable. Accordingly, when reaching a judgment whether hearsay evidence should be admitted the court should assess the risk of unreliability and the extent to which the reliability of the evidence could safely be tested and assessed. The court gave examples of features which tended to demonstrate reliability: the disinterest of the maker of the statement; evidence independent of the hearsay which dovetailed with it. The questions that the trial judge should pose are (judgment, paragraph 7): (i) Is there a specific statutory gateway (sections 116-118 of the Criminal Justice Act 2003) permitting the admission of the evidence? (ii) What material is there which can help to test or assess the hearsay? (iii) Is there an interest of justice test to be applied to admissibility? (iv) If there is no specific gateway, should the evidence be admitted under section 114 (1)(d) of the 2003 Act? (v) Ought the evidence nonetheless be ruled inadmissible under section 78 Police and Criminal Evidence Act 1984 by reason of the unfair prejudice that would otherwise arise? (vi) If the evidence is admitted, should the case subsequently be stopped because the case is based wholly or partly on hearsay evidence which is so unconvincing that a conviction based upon would be unsafe (section

125 (1) of the 2003 Act)? 83. The court reminded trial judges of the fact that even where the interests of justice did not apply to the gateway of admission, application of the factors to be considered in section 114 (2) provided a useful guide upon the issue whether the admission of the evidence may give rise to such prejudice that it ought to be excluded under section 78 PACE 1984. In the present case the judge assumed that the interests of justice test did apply and he looked carefully at the questions (i) whether and to what extent the evidence was supported and (ii) whether there existed means by which the reliability of the evidence could be tested. Admission of the evidence of LB and AF 84. 85. The appellant concedes (upon the principle established in Z [2000] AC 483) that notwithstanding the appellant's previous acquittal of offences allegedly committed against LB and AF their evidence was admissible in his later trial for other offences. Challenge is made to the judge's decision on the ground that there no longer existed material that would have assisted the jury to assess the reliability of the evidence which the previous juries had rejected. LB gave oral evidence. She had made a witness statement in August 1974 that was available to the defence; so also were the contents of her later interviews in 2010. There was available to the jury evidence that had not been considered in 1975. Mr Cifaldi made his statement in June 1980 and made a further statement in 2011. In our view, the absence of the trial papers from Leicester Crown Court and the defence solicitors did not of itself render the admission of the evidence unfair. In R (Ebrahim) v Feltham Magistrates Court [2001] 1 WLR 1293, at paragraph 25, Brooke LJ pointed out that a judgment of the fairness of proceeding applied both to the prosecution and the defence. As to the assessment of fairness where relevant evidence was missing he said, at paragraph 27: "It must be remembered that it is a commonplace in criminal trials for a defendant to rely on 'holes' in the prosecution case, for example, a failure to take fingerprints or a failure to submit evidential material to forensic examination. If, in such a case, there is sufficient credible evidence, apart from the missing evidence, which, if believed, would justify a conviction, then a trial should proceed, leaving the defendant to seek to persuade the jury or justices not to convict because evidence which might otherwise have been available was not before the court through no fault of his. Often the absence of a video film or fingerprints or DNA material is likely to hamper the prosecution as much as the defence." We would respectfully add that in this respect the fairness of the proceedings before a jury will be secured by a direction from the judge pointing out that where 'holes' exist the burden is upon the prosecution to remove any doubt thereby created. That is the effect of the direction given by Owen J upon the impact of delay in the present case. 86. AF was the appellant's sister-in-law when she returned home with an injury to her mouth which the appellant admitted causing. Neither AF nor the appellant had ever asserted to the police that they had sexual intercourse. All that had changed since the appellant's acquittal of attempted rape was that AF now said she had lied at the Crown Court as to the circumstances in which the injury was inflicted. In important respects AF was giving an account similar to that given by the appellant in his witness statement. There was no doubt that the appellant made that statement. It provided powerful support for the truthfulness of AF's present account and to the hearsay evidence of Mrs Dot Stringer to whom a

complaint was made by AF.

