

ENGLAND AND WALES / JUDGMENT

R v Shane Ryan Brooks

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MR W PAYNTER appeared on behalf of the Appellant MR S FOSTER appeared on behalf of the Crown

J U D G M E N T

1. LADY JUSTICE YIP: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 2 April 2025 in the Crown Court at Reading before Her Honour Judge Campbell, the appellant was convicted by a majority of two counts of rape. On 17 April 2025 he was sentenced to a total of 12 years' imprisonment, comprising a term of nine years on count 1 and three years consecutive on count 2. The appellant now appeals against conviction with the leave of the single judge. His application for leave to appeal against sentence has been referred to the full court by the single judge.
3. On 16 January 2021 the complainants "C1" who was then aged 16, and "C2" then aged 14, met up in Maidenhead at about 5.15 in the afternoon. At some point they were approached by the appellant and another man, Luke Sherrington (who is now deceased). The appellant introduced himself as "Sam", whilst Sherrington gave his name as "Lee". The complainants provided false names but, said the prosecution, correct ages, namely 16 years and 14 years.
4. The appellant and Sherrington purchased some alcohol and Sherrington invited the complainants to go to his place. They declined. He then suggested they go to a place near the river "with no cameras". In the event the complainants were led towards a secluded canal side area with benches. 5. It was the prosecution case that whilst at this location the appellant and Sherrington plied the complainants with drink and then each engaged in non-consensual sexual activity, culminating in sexual intercourse - the appellant with C1 and Sherrington with C2. The role of the appellant in relation to C2 was said to have been an assister or encourager.
6. C1 was interviewed on 9 February 2021 in an ABE interview. She said she drank three Strongbow cans in the space of half an hour, in addition to other alcohol she had consumed. At one point she said the appellant kissed her. She pushed him away and reminded him that she had a boyfriend. They engaged in a further conversation about trust issues. He told her to follow him. She could see Sherrington and C2 kissing. C2 seemed uncomfortable. He guided her with a hand to her neck, using a bit of force, to a local alleyway with a bush. The appellant then put a hand down her pants. She said "no" and "stop" but a protest from her about her boyfriend was brushed aside with the appellant saying, "don't worry about that".
7. After about 10 seconds he took his hand out and she thought the episode was over. However, he turned her around, pulled her pants down and bent her over so that her hands rested on a tree trunk or something stable. She felt his penis enter her vagina despite her saying "no, stop" and "no" a couple of times. This was count 1. He said, "trust me, it's fine". She did not know if he ejaculated. She did not shout out, fearing he would freak out and hurt her. She was "frozen, numb, every feeling gone". After about a minute and a half he stopped saying, "I can't, I have kids" and then, after pulling up his pants, said, "Come on, I'm sorry".
8. He guided her back towards the others. She saw C2 bent over a bench with Sherrington engaging in vaginal intercourse with her from behind. The appellant told C1 to come away from them, which the judge said in her sentencing remarks was designed to ensure that she could not come to C2's assistance and was the basis on which he was convicted on count 2.

