

ENGLAND AND WALES / JUDGMENT

R v HGF

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R E X

- v - H G F

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Miss G White appeared on behalf of the Applicant Crown Mr C Harper appeared on behalf of the Respondent Defendant

J U D G M E N T (Approved)

Wednesday 22 April 2026 THE LADY CHIEF JUSTICE: Reporting Restrictions

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offending. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. As this is a prosecution appeal, section 71 of the Criminal Justice Act 2003 applies to these proceedings. However, our judgment is expressed in a manner that does not identify the respondent, the complainant or any other person involved. Nor does it identify the place or places where the relevant events occurred. The court therefore permits the publication of this judgment in the anonymised form in which we deliver it.

Introduction

3. The Registrar has referred to the full court this prosecution application for leave to appeal against a decision of Her Honour Judge Thompson sitting in the Crown Court to stay proceedings as an abuse of process under section 58 of the Criminal Justice Act 2003. We heard the application on a rolled-up basis, that is to say we would consider whether to grant leave, with the appeal to be heard on the same occasion, We grant leave and proceed to consider the full merits of the appeal.
4. The respondent was charged with a single count of sexual assault of a woman, "C", contrary to section 3 of the Sexual Offences Act 2003. The trial did not commence on its first day because of outstanding disclosure issues and no jury was sworn. The next day the respondent applied to stay the proceedings as an abuse of process due to the failure by the police to investigate and obtain CCTV evidence. The judge allowed the application and stayed the proceedings on the basis that the respondent could not receive a fair trial. The prosecution indicated an intention to appeal and gave the necessary acquittal undertaking. The Prosecution Case
5. The prosecution case was that C was staying at a hotel with two of her children, her niece and her father after a football match. The respondent is her father's friend and attended the same football match. They all went to a hotel after the match, where C and her father were to stay. At some stage it was agreed that the respondent would also stay in the hotel in the father's room.
6. C, the children and her father checked in to the hotel. C's father states that the adults then had a drink together on the ground floor of the hotel. At some stage C went out with the children to buy food for the children. Her father and the respondent stayed in and around the hotel lobby together. C returned and joined the adult group in the lobby. They were

together drinking until some time between 10 and 11 pm. The precise period of time is unclear, but what is clear is that it was a substantial period of time. C's father put it at three hours.

7. At that stage, between 10 and 11 pm, C's father went to retrieve his car from a nearby car park, and the respondent went to purchase kebabs for the three adults. C went to her room with the children. The respondent returned to the hotel first and took the food to C in her room. He then went to his room. At some point after that C left the children and went to the respondent's room.
8. The prosecution contends that, as C stepped into his room, the respondent grabbed her neck with two hands and pushed her into the room and onto the bed. It is said that C sustained marks to her neck as a result; and there are photographs of the marks said to have said to have been produced. It is said that the respondent then thrust his crotch into C's pelvic area and placed his hand on her crotch over her clothing before she was able to push him away.
9. On the prosecution case, C then telephoned her father who, at the time, was walking back into the hotel. She told her father what had happened. According to him, he then confronted the respondent who was still in his hotel room. The respondent denied the allegation at that stage and stated that C had not been in the room.
10. C made a 999 call sometime after 11 pm. The respondent also made a 999 call as a result of the accusation being made against him. The police arrived after midnight. The respondent was arrested at 12.45 am and taken to a police station. Later that morning he was interviewed about the allegation during the course of which, as we elaborate below, he said that the CCTV in the hotel would support his account. The Defence
11. The respondent says that, when he was confronted by C's father, he strenuously denied the offence. He stated that C had been flirting with him earlier in the evening. He then contacted the police and complained that a false allegation was being made against him by C. He told the call handler in terms that "there will be cameras in the lobby downstairs. All night she has been coming on to us ... and she came into my room". On his arrest, the respondent repeated that there was CCTV that would vindicate him. In his interview under caution at the police station, he again repeated his contention that it was C who had been behaving in a sexualised manner towards him and that the CCTV of the communal areas of the hotel would support that contention.
12. The interviewing officer responded as follows: "We have got her statement and we will go to the hotel, and we will look at the CCTV and trace the interactions between the two of you prior and after, okay? And then we will take it from there".
13. Despite those assurances, the police did not obtain any CCTV footage from the hotel. A question was asked of the hotel sometime later, at C's behest, about CCTV outside the room in which the incident was said to have taken place. The hotel's response was that there was

no CCTV opposite or inside the room, but that there was CCTV in the lobby and reception area downstairs. The police did not then ask for that CCTV footage. In any event, it would appear that by the time that request was made, any CCTV recordings would no longer have been in existence.

