

JERSEY / JUDGMENT

AG -v- H [2013] JCA 063 (21 March 2013)

[2013] JCA 063

COURT

Court of Appeal

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Court of Appeal

21 March 2013

Before

:

James. W. McNeill, Q. C., President;

J. Crow Q. C., and

Sir David Calvert-Smith, Q. C.

H

-v-

The Attorney General

Appeal by

H

against the conviction by the Royal Court at Assize trial on 11

th

December, 2012, and application for leave to appeal against the sentence passed

by the Superior Number of the Royal Court on 16

th

January, 2013 on:

5 counts of:

Indecent assault (Counts 1, 2, 4, 6 and 7).

Ms S. E. Fitz, Crown Advocate.

Advocate S. M. Baker for the Appellant.

JUDGMENT

calvert-Smith JA: 1. On 11 th December 2012 this appellant was convicted of 5 counts of indecent assault. On 16 th January 2013 he was sentenced to 2 years and 6 months' imprisonment on each count concurrently. He now appeals against conviction and applies for leave to appeal against sentence. The evidence and the allegations. 2. The appellant is now 77. The complainants were:- (i) A the appellant's granddaughter born in 1988. (ii) B born in 1992; and her sister (iii) C born in 1995. 3. There were 3 counts concerning A (Counts 1-3). All 3 offences were alleged to have occurred between 1.1.2000 & 31.12.2003 when the complainant was between 11 and 15 years old. Although the counts were not particularised within the Statements of Offence a document entitled Facts relating to Indictment was put before the jury. This stated:- (i) Count 1 "Went from rubbing her back to holding her breasts while standing behind her." He was convicted unanimously of this offence. (ii) Count 2 "H on sofa. Defendant removed her bra and fondled her breasts. (Also moved hand down inside her trousers towards crotch and kissed her breast)". He was convicted unanimously of this offence. (iii) Count 3 "On various occasions would fondle her breasts and kiss and/or suck her breasts." He was acquitted on this count. 4. There were 3 counts concerning B (Counts 4-6). They were alleged to have occurred between 1.1.1998 and 31.12.2001 when the complainant was between 5 and 9 years old. The counts were not particularised but the Facts relating to Indictment alleged:- (i) Count 4 "On a day after school sitting on defendant's lap at computer, he put both his hands up under her top and "played" with her breast area" . He was convicted unanimously of this offence. (ii) Count 5 "The last occasion sat on his lap at computer. Put hands up her top, touched her breast, pulled her towards him while having an erection and rubbed his penis against her." He was acquitted on this count. (iii) Count 6 "On various occasions whilst on his lap at computer he would touch her breasts." He was convicted by a majority on this count. 5. There were 2 counts concerning C. They were alleged to have occurred between 1.1.2003 and 31.1.2006 when the complainant was between 7 and 10 years old. Once again the particulars were set out in the Facts relating to Indictment:- (i) Count 7 "On various occasions whilst sitting on the Defendant's lap at computer he would put his hands under her top and touch her breasts and nipples. Also put his hands down her trousers and touched her bottom". He was convicted by a majority on this count. (ii) Count 8 was charged as Inciting an Act of Gross Indecency. "Standing naked and invited her to touch his penis" . He was acquitted of this offence. 6. A said that there was a period when she was 11 or 12 when she suffered from panic attacks for which she was treated in hospital. When she was discharged she continued to suffer from them and did not return to school. Thus it came about that she spent much time both at home and at the appellant's house. At pages 6-8 of the transcript of her evidence she said:- "CROWN ADVOCATE: And did anything occur that concerned you while you were there at your grandfathers? A : Yes. CROWN ADVOCATE: Can you tell the members of the Jury what happened to you? A: My grandfather would touch inappropriately. CROWN ADVOCATE: When you say touch you inappropriately, what would do? A: Er ... touch my breasts, er. .. CROWN ADVOCATE: Can you perhaps describe how he would do that? How, how would it happen? A: He'd start by tickling, or you know, that ... sort of tickling my back or whatever and slowly move around-and-... to be under