87. We conclude that the evidence of LB and AF was properly admitted in support of the evidence of other complainants. The admission of hearsay evidence during the trial 88. Despite invitation from the court Mr Pownall QC and Ms Rafferty cannot now identify those witnesses to whose hearsay evidence the defence made objection at trial. Much of the evidence read was read without objection. This is not a promising point from which to argue that hearsay evidence should not have been admitted. We have already identified the issues in the case to which that evidence was relevant. It is quite clear to us that the judge permitted evidence to be read if it was of any assistance to the appellant. We have nonetheless considered afresh the fairness of the admission of the evidence generally.
89. We have summarised the evidence given in relation to counts 1 – 3 at paragraphs 27 – 36 above. Janet Draper, a friend of DD whom she telephoned for assistance from a kiosk outside The Ram Jam Inn club or pub, gave oral evidence as to DD's complaint and demeanour. Tony O'Rourke's statement was read. It was relied upon by Mr Pownall QC in his cross examination of DD. Mrs Mackintosh, the landlady at the Angel public house was deceased. Her evidence, favourable to the appellant, was read. Mrs Lang, to whose home the appellant had taken DD before their onward journey to the Haycock hotel, was also deceased. Her evidence, in general favourable to the appellant, was read. Her husband, Conrad Lang, who was present on the same occasion, but not always in the same room with DD and his wife, gave oral evidence, relying in large measure on his witness statement made in 1980, and he was cross examined. The Haycock hotel witnesses, Lelby Howard, assistant manager, Sheila Sims, receptionist, and Robert Croft, night porter, all gave evidence in person. DD's sister, Rosalee, and the general practitioner, Dr Myska, to whom the complaint was made both gave oral evidence. Dr Myska's note of the meeting had survived and was used to effect in cross examination. The statements of DD's parents were read. They concerned the limited complaints made by DD to them and DD's condition when she arrived home. The appellant's denial in interview during April 1980 of non- consensual sexual intercourse was placed before the jury.
90. We have summarised the evidence relevant to counts 4 and 5 at paragraphs 37 – 40, and 70, above. LW gave oral evidence as did all the significant witnesses, save for Mrs Sturridge.
91. We have summarised the evidence given in support of count 6 at paragraphs 41 - 48, and 78, above. It was conceded by Mr Pownall QC in the course of argument that ASF was a compelling witness. The evidence of Paul Stringer and ASF herself was critical. Both witnesses gave oral evidence. All their witness statements were available to the defence to deploy as they wished. The evidence read was that of DS Peck and Mrs Dot Stringer. The evidence, including the evidence read to the jury, could be and was vigorously tested by cross examination of the witnesses who gave evidence orally. All the points available to the appellant could be and were made to the jury and it was for the jury to judge their impact on the reliability of the accounts given by the significant witnesses. There could hardly have been and there was no challenge to the fact that sexual intercourse had taken place between

the appellant and ASF in the circumstances they had both described. In an interview by DS Chamberlain with the appellant on 2 August 1979 the appellant accepted that intercourse had taken place, but he maintained that it had been consensual. The issue was one of consent. Only three people were present on the admitted occasion. The critical issue for the jury was whether ASF and Paul Stringer were telling the truth about the circumstances. As to Mrs Dot Stringer's evidence of the complaint made by ASF her hearsay evidence was supported by the oral evidence of her three sons. We recognise that identification of the place the incident occurred was of importance to the issues that arose in count 7 and that DS Peck was no longer available to give evidence of his journeys to Castor Hanglands with ASF and Paul Stringer. However, the spot identified by Stringer was at the time located on a plan and both witnesses were available to give evidence of those circumstances.