14. A defence statement was uploaded on 12 March 2025. The respondent asserted that he had not touched C sexually at any point. Rather, his case was that C had been touching him in the public areas of the hotel, on his leg and the back of his neck. The Defence Application and the Judge's Ruling
15. The respondent submitted that the police failure to secure the CCTV footage amounted to an abuse of the process of the court on either or both of the two well-recognised limbs of abuse. It was said that the police conduct amounted either to (i) a failure causing such irreparable prejudice that a fair trial was no longer possible, or (ii) bad faith or serious default such that the administration of justice would be brought into disrepute should the prosecution continue.
16. The judge gave an ex tempore ruling. She noted that the application centred on missing CCTV footage from the hotel's lobby and reception areas. From his earliest contact with the police, including during his interview under caution, the respondent had consistently maintained that this footage would show C behaving in a sexualised manner towards him. In interview, the officer in the case had expressly assured the respondent that the police would obtain and review the CCTV footage. She recorded that it was now accepted by the prosecution that, despite that assurance, the police did not obtain the relevant footage and had only made enquiries about CCT outside the room at the behest of C at a later stage.
17. The judge considered the principles in *R v Dobson* [2001] EWCA Crim 1606 ("Dobson") and relevant passages in *Blackstone's Criminal Practice 2026* ("Blackstone's"). It was conceded by the prosecution, she recorded, that the police had a duty to obtain the CCTV footage and had failed in that duty. She found that the missing CCTV footage could have been decisive or strongly supportive evidence for the defence, going as it did to the question of whether C had behaved in a flirtatious manner and whether her account could be undermined. The absence of this evidence, in her judgment, would therefore cause substantial prejudice to the defence. Further, the judge found that no direction or trial mechanism could cure the prejudice, without inviting speculation by the jury as to what the CCTV footage might have shown.
18. In short, the judge concluded that this was an exceptional case in which the absence of the CCTV footage rendered a fair trial impossible. The indictment was therefore stayed as an abuse of process, without the need to determine the second limb of the abuse jurisdiction. The Arguments on the Appeal before this Court
19. Miss White, on behalf of the prosecution (and who did not appear below), advances four grounds of appeal.

20. First, she says that the judge failed properly to consider all relevant caselaw and did not sufficiently take account of the principle that staying proceedings as an abuse of process was a remedy of last resort. She accepts that the judge was taken to the relevant caselaw, but there was no mention of key authorities such as, for example, the case of *R v Feltham Magistrates' Court, ex parte Ebrahim* [2001] EWHC (Admin) 130 ("Ebrahim").
21. Secondly, she says that, when assessing the importance of the missing CCTV footage, the judge failed properly to consider the real issues in the case, which amounted to a factual dispute about what happened in the bedroom, where it was agreed that there was no CCTV camera. Although credibility, she says, in general terms was a matter in issue, the respondent was not arguing that C consented, or had a reasonable belief in consent, such that CCTV footage of earlier interactions might have been relevant to what occurred between them in the bedroom. She submits that C's credibility could be tested in a number of different ways in the normal trial process, including cross-examination, and, for example, that the jury could be told about the respondent's requests to the police for the obtaining of CCTV footage from the hotel lobby areas.
22. Thirdly, Miss White says that the judge failed to have regard to the remaining credible evidence which the jury would have been entitled to assess against the fact that the CCTV footage was unavailable.
23. Fourthly, and finally, she argues that the judge erred in determining that the trial process could not adequately and sufficiently address the issues raised by the defence. She accepts that no tailored direction was put before the judge. In her oral submissions, Miss White rightly accepts that the jury would have to be directed that they could not speculate impermissibly as to the contents of the CCTV footage, but submits that the jury could have been directed that they could reasonably draw an inference from the respondent's requests for CCTV footage at the time that he believed that the CCTV footage would support his version of events.
24. For the respondent, Mr Harper contends that the judge considered all the relevant caselaw; that there was serious fault on the part of the police in this case; and, in summary, that the judge reached the right conclusion for the reasons that she gave. He suggests that the tailored directions now advanced on behalf of the prosecution do not meet the mischief of the case. Any belief of the respondent would not address the critical question of what actually happened in the bedroom, where there was no CCTV. Such an exercise would, in his submission, involve (as he put it) "double speculation".
25. In the alternative, Mr Harper submits that, were the prosecution to succeed in overturning the ruling on limb 1, we should find that the case is, in any event, an abuse of process under limb 2, namely, that it would offend the court's sense of propriety for the trial to continue in the particular circumstances of the case. The misconduct by the police, it is said, was here so great against the background of so many protestations from the respondent that the threshold for limb 2 abuse would be made out. Discussion