my top and to my, to my breasts. CROWN ADVOCATE: And-you said that would be under your top, is that right? A: Yes. CROWN ADVOCATE: Can I ask, you were aged .. what .. sorry, should ask you what age were you at the time? A: 12. CROWN ADVOCATE: And can I ask, at that time did you or did you not wear a bra? A: Sometimes I sometimes I didn't, I was only just developing breasts and ... CROWN ADVOCATE: And you say he would touch your breasts under your clothing. Can you give the Jury a little bit more detail about how he would do that? A : As I've later learnt in a sexual way." At page 11 of the transcript: "CROWN ADVOCATE: Did he ever touch you anywhere else or attempt to touch you anywhere else? A : Occasionally he would try and move his hand either towards my... sort of, underneath the waistband of my trousers or whatever, but I would always fidget or move and he never pursued it." 7. It stopped when she was 15 when she stopped going round to his house so much and, if she did, gave him no opportunity. She first told her mother in 2010 when she was about 21. She described the circumstances which had combined to make her tell her mother. By then she was working in a law office. Her work there related in part to allegations in other cases of child abuse. The family kept the matter to themselves during the rest of the year. 8. In January 2011 she was admitted to the Priory for a short time. 9. Later that year in July she decided to confront the appellant. She took a tape recorder with her. The resulting recording was played to the jury. Admissions made by the appellant during that conversation formed the basis of Counts 1 and 2. During the conversation the following exchanges took place:- "A: It's taken me a while to come to terms with it and to realise what went on and that it wasn't right but now I know and I want to, want to ask you, why, and whether you thought it was right and whether you realise it happened H Well A. Huh? H What, what? A Well this room for example H Say A What happened in this room? H When, when I cuddled you and... A Yeah, the inappropriateness H Perhaps that was, possibly it was, I agree with you there, urn, at the time you, your mum kept telling me you were going through bad she didn't know what you were doing and you were up and down and what have you, urn, you came round, I wanted to cuddle you and try and comfort you somehow and I dunno it just, that, that particular occasion... A It wasn't one occasion, it was several, it was more than one occasion H Alright I, twice I think, urn A Well I would say it was more than that, you know <Indistinct- Speaking over each other> H <Indistinct - Speaking over each other> I wanted to be close to you to try and... I, I didn't know what was going on and I wanted to get you close to open up to... I tried and, and I mean I didn't understand what was going on, then I thought ok well, I'll try to warn you, if I remember rightly, that as you get on, boys are gonna be boys and they're gonna try and take advantage of you and I tried to put that over to you if I remember rightly, urn A But how is that, at the age of twelve, how is someone supposed to understand what goes on H No you... A . . . I mean that's just an excuse H No you weren't twelve, thirteen A I was twelve H Thirteen I think A No I was twelve, thirteen, thirteen at the oldest 'cause I'd just come out of hospital. And how was that an excuse, you know it doesn't, I mean, it was inappropriate and it's had a huge impact on my life, on my relationships, on my thing you know and I've had to have extensive therapy for it and then I hear you come over<indistinct> H That w... for that? A Yeah, for the occasions that it happened, it's completely, it's abuse H Well I'm sorry love but A It's abuse, there's nothing else to it H Ok, urn, you, I don't know, you, you sort of came to me, you, you, as almost you wanted me to cuddle you and comfort... If, if you'd have said "no, don't cuddle me" I'd have stopped, straight away A For one