9. C2 was ABE interviewed on 15 February 2021. She said Sherrington grabbed her by the wrist, he bent her over a table so that her hands were on the seating, lifted her skirt and top, ripped her tights, pulled aside her underwear and despite her often saying "stop" and "no" engaged in vaginal intercourse from behind. Soon afterwards they all left the area. Shortly afterwards the appellant and Sherrington and the complainants split up, meeting up with friends. The complainants spoke to their friends and told them what had happened. In his witness statement, C1's then boyfriend said: "She went on to say that the 4 of them had walked to Lidl's and ended up sat near to a river at some picnic benches. She had then walked off towards a tree and then come back and during a conversation told the men that she had a boyfriend at home. It was then that one of them had grabbed her by her neck, turned her around, pulled her trousers down and raped her. She hates water, so due to a mixture of that particular fear plus what was going in, she told me that she just froze. After it had finished, then one of the guys put their number in her phone, and she just let them as she felt it would help keep the men calm and effectively help her to survive."
10. A further witness to C1's disclosure, a friend of the boyfriend, made a statement in which he said that she spoke of being raped but in quite different terms to her final account. In particular, she said she had parted company with C2 before the incident, she had only met the men when she was already by the canal and that she had walked away leaving her at the scene. She was asked about this differing account at trial and gave an explanation suggesting that this was in reality what might be described as a white lie to protect her friend C2.
11. The police attended the appellant's home address on 17 January 2021 and arrested him. In interview he said the sexual encounter had been entirely consensual.
12. In his defence statement he stated the following. He and Mr Sherrington met the complainants in the town centre. C1 gave a false name and age. Mr Sherrington and he both purchased alcohol. C1 sat on the defendant's lap. She kissed his neck and placed the defendant's hand on her inside leg. The defendant touched C1's vagina. C1 led the defendant to another nearby bench. They lowered her underwear together. They had consensual sex for a very short period of time. The defendant stopped and explained he had an ex-partner and could not do this. The defendant did not ejaculate. C1 was clearly consenting throughout. They continued talking after they had stopped having sex. They walked back as a group, laughing and singing together at stages on the journey.
13. At trial the defendant gave evidence as foreshadowed in his defence statement.
14. Therefore, the issue for the jury in respect of count 1 was whether C1 consented and in respect of count 2 whether C2 had consented and whether the appellant jointly participated in the act of rape by assisting or encouraging Sherrington. We note that Sherrington had died by the time of the trial and accordingly the appellant stood trial alone.

15. Disclosure was not dealt with as it should have been until shortly before trial, when counsel for the trial were instructed. Both Mr Foster for the prosecution and Mr Paynter for the defendant worked hard to remedy the situation. We acknowledge their hard work, both before the trial and the work done in preparing the case for both sides and presenting the submissions on this appeal.
16. Nonetheless, the judge was faced with the deeply unfortunate situation of last minute applications and legal arguments founded on an uncertain and belated disclosure process.
17. The appellants sought leave to adduce two separate pieces of material pursuant to section 100 of the Criminal Justice Act 2003. We will deal with them in turn. The first category was material in the psychological report and care records. The appellant sought leave to adduce evidence of alleged misconduct, specifically acts of dishonesty or untruthfulness by C1 raised within crime reports or third party material disclosed within the trial process. It was argued that the evidence had substantial probative value to the issue of C1's credibility. That material was: i. Comments by a support worker at C1's school to the effect that C1 told lies. The only example given was that she had told a friend her grandmother had died when in fact the grandmother had not. That occurred in June 2019, so 19 months before the events in question. ii. Her former foster parents spoke of her wanting to be the centre of attention, telling lies and they suspected lying about having stolen items from them. iii. Her former foster parents said that she had created social media accounts in false names and used them to talk to boys online. iv. According to a psychological report, C1 told a lot of lies, including telling her friend that she was pregnant when she was not. The same report wrote of her becoming entrenched in her lies.
18. The context of the assembling of those various reports was an allegation C1 had made that she had been raped by her then foster parents' adult son. A different police force had investigated that allegation and decided there was insufficient evidence to submit a file to the CPS based on the lack of supporting evidence to C1's allegations and a number of reasons for doubting her credibility. We should make it clear that at no stage did C1 admit her allegation of rape was false.
19. The second category of evidence which the defence sought to admit concerned an allegation of coercive and controlling behaviour which had been made by C1 against her boyfriend. She had alleged that he restricted her phone usage, demanded she always answer him, kept her awake with him, made physical and verbal threats and insults, had thrown plates around and and shown aggression in other ways. The application was advanced on the basis that the defence could not say whether the allegation was true or false. If it was true it was evidence of misconduct on the part of the boyfriend which would have a substantial probative value to a matter of substantial importance in the context of the case as a whole, namely whether after his friends had told him about the incident, C1 (because of the boyfriend's personality) felt the need to make and thereafter maintain a false allegation of rape to the police. In the alternative, if the allegation against the boyfriend was false, it went to the credibility and reliability of C1 as a witness.