92. We have summarised the evidence concerning count 7 at paragraphs 49 – 58, and 79 above. The only evidence relevant to count 7 that was read to the jury was either uncontroversial or helpful to the defence. 93. Subject to the cell confession evidence to which we shall refer below we are not persuaded that any unfairness or prejudice was caused to the appellant by the admission of evidence read to the jury. Either the evidence was, by reference to other evidence, demonstrably reliable, or the means were available to test the reliability of the evidence by cross examination of other witnesses. Furthermore, as we have said, it was open to the appellant to give evidence either as to the issue raised by the hearsay evidence or to explain how he was at a disadvantage through failing memory. Judicial directions as to delay and hearsay evidence
94. We have referred to the judge's directions to the jury on the issue of delay at paragraph 21 above. In the course of that direction the judge explained to the jury how the delay in prosecution had affected the ability of the defence to test the evidence of witnesses who were no longer available to give evidence in person. We have noted how, when specific issues were raised by the defence as to the loss or destruction of records, or the absence of contemporaneous enquiry, they were referred to by the judge as matters to be considered by the jury. As to evidence that was read, the judge distinguished between the evidence that was agreed and evidence from witnesses who were unavailable through death, illness or other reasons. As to those who were unavailable to give oral evidence, the jury were directed that they should bear in mind the attestation as to the truth of the statement made by each of the witnesses, but: "...the statements have not been verified on oath before you. You have not been able to assess the witness for yourselves, nor has the evidence been tested in cross examination. For those reasons you must approach such evidence with considerable caution. You must also consider such evidence in the context of the case as a whole, taking account of the degree to which it may be supported by the other evidence in the case, whether given on oath or contained in other witness statements that were read to you. There is a distinction to be made between statements read by the prosecution and those read on behalf of the defence. So far as those read by the prosecution are concerned, they form part of the prosecution case, and are therefore relied on to satisfy you so that you feel sure of the guilt of the defendant. But the defendant does not have to prove his innocence, and reliance

is placed upon the witness statements read to you by the defence in support of its case that the prosecution have not discharged the burden of satisfying you as to the defendant's guilt. But you will also bear in mind that much of the evidence read to you related to events at the Bull and Dolphin public house and in particular whether Sally McGrath was there on the evening of Tuesday 10 July or Wednesday 11 July 1979; and in the case of witness statements read in relation to that issue by the prosecution, the witnesses were available, and the defence could have called for their attendance if they had wished to cross examine them."

95. This, among the judge's other legal directions, was provided to the jury also in writing. The judge's proposed directions were discussed with counsel who made contributions to the final form in which the directions were given. All of them were, in the end, agreed. Defence counsel made no application to the judge either before or after the summing up that he should make any additions to these directions. In this respect, neither the grounds of appeal nor the appellant's Further Skeleton Submissions submitted to the court on 11 November 2013 made any criticism of the judge's summing up, including his directions of law. However, at the oral hearing of the appeal Mr Pownall QC sought to raise for the first time a ground that the judge had failed, in the course of his summary of the evidence, to highlight for the jury each occasion on which delay may have made more difficult the task of challenging the evidence, where a line of enquiry may have been denied to the defence, and where the passage of time may have affected the reliability of the evidence. Mr Pownall QC disarmingly accepts full responsibility for the failure to alert the judge. He informed the court that he was not present when the summing up was in progress. No satisfactory explanation was tendered, however, for the failure to raise this matter as a written ground of appeal, with adequate notice to Mr Khalil QC, before the hearing.

96. We have already referred, at paragraphs 21 and 22 above, to occasions on which, in relation to LB, the judge did make specific reference to the effect upon memory of the passage of time and when the jury's attention was drawn specifically to the loss of evidence. At page 39 of the transcript of summing up the judge drew attention to the defence point that neither Mr Fry nor the appellant had at the time been asked to confirm Mr Cifaldi's recollection of his conversation with the appellant in 1980 (see paragraph 19 above). In the case of AF the judge reminded the jury of Mr Pownall's cross examination of the witness and, at page 185 of the transcript, he invited the jury to recall the submissions Mr Pownall had made in his final address. Several witness statements were read to the jury on the subject of AF's reliability at the request of the defence and the judge provided the jury with a full summary of them. 97. As to the evidence of DD, at page 49 of the transcript of his summing up the judge reminded the jury of the inconclusive evidence about the Old Greetham Hotel. At page 51, he pointed out that the appellant's absence of recollection in December 2010 of events concerning DD was another problem caused by the delay in prosecution. At page 63, he reminded the jury that, as an exception to the majority of witnesses, DD's sister, Rosalee had not been asked about the matter in 1980. She had first made a witness statement in February 2011. At page 68, the judge reminded the jury of Janet Draper's evidence that DD had made an inconsistent complaint to her of being held in the appellant's "flat" when she had been attacked with a