26. On an appeal by the prosecution under section 58 of the Criminal Justice Act 2003, this court may not reverse a ruling unless it is satisfied that the ruling was wrong in law, that it involved an error of law or principle, or that it was a ruling that it was not reasonable for the judge to have made: see section 67 of the Criminal Justice Act 2003.
27. The law on abuse of process was recently considered by this court in *R v Ng and O'Reilly* [2024] EWCA Crim 493, when it was emphasised that the power to stay proceedings as an abuse of process was a measure of last resort. When considering whether a judge had been right to refuse to adjourn a trial in the absence of a prosecutor being available to prosecute it, the court said this: "21. In summary, the power to stay criminal proceedings as an abuse of process is an important though exceptional remedy to be exercised with care and restraint. A stay of proceedings is the exception, not the rule; it is a measure of last resort.
22. There are two species (or limbs) of abuse justifying a stay, each of which is separate and distinct. The first is when a fair trial is not possible. The second is where it offends the court's sense of justice and propriety, or public confidence in the criminal justice system would be undermined, for the defendant to be tried in the particular circumstances of the case. The abuse must amount to an affront to the public conscience."
28. We turn first to the question of whether or not the judge was right to conclude that there could be no fair trial. The burden lay on the respondent to establish an abuse of process on the ground of unfairness and on a balance of probabilities. The principles underlying this first limb were reviewed by the Divisional Court in *Ebrahim* at [24] to [27] of the judgment of Brooke LJ. In summary:
- i) The power to refuse to try a case arises only when it is clear that otherwise the defendant could not be fairly tried. An unfair trial would be an abuse of the court's process and Article 6 of the European Convention on Human rights; ii) The fairness of a trial is not all one-sided; it requires that those who are guilty should be convicted, as well as those about whose guilt there is any reasonable doubt should be acquitted; iii) The trial process itself is equipped to deal with the bulk of the complaints on which applications for stay are founded. The circumstances in which any court will be able to conclude, with sufficient reasons, that a trial of a defendant will inevitably be unfair are likely to be few and far between; iv) It is commonplace for a defendant to rely on "holes" in the prosecution case. If, in such a case, there is sufficient evidence, apart from the missing evidence, which, if believed, would justify a safe conviction, then a trial should proceed.
29. *Ebrahim* was followed by this court in *Dobson*, where Potter LJ identified (at [34]) that the following questions in cases under limb 1 fell to be asked:
- (1) What was the duty of the police in the circumstances?
- (2) Did the police fail in their duty in not obtaining and retaining the relevant material?