20. The judge rejected both applications. Dealing with the first category of material, she said that she was not convinced that lies of this nature told by a teenager really amount to misconduct within the definition of the Criminal Justice Act 2003. She noted that the defence argued that if it was not misconduct then the simple test was one of relevance and said: "I do not regard the fact that a child has been telling lies or is an attention seeker in the year to 18 months leading up to this offence as being of relevance to the central issue of consent in this case bearing in mind the large measure of agreement on the facts."
21. The judge went on to consider the position if the evidence did relate to misconduct within the definition of section 98 of the 2003 Act, on which basis she said: "... I am of the view that it is not of substantial probative value in relation to the issue in the case which is consent. Whilst I can understand the defence would wish to undermine her credibility in relation to her account regarding whether she consented and that there may be some probative value in seeking to demonstrate that the complainant within the 18 months prior to the allegation was capable of telling lies, that behaviour is not uncommon in children with the kind of background that C1 has. In my view these lies are not of substantial probative value, nor are they of substantial importance in the context of the case as a whole where there is a large measure of agreement about what actually did take place."
22. She cited the case of Hussein [2015] EWCA Crim 383, before adding: "If that is the view I take in relation to the probative value, I cannot see how I can reach a different view in relation to relevance as the two must be aligned in my view."
23. In relation to the allegation of controlling and coercive behaviour, the judge said, first that there was no material from which the jury could infer that was a false allegation. Further, it was highly likely that any controlling behaviour in fact post-dated the rape allegation. She then said: "In those circumstances, there is no material upon which the jury could conclude that this was a false allegation and so the application fails on that ground as it could not have substantial probative value in relation to the issue in the case nor could it be of substantial importance in the context of the case."
24. Addressing the alternative position advanced by the defence that if it was a true allegation C1 would be more likely to describe a rape than to admit consensual sexual activity, she said in that case it would not fall within section 98. She said the defence argument failed firstly because having regard to the chronology of the relationship there was no material to suggest the boyfriend was behaving in this way on the date of the incident. She continued: "Secondly, the defence have this point in any event without the jury needing to descend into what in my view would become tangential matters amounting to satellite litigation. By his own admission in his witness statement, [the boyfriend] accepts that he became angry with C1 when she reported this to him for going off with two men that she didn't know. Therefore, they have the point which can be made on the evidence that she was more likely to report this as a rape in the knowledge that he would become upset. In the circumstances, to admit this evidence would distract the jury from their central task of deciding whether C1 consented and in my view involve descending into unnecessary satellite litigation."

25. The appellant's appeal is advanced on the grounds that the judge was in error in making those rulings. In summary, it is argued that the appellant should have been permitted to adduce the evidence either as bad character evidence under section 100 of the Criminal Justice Act 2003 or, alternatively, if it did not amount to misconduct under section 98, on the basis that it was relevant and admissible evidence.
 26. In his extremely well-focused oral submissions, Mr Paynter focused upon section 100. He acknowledged that that was the basis on which both applications had been made, albeit in the course of submissions before the judge and in light of questions asked by the judge he had advanced the alternative proposition in the event that the matter did not fall within section 98.
 27. Mr Paynter referred to R v Brewster
- [2010] EWCA Crim 1194, in particular to paragraph 22 of the judgment of Pitchford LJ where it was said: "It seems to us that the trial judge's task will be to evaluate the evidence of bad character which it is proposed to admit for the purpose of deciding whether it is reasonably capable of assisting a fair minded jury to reach a view whether the witness's evidence is, or is not, worthy of belief. ... When the evidence is reasonably capable of giving assistance to the jury in the way we have described, it should not be assumed that the jury is not capable of forming an intelligent judgement whether it in fact bears on the present credibility of the witness and, therefore, upon the decision whether the witness is telling the truth. Jurors can, with suitable assistance from the judge, safely be left to make a proper evaluation of such evidence just as they are when considering issues of credibility and propensity arising from a defendant's bad character."
28. Mr Paynter submitted that in relation to the first category of evidence, that that evidence demonstrated that C1 had a propensity for untruthfulness and was, in the words of Brewster, capable of assisting a fair-minded jury to reach a view whether C1's evidence was or was not capable of belief. He stressed that C1's credibility was central to the case and that the evidence therefore was of substantial probative value to a matter of central importance in the case. Mr Paynter argued that to not admit it was raising the bar under section 100 too high. He maintained that the evidence should have gone before the jury with a proper direction in what was due to the nature of the evidence generally, he said, a finely balanced case.
 29. In relation to ground 2, Mr Paynter made the point that controlling and coercive traits usually show some time before a complaint is made. He acknowledged that the point was made in cross-examination that the boyfriend's reaction may have provided a motive to lie. However, he said that if the complaint about controlling and coercive behaviour was true, then it added weight to that submission to the jury that C1 may have had a reason to make a false allegation of rape in light of her boyfriend's behaviour. On the other hand, if the allegation was false then, said Mr Paynter, that adds to the picture of untruthfulness of C1. Again, he maintained that that evidence should have gone before the jury with appropriate