whisky bottle and raped. When dealing with the evidence of the appellant's interview with the police in April 1980, at page 69, the judge reminded the jury of Mr Pownall's cross examination as to the reliability of the note made and the failure of the officers to show the appellant the note for his agreement. 98. 99. The judge reminded the jury at page 77 that Mr Crown was no longer able to give meaningful evidence of the evening of the christening party attended by LW. While the judge reminded the jury of the hearsay evidence of Mrs Sturridge that LW made a complaint to her, at page 78 he also reminded the jury of Mrs Crown's evidence that LW had been drinking and was rather upset even before she left the party with the appellant. As to the evidence of ASF, at page 94, the judge drew attention to the fact that Mrs Dot Stringer was unable to attend trial to give evidence of the complaints made to her and, for that reason, her evidence was read. He also reminded the jury at pages 95 – 96 of the evidence of Terry Stringer and Lesley White who confirmed that ASF came to the house complaining that she had been raped by the appellant. We do not consider that a specific reminder was required of the absence of evidence from police officers to whom ASF then made the complaint with which she declined to proceed. These matters had been put to the complainant herself.

100. As to the murder of Sally McGrath (summing up, transcript page 109 et seq) the judge first identified the evidence of the deceased's movements on 11 July 1979. There was an abundance of evidence, partly oral and partly read, that was largely uncontroversial. The judge explained where the hearsay evidence and the oral evidence fitted into a pattern and where it did not. The thrust of the defence case was that the appellant had not been the last person to see Sally McGrath alive. Since there had been a full police investigation at the time, the material required to advance that case was available to the defence and fully summarised by the judge. From page 116, the judge summarised in detail the evidence relating to the presence of Sally McGrath and the appellant in the Bull hotel, on several occasions pointing out possible gaps in the evidence identified by Mr Pownall in cross examination. 101. The judge proceeded at page 138 to summarise the evidence that might support the conclusion that Sally McGrath was seen elsewhere or in other company on 11 July 1979, including with Peter Thompson. He again explained where the evidence, oral and read, did and did not knit together. In the course of his summary the judge described in detail the evidence available as to DS Peck's sighting of the appellant on 11 July. He did not specifically speak of DS Peck's death as a disadvantage to the defendant's case but the jury can have been in no doubt of the importance of the issue having regard to the care with which the judge dealt with it. In his conclusion upon the topic of Sally's movements on 11 July, at page 155, the judge pointed out the significance of the evidence in that "if that was the Wednesday the 11th and if the other witness statements relied upon by the defence also accurately date the matter as Wednesday the 11th, then the two are entirely inconsistent. She could not have been in two places at once".

102. At page 156, the judge turned to the evidence that the deceased and the appellant were known to one another, including the inconsistencies between statements made by witnesses at the time of the investigation and their more recent statements and/or their oral evidence. These observations applied in particular to Paul Stringer and Michael Stallion. The judge was, in effect, drawing attention to the changes in account that had emerged over time. Those changes were fully explored by Mr Pownall in cross examination. 103. The summing up, at page 158, described the evidence that a blue van was sighted in the area of Castor Hanglands on the evening of 11 July. Ms Helen Clarke and Mr David Rager gave oral evidence; both had made statements at the time of the investigation. Mr Pownall made use of Mr Rager's statement in cross examination to helpful effect. The judge pointed out to the jury at page 160 Mr Rager's recent certainty that the van he had seen was blue rather than blue or white as he had said at the time; and that there had been one person in the van on its return journey rather than two as he said in his statement in 1980. This was, the judge said, another example of a witness's difficulty in recalling events of such an age.
104. At page 161 the judge dealt with the appellant's disposal of the van and his failure on time to report to the police station on 11 July. As we understand it none of this evidence was controversial. What was in issue were the inferences, if any, that the jury could properly draw from the appellant's conduct.
105. At page 165, the judge turned to the evidence of Sally McGrath's lifestyle, including her regular visits to a local RAF station and her drug consumption. None of this evidence was disputed by the prosecution and it was read. The question for the jury was whether it cast doubt upon the prosecution case that the appellant was the last person to be with Sally on 11 July. 106. 107. Finally, at page 175, the judge dealt with the circumstances in which the deceased's body was discovered and the post mortem examination, none of which was in dispute. It seems to us that the judge's command of the evidence and the legal issues concerning the evidence with which he had to deal in his summing up was complete. He was fully entitled to expect, if the defence wished any particular disadvantage arising from the delay in prosecution to be drawn to the jury's attention, that they would be listed for him for his consideration in advance of final speeches. This was not done. Having reviewed the summing up for the purpose of assessing the merits of the criticism now made of the judge, it has become quite apparent to the court that those features of the consequences of the passage of time on which the appellant could, with some justification, rely had emerged in the course of cross examination of the witnesses who gave oral evidence and that, contrary to the new ground now advanced, the judge did give them the prominence they deserved. In our judgment this was a masterly collection of the evidence and the issues that was calculated to provide the jury with optimum assistance while at the same time being scrupulously fair to the appellant. In our view, the new ground is without merit and leave to pursue it is refused. Admission of cell confessions