- (3) If so, was the prejudice suffered serious prejudice to the extent that no fair trial could be held in the light of such failure?
30. This court also considered Ebrahim in *Ali v Crown Prosecution Service* [2007] EWCA Crim 691, where Moses LJ stated: "30. But in considering such powers to alleviate prejudice, Brooke LJ (at para 27) emphasised the need for sufficiently credible evidence, apart from the missing evidence, leaving the defence to exploit the gaps left by the missing evidence. The rationale for refusing a stay is the existence of credible evidence, itself untainted by what has gone missing.
31. In the instant appeals, the missing evidence and the evidence which the jury had to believe cannot be distinguished in that way. That which was missing, T's application to the CICA, was part of the material by which her credibility could be assessed." (Emphasis added)
31. On the particular facts before her, the judge here concluded that this was an exceptional case where it was right to exercise to stay the proceedings on the ground of fairness. In our judgment, and adopting the approach set out in the authorities above, she was entitled to reach that decision.
32. It is right to say that there was evidence in support of the prosecution's case. That came primarily from C herself. The photographs of red marks to her neck provide some corroboration of her account of her injuries. The prosecution could also point to the early complaint made by C to her father and then to the police. All of that evidence would remain available to the jury.
33. However, there was plainly potential evidence to contrary effect that required investigation. The very first response of the respondent to the allegation against him was to call the police and urge them to obtain the CCTV footage in the hotel because he said that it would prove that it was C who was behaving flirtatiously, not him. The police, presumably recognising the potential forensic value of those CCTV recordings, agreed to do so. They failed to do so, and that was a serious dereliction of duty. This was not evidence of marginal or secondary value to the police investigation. It was central to the case, which turned on credibility. Given the nature of the allegations and the fact that C and the respondent had been in each other's company for some hours earlier that day, there would be no useful forensic evidence. There would be no independent witness who could speak to what occurred in the bedroom. There was no CCTV camera inside the bedroom where the alleged incident occurred, nor, as it turned out, in the corridor outside that room. If C's allegations were disputed, as they were, there was no prospect of any independent or corroborating evidence as to the alleged assault.

34. The best independent evidence would be the CCTV footage of C and the respondent together in the common parts of the hotel shortly before the alleged incident is said to have occurred. This was not a case where the prosecution failed to obtain evidence which might or might not have supported a prosecution. This was a case where the prosecution failed to obtain evidence which might have weakened the prosecution case – and was plainly relevant.
35. It follows that this was not a case where the relevant question was that posed in Ebrahim, namely, whether there was sufficient credible evidence, apart from the missing evidence, which, if believed, would justify a safe conviction. Rather, the relevant question here was that posed in Ali, namely: was the missing evidence important material by which C's credibility could be assessed? Implicitly, the judge concluded that it was.
36. In our judgment, that is the answer to what we regard as the primary (third) ground of appeal, to the effect that the judge failed to have regard to the remaining credible evidence which the jury would have been entitled to assess against the fact that the CCTV recordings were unavailable. That, as we have identified, is not the point at issue. What was critical was not the strength of the remaining prosecution evidence, but the prejudice suffered by the respondent in being denied the means of challenging that evidence. It was conceded that the police were under a duty to obtain the CCTV recordings, and, as we have indicated, they failed in that regard. The result was to deprive the respondent of his primary means of challenging C's allegation and accordingly to occasion the defence serious prejudice.
37. That, in our view, is the answer to the central ground of appeal. We can therefore deal with the other grounds shortly.
38. Contrary to the prosecution's first ground of appeal, it is clear from her ruling, and her reference to Dobson and Blackstone's, that the judge had all the relevant legal principles in mind. Contrary to the second ground of appeal, the judge was entitled to conclude that the credibility of C and the respondent as to events immediately prior to the alleged assault in the former's room at the hotel was an important issue in the case.
39. As to the fourth ground, the prosecution has still not been able to formulate a direction which adequately corrects the unfairness without inviting the jury to speculate impermissibly about what the CCTV recordings might reveal about the respective behaviours of C and the respondent. It was accepted for the prosecution that the highest it could be put was as follows: the jury could be directed that they could infer from his statement that the respondent believed that the CCTV recordings would support him. That belief, however, would only be relevant in so far it was correct. Whether or not it was correct was a matter which could not be determined without impermissible speculation.
40. We cannot ourselves identify any corrective direction which does not lead back to the sort of impermissible jury speculation as to the contents of the CCTV recordings to which we have referred.

Conclusion

41. Every application for a stay of proceedings for abuse of process on the basis that there cannot be a fair trial will turn on its own facts. In the particular circumstances of this case, the judge was entitled to conclude that this was one of those rare cases where it was right to stay the proceedings because the respondent's trial would not be fair as a result of serious police failings. This is not a case in which we are satisfied that the ruling was wrong in law, or that it involved an error of law or principle, or that it was a ruling that it was not reasonable for the judge to have made.
42. In these circumstances, like the judge, we do not need to consider whether a stay would also have been justified under the second limb of the abuse of process rule.
43. For all these reasons the appeal will be dismissed.

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Prepared on 26 October 2026 · Esheria