directions.

30. Without wishing to be unduly critical of the judge, it is difficult to follow some of her reasoning. We recognise that she was required to provide her ruling when these issues cropped up in the course of the trial and no doubt under pressure of time. However it is a little hard to reconcile what she initially said, namely that she did not regard evidence that C1 had been telling lies as being of relevance to the central issue of consent, with her subsequent statement that there may be some probative value in seeking to demonstrate that C1 was capable of telling lies. Further, we are not convinced by her statement that if she took the view that the material was not of substantial probative value she could not take a different view in relation to relevance as the two must be aligned. We are also not convinced that the chronology of the relationship between C1 and the boyfriend provided a sufficient basis to reject the application in relation to the allegation of controlling and coercive behaviour.
31. Section 100(1) of the Act provides that evidence of the bad character of "a person other than the defendant" is admissible if and only if one of three conditions are satisfied. For the purpose of this appeal, the only applicable category is that found in subsection (b) "it has substantial probative value in relation to a matter which (i) is a matter in issue in the proceedings, and (ii) is of substantial importance in the context of the case as a whole."
32. Section 98 of the Act provides that evidence of a person's bad character means evidence of or of a disposition towards misconduct. Misconduct is defined in section 112 as the commission of an offence or other reprehensible behaviour. There was some debate in this case as to whether the material which the defence sought to rely on properly amounted to misconduct at all.
33. There were no established findings of wrongdoing. Much of the material from the social services' file is either unattributed hearsay or general opinion evidence, such as the opinion of the support worker that C1 told lies, or, in the alternative, relatively normal teenage behaviour such as wanting to be the centre of attention.
34. There are however two alleged lies that (perhaps only just) are sufficiently specific to be the subject of cross-examination, namely that C1 had lied to a friend about being pregnant and lied to a friend about her grandmother dying. Such material does not readily fall within the statutory concept of misconduct. However to the extent that it could be said to be of relevance to the issues in the case, it was clearly directed towards the character of C1 and to painting her as an habitual liar. In those circumstances section 100 was engaged, as the defence application recognised.