It wasn't a cuddling and two even if, even if that wasn't the case I didn't say stop as a twelve/thirteen year old child, you don't realise what, what is going on, you don't, you don't have the ability, the awareness of <indistinct> so it doesn't, it doesn't excuse it, it doesn't make it ok H Ok love, well I apologise for that H I'm sorry, I'm, I, well I don't know what to say. I thought I was comforting you, I thought A So you didn't realise it was wrong? H I didn't think of it in that light, I was wanting to cuddle you, you were here, you came here, you sort of nestled into me and I embraced you because I just felt there's something, well your mother didn't know, your father every time I asked, "don't know what's wrong with her, don't know what's wrong with her" I tried to, to get open, make you feel as if I was there to be comforted and so forth and perhaps we went a little bit too far, but I didn't do any harm to you whatsoever. I was purely trying to... A You didn't do any harm? I don't see how you don't see that as harm. It might not have been, you know, violent or whatever but at the end of the day that's not something you do, one, to a twelve year old virginal child and two, certainly not to your granddaughter H I, it's just those circumstances at that time, but yes, possibly right, I shouldn't have done it at all A Not possibly, there's no possibly about it H Ok <Indistinct - Speaking over each other> at the time I tried to tell you don't let this happen with boys who will take advantage of you or whatever and If I was the sort to actually abuse a child I would of, could have done a lot more <indistinct> A I But that <indistinct> H But it wasn't, it wasn't in the, in, that wasn't in the... A Doesn't, it doesn't change the fact that it was abuse, it doesn't, I'm sorry, it does not change the fact that it was abuse and it was wrong, doesn't matter whether you, you know, obviously there are scales there are degrees of, you know, what happened but it doesn't change the fact that it was abuse, abuse at any level, even if it, you know from the most mild inappropriate touch to full fledged you now, sexual... sex or whatever, it's still abuse and it's taking advantage of a s... of a situation of a child who doesn't understand, doesn't have the capability to realise what is going on and it's not ok, it's wrong and it has caused me untold suffering and that's something that I have to live with for the rest of my life H <indistinct> A I And have to deal with, with relationships, with studying, with... H Well I hope you can get over that A You know. A month staying in a psychiatric hospital, you know, how, how d'you have, how d'you ever come to terms with something like that, well I, I don't know. And <indistinct> I might not, you might have justifications and you never intended to be like that, but it doesn't change the way it affected me, doesn't change the... H <indistinct> no but it wasn't, it, it wasn't done in that sense to, so it would affect you or hurt you, it was done in the hope <indistinct> A I don't think anyone ever does do it because they want to hurt the person, in terms of sexual abuse it's never because they want to hurt the person, that's not really ever the, the, you know, I don't, I'm not saying that you did do it to... H No no no, but, but the normal um occasions that that happens for, for abusers is for self gratification. I wasn't doing that for self gratification I was trying to get you to feel comfortable and open up and I don't know we're going back so many years now. Urn I, I, I just, I, I just regret now that it ever, ever happened. and, and regret that it's telling me it's affected you which I, I just didn't realise what had happened and I suppose one has to move on but urn, that's up to you, you know and, you know it's, I mean you were my... everybody used to say it that A is favourite <indistinct> I was doing it in a, a loving way, not a, a sexual way A It doesn't change the fact that it was sexual <indistinct - Speaking over each other> H <Indistinct - Speaking over each other> A We can go through these justifications but that's the case<indistinct> H It's, it's you