108. We accept, as did the judge, that the decision whether to admit hearsay evidence of ‘cell’ confessions required the utmost care to ensure that the appellant did not suffer unfair prejudice. We have already noted the judge’s decision to postpone consideration of part of the prosecution’s application until he was in possession of the necessary facts. It is clear from the judge’s ruling of 8 November 2012 that he was anxious to ensure either that the evidence was demonstrably reliable or that the jury had adequate means by which to test its reliability. 109. In the case of Keith Shaw there were means by which the reliability of the evidence could be considered. First, at the same time that Shaw was in conversation with the appellant about the course of the police investigation, the appellant had been writing letters on the same subject to his own wife. Second, Shaw, Thomsett and the appellant had all been in prison at the same time. Thomsett gave oral evidence which enabled the defence to explore the circumstances in which it was claimed the appellant had made damaging admissions or observations. This is an example of evidence described by the Vice President in Riaz as dovetailing with other evidence in the case. Third, Thomsett’s evidence included the revelation from Shaw, which was in any event implicit in the number of statements made by Shaw that Shaw had been asked to keep the police informed of any further comments by the appellant about the Sally McGrath investigation. That enabled the jury to understand the importance of applying the judge’s direction as to the witness’s possible self-interested motivation for the evidence. Furthermore, although the evidence was relevant and, depending upon the view of the jury, probative of guilt, taken at its highest there was still available to the defence an argument that the conversations established did not amount to a frank confession but only to cynical comment on the state of the investigation into the appellant. 110. As to the evidence of Robert Brown, the particulars allegedly given by the appellant of his attack on his sister-in-law amounted to a repeat of the confession he had already made in writing in 1980, of which Robert Brown can have known nothing unless he had been fed the information by the police. Provided the jury could exclude the latter possibility the similarity between the two provided compelling support for Brown’s evidence that the context was one of the appellant bragging about his sexual exploits. It is noteworthy that the appellant was said to have been admitting to a fellow prisoner an incident to part of which he pleaded guilty in the Crown Court.
111. Brown’s evidence and the evidence of Bruce Pope was mutually supportive since both claimed that the appellant had told him about his sister-in-law. Pope’s evidence was important because he was saying that in October 1979, four months before the discovery of Sally McGrath’s body, the appellant was claiming to have given a good hiding to a woman on some “waste ground with bushes” and left her there. This was strikingly reminiscent of the circumstances in which Sally McGrath’s body may have been left in Castor Hanglands on 11 July 1979. The implication was that by that stage the appellant was feeling confident that he had got away with murder. Pope’s evidence linked with that of Frederick Clarke because by September 1980 the appellant certainly was under suspicion of the murder and, although equivocal in his revelations to a man who was not before known to him, he was more circumspect than he was with Keith Shaw, whom he knew, and Bruce Pope to whom he