35. The evidence about the allegation of controlling and coercive behaviour was also to be viewed as bad character evidence. It was an allegation of bad character made against the boyfriend who happened to be a witness but in any event fell within the wide definition of a person other than the accused. In the alternative, if untrue, the appellant sought to rely on it as a further occasion of untruthfulness on the part of C1. Again the defence recognised the need for the admissibility of this evidence to be considered under section 100.
36. It is common ground that the credibility of C1 was a matter of substantial importance in the context of the case as a whole. A subsidiary issue in assessing C1's credibility and reliability as a witness was whether she may have a motive to lie about being raped. The probative value of the evidence which the defence sought to admit had to be assessed in that context.
37. The proper approach has been explained in a number of authorities since *Brewster*. In *R v BVY* [2004] EWCA Crim 1355, the court said that the decision in *Brewster* did not purport to put a gloss on the statutory test and emphasised the requirement of "substantial probative value" which imposes a threshold higher than simple relevance. The statutory test concerns the probative force of the evidence which the defence seeks to adduce and requires the judge to assess whether it substantially advances the point which the party seeks to prove. That assessment is necessarily fact-sensitive and is primarily a matter of fact for the trial judge. Accordingly, an appellate court will not interfere unless the judge has misdirected him or herself as to the applicable principles or reached a conclusion which no reasonable judge could have reached. The decision in *BVY* also makes it clear that it is wrong to equate the statutory test with the question whether evidence might simply have a bearing upon the credibility of a witness. Many forms of conduct might arguably affect a tribunal's view of credibility in that broad sense. Section 100 requires something more. The evidence must be sufficiently persuasive to warrant placing it before the jury as material capable of assisting them in determining the credibility of the witness.
38. These principles are consistent with the broader concern reflected in earlier authority that trials should not become diverted by collateral enquiries into unrelated matters. In *R v H* [2011] EWCA Crim 303, the Court of Appeal upheld a judge's refusal to permit cross-examination about matters arising from a separate investigation which were only tangentially related to the issue before the jury. The court emphasised that the judge was entitled to prevent questioning which would lead to the exploration of issues remote from the charges and which would amount in substance to a fishing expedition. Such questioning risked diverting the trial into what the judge had described as satellite litigation.
39. Against that legal backdrop, we turn to consider the material the defence wished to adduce. The evidence in the social services' files was largely unsubstantiated and amounted to little more than the views or impression of others rather than established findings of misconduct. None of these matters had been the subject of any judicial determination and their

reliability could not have been assessed without investigating the circumstances in which those opinions were formed. The probative value of the two specific lies was very limited. They concerned matters wholly unrelated to the events which the jury were required to determine. They could not be said to meet the threshold for admission under section 100.

40. The introduction of that material would inevitably have required the parties to explore the circumstances in which those opinions and observations had arisen, the reliability of the individuals expressing them and the accuracy of the records themselves. That process would likely have required additional witnesses and detailed examination of matters remote from the alleged offences. Such an exercise would risk diverting the trial into collateral enquiries of precisely the type often described as satellite litigation.
41. In those circumstances, we consider that the judge's decision to refuse to admit the evidence contained in the social services' records and the psychological report was correct, albeit we arrive at that conclusion through a different route to that adopted by the judge.
42. A different issue arises in relation to the second category of material, namely C1's allegation that her boyfriend had behaved in a coercive or controlling manner within their relationship. If the allegation were true, it would not amount to misconduct on the part of C1 and therefore would not constitute evidence of her bad character within the meaning of section 98. However, it could instead be misconduct by the boyfriend since he was a witness in the proceedings and in any event the material was potentially capable of amounting to non-defendant bad character evidence in relation to him. Its relevance was not in challenging his credibility, but rather to establish a motive for C1 to lie.
43. The written application before the judge was advanced on the basis that the evidence was alternatively bad character evidence relating to the boyfriend or bad character evidence of C1, but that in either event section 100 was engaged. However, the judge's ruling proceeded on the basis that if the allegation was true it was not evidence of bad character. Having found that there was no evidence the allegation was false, the judge therefore did not analyse the issue through the statutory framework governing the bad character of a non-defendant. However, it seems to us that had she done so, she would have arrived at the same conclusion. The question of substantial probative value must be considered in the context of the case as a whole. That context includes the other evidence in the case. The judge regarded it as significant but there was evidence before the jury that the boyfriend reacted angrily around the time C1 made her complaint for her having gone off with two men that she did not know. The boyfriend admitted being angry and frustrated and "having a go at" C1. The judge who had heard that evidence took the view that it provided a sufficient basis upon which the defence could explore before the jury the dynamics of the relationship and the possibility that it provided a motive for C1 to report this incident as one of rape. To permit investigation of the allegation of controlling behaviour would have required an inquiry into the truth or otherwise of that allegation and the circumstances in which it arose. That again would have risked diverting the trial into collateral issues without providing any significant additional assistance to the jury in determining the matters they had to decide. In those

circumstances, on the specific facts of this case and having regard to the evidence which was before the jury, we do not consider that the evidence about the allegation of controlling and coercive behaviour was of substantial probative value to a matter of substantial importance in the context of the case as a whole.