spoke before he came under suspicion. 112. In our judgment, the judge was the entitled to find that there was a pattern to the appellant's behaviour revealed by disparate sources of evidence whose effect the jury could properly be left to consider provided they received the appropriate warning. In order to avoid what the judge considered unfair prejudice to the appellant he authorised the editing of statements so as to exclude the more flamboyant passages that the appellant would have little or no means of challenging effectively. 113. The jury was provided with the agreed details of the witnesses' criminal records. When approaching his summary of the cell confession evidence the judge reminded the jury of the terms of his warning about the need for caution. In the case of Bruce Pope the prosecution called DC Hilton to give evidence about the circumstances in which Pope's statement came to be taken. Mr Pownall QC cross examined DC Hilton about the vulnerability of prisoners in the appellant's position to evidence such as Pope's. DC Hilton agreed, and the judge endorsed that evidence in his summing up, pointing out at the same time that the jury had evidence from other witnesses speaking of a period over a matter of months. He repeated his instruction that the jury should treat the evidence with the utmost caution. Pope's witness statement was taken by DC Bacon who was also called to give evidence and was cross examined as to the circumstances. Notwithstanding that there was not available to the defence the prison records that would have been available in 1980 and 1981 to cross check the evidence of the prisoners with the records as to where they were housed, it seems to this court that the evidence was properly admitted and the directions provided by the judge appropriate to the circumstances. The witness statements themselves were made close to the time of the events they were describing and they gave circumstantial detail of the environment in which the conversations took place. The room for such manifest falsehood as inventing the opportunity for the conversations to take place was so vanishingly small that we consider the judge was justified in discounting it. We notice that the defence did not in this respect, as it did not in others, invite the judge expressly to raise the matter with the jury in his summing up. We infer that at the time of the trial it had not occurred to the defence that such a direction was necessary. Interviews April 1980

114. We have rehearsed above the circumstances of the interviews under caution that were admitted in evidence and the warnings the judge gave about them. We do not accept that they should have been excluded. The officers who were engaged in the process of conducting the interviews were available to give evidence and did give evidence as required. No application was made to hear the evidence in a voir dire. We are not surprised that this was so because in some respects the defence relied on the interviews as self-serving. The prosecution did not rely upon the content of the interviews for their semantic accuracy. It relied upon them for the thrust of the appellant's admissions when he made them. 115. In the case of DD the defence case conducted at trial followed the admissions and denials made in interview. There was no contemporaneous interview about the allegations made by LW. At trial the appellant admitted sexual intercourse with ASF. He denied that she did not consent. This was the same account as he had given to DC Chamberlain on 2 August 1979. When he was interviewed again in April 1980 he agreed that they had gone to Castor Hanglands with

Paul Stringer. He admitted sexual intercourse but denied that it was non-consensual. That was the thrust of Stringer's own account in 1980. As to 11 July 1979, the day Sally McGrath went to the Bull hotel, the prosecution relied upon the interview for the appellant's recollection that he met people who can only have been Melanie Atkin and Brian May. It provided important support for the evidence of those witnesses that they spoke to the appellant in the Bull hotel that afternoon and, in the case of Brian May, for his identification of the appellant as the man who was in company with Sally McGrath and left the Bull hotel with her. The importance of the evidence lay not in any explicit admission (the appellant made none) but in the circumstances the appellant was able to recall that tied in with the witnesses' evidence. The sole issue for the jury was, in this respect, whether the evidence of the police officers that the circumstances were recalled, and mostly volunteered, by the appellant was truthful and accurate. That, it seems to us, was a matter for the jury to consider, properly directed by judge, as they were, as to the caution required. 116. In our judgment, the judge was entitled to reach the conclusion he did that the evidence could be admitted without unfair prejudice to the appellant.

Conclusion

117. We have surveyed the major part of the evidence, the judge's decisions upon the admissibility of evidence and the summing up because a trial of this seriousness well over 30 years after the events which it concerned did, we are satisfied, raise important issues of fairness for consideration. At the conclusion of our examination of the grounds we are left with the firm conviction that the trial was fairly and properly conducted, that the verdicts of the jury were amply justified by the evidence, and that they are safe. For this reason the appeal against conviction is dismissed. Sentence 118. There is no appeal against sentence. However, the criminal appeal office, for whose efforts we are grateful, has spotted that the sentence of 9 years imprisonment imposed upon count 4 of attempted rape was unlawful because at the relevant time the maximum sentence for the offence of rape under the Sexual Offences Act 1956 would have been 7 years imprisonment. It was not until the Sexual Offences Act 1985 that the maximum sentence for rape was increased to life imprisonment. We therefore dispense with the formalities, quash the sentence of 9 years upon count 4, and substitute a concurrent sentence of 7 years imprisonment. Otherwise the judge's orders will remain in force.

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