44. Accordingly, while we might have approached the exercise somewhat differently, we consider that the judge's decision to refuse both applications was correct. The material which the defence sought to rely on fell to be considered under section 100 and did not meet the threshold for admission under that statutory test. It would also have risked distracting the jury from their central task which was to assess the evidence surrounding the events in question. That evidence included matters touching upon C1's honesty and reliability and the response of her boyfriend. With the benefit of a fair summing-up, about which no complaint is made, the jury were required to scrutinise those matters closely in arriving at their verdicts. For those reasons, the appeal against conviction must be dismissed.
45. We turn then to the application for leave to appeal sentence. The appellant was 24 years old at the time of the offence and 29 at the time of sentence. He had two relatively minor previous convictions, neither of them for sexual offences. The judge had the advantage of having heard the trial and also heard victim impact statements read by both C1 and C2.
46. C1 said that she had moved away from the area to start afresh. However, the pain and trauma had not gone away and she was now on anti-depressants.
47. C2 described how she felt violated and dirty as a result of what had happened. She withdrew from society afterwards and did not want to tell her mother what had happened, blaming herself and feeling a sense of shame. She started drinking and her self-harming tendencies got worse. She had previously been diagnosed with depression, anxiety and PTSD but they had got worse. She suffered frequent panic attacks, nightmares and waking up in the night after thinking of the rape and stopped eating. She had planned to end her life, she had told her therapist.
48. The judge considered the Sentencing Council guideline for rape. She found the offences were in culpability category A as drink was used to facilitate the offending and harm category 2 on the basis that the victims were particularly vulnerable given their age and backgrounds. Those categorisations led to a starting point of 10 years' imprisonment for a single offence.
49. There was aggravation in the location of the offence, in darkness, and in the appellant being under the influence of drink. The judge found no aggravation in the appellant's previous convictions and some mitigation in the delay in the case coming to court and the appellant's very troubled background that had led to an alcohol problem.

50. The judge said she had in mind totality. She passed a sentence of nine years for the rape of C1. The judge explained that had the appellant been the man who actually raped C2 she would have taken a figure of 10 years for that offence but as he was guilty through assisting Luke Sherrington, on the judge's findings that assistance being after the rape of C2 had already begun, she instead chose a sentence of four years, reduced to three to allow for totality. The total sentence was therefore one of 12 years' imprisonment.
51. Three points are taken in the appellant's grounds of appeal against sentence:
1. Count 1 should not have been categorised as harm category 2.
 2. Count 2 also should not have been categorised as harm category 2.
 3. The use of a consecutive sentence structure led to the overall sentence of 12 years being manifestly excessive.
52. These points were developed further, again in very helpful oral submissions from Mr Paynter. The essential submission on the categorisation of harm is that both C1 and C2 had already suffered serious harm at the hands of others and the upset and the damage they had sustained could not solely be blamed on the appellant and Mr Sherrington. That submission was made to the judge and she rejected it. After hearing the trial, and hearing and seeing both victims read out their impact statements, the judge was in the ideal position to assess the extent of the damage caused by the rapes for which this appellant was responsible. She considered the points that were put before her in mitigation which essentially have been repeated to us today. She reminded herself of the need for caution in approaching the victim personal statements. We can see no basis or argument for disagreeing with her conclusion.
53. The judge was, in our view, entirely correct to pass consecutive sentences for the rape of two children. There was a need to adjust the overall sentence to allow for totality but the judge did so explicitly in lowering the sentence on count 2 by one year and by implication imposing a somewhat shorter sentence for count 1.
54. We are therefore unpersuaded that there is any basis to criticise the judge for the overall sentence imposed, nor to regard it as manifestly excessive. We therefore refuse leave to appeal sentence. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk

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