know A <indistinct> H It's the past but A <indistinct> I'm just H I'm sorry you've come to me with this, on the other hand, urn, I'm, I'm not pleased, urn, at least I know now that, how you feel, urn, but you know, what, what can I do to sort of, other than say I apologise and make you feel comfortable again? A Well that's, that's certainly never gonna happen I mean like I said I don't, <indistinct> I don't have any desire to have any kind of, urn, relationship with you, urn H But, but, but you've been alright with me other times, long since then A Yes because that, I didn't, maybe, perhaps you are not familiar with the process of which children who have been through things like that, and the way in which they deal with it is to suppress the m... suppress the memories or to completely hide, you know, completely try to forget or block them out until they come to a head and that's what happened <indistinct> might have been fine with you, it wasn't, it doesn't change anything, it's still, you know, now I have had the realisation and I have come, had to come to terms with it myself H Oh dear. <indistinct> hospital in London A Yeah H <indistinct> they said a couple of months ago you'd been in hospital but I don't know anything, I don't hear anything because we don't talk about it unless I go up there, so I, I've almost lost, lost contact with them over there but I, I hope it isn't because of that, because, it would be the break up of a family and I hope that wouldn't, wouldn't happen..... Well it, see, I, I *pause* oh I don't know, we can talk about this all day long and still not get anywhere. It's urn, you know, for me it was just almost a natural instinct to cuddle and fondle what have you, urn, it wasn't a drastic thing, I wasn't hurting or harming or interfering with a child. But... A But you were H Just.... A That was all what it was, that's, <indistinct> that wasn't <Indistinct - Speaking over each other> H <Indistinct - Speaking over each other> it was from here up A <indistinct> there were times when it almost did go further H No A Yes there was 'cause I remember a specific occasion <indistinct> but regardless <indistinct> whatever it was, in the area of the body which it was sexual abuse and that's all there is to it and it wasn't just, you know, cuddling, that's not what it was and you know that because if it was just cuddling you wouldn't be standing here telling you that, you know you've thought about it and Haut de la Garenne H But even, even, even sort of slightly cuddling is, is, according to the things, the way they're looking at things now, is abuse A Ok, well I think there's a hell of a difference between a grandfather cuddling their granddaughter and what you did, do you not agree? There is a difference H Yeah <indistinct>" 10. Following the playing of the recording A explained that she then told a psychiatrist about the assaults and her current situation and was again admitted to the Priory in October 2011 for treatment to help her sleep. 11. Around Christmas time in 2011 the appellant approached his daughter in law D and told her that he liked to rub A's back and had once accidentally touched her breast. He admitted kissing her breast on another occasion when she had taken her bra off. He claimed that he had done it to show her what she should not let boys do. 12. In January or February 2012 the appellant asked to speak to E, his son. He told him he had been accused of doing things to A and explained that he had massaged her back and with cupped hands touched her breasts under her top. On another occasion A had been on a sofa and the appellant had commented on her wearing a bra. A took off the bra, he touched her breasts and his hand went down towards her groin. This was done, he said, to show her what boys would want to do. A little later he had turned round to kiss her on the cheek but accidentally kissed her breast. 13. At some time - not given in evidence but before the arrest of the appellant

- he also spoke to a former partner of his, the mother of E. He told her he wanted to give his version of what happened to A. He repeated that he had stood behind her and fondled her breasts under her jumper. He went on to say on a second occasion he saw A sitting on the floor and said to her that she had a bra on. She took the bra off. He thought it was time she left and as he turned to kiss her he kissed on the breast under her jumper. When the former partner suggested getting the family together to discuss the issue he asked her repeatedly not to call the family. 14. A would never have reported the assaults to the police. However, in April 2012, following reports by C to a teacher, the police came to see A and she agreed to make a witness statement. 15. A was in the witness box for well over a court day. Her evidence occupies 152 pages of transcript. Some 30 pages are devoted to matters which arose during the course of her evidence which had to be dealt with by the Commissioner in the absence of the jury. Her description of the incidents she alleged against the appellant lasts for some 4 of them and the cross-examination upon them occupies another 3. 16. The remainder, which occupies some 90 pages, focused almost exclusively on matters which were not directly connected with the allegations but with A's state of mind since the admitted acts took place, her motives for, and state of mind when, confronting the appellant in July 2011, and her decision to cooperate with the police and come to court to give evidence. Her general credibility was attacked on the basis of a fraudulent addition of her name to a car insurance policy. 17. B said:- "CROWN ADVOCATE: And did anything happen while you were using the computer that caused you any concern? B: Yes. CROWN ADVOCATE: Can you tell us about that? B: When I was sat on his lap he would put his hands up my top and play with what would be breasts, my chest at the time. CROWN ADVOCATE: When you say what would be breasts, what do you mean? B: I was 6, 7 years old I don't believe that they were breasts, I don't believe that they were fully developed at the time. So it would be my chest. CROWN ADVOCATE: And how would he do that, can you just describe in a bit more detail how, what would he do with his hands? B: He would rub his fingers on my nipples. CROWN ADVOCATE: What sort of clothes would you have been wearing? B: Would have been maybe tracksuit bottoms and T-shirt, depending on whether it was winter or summer." 18. She had told the police when she realised she was not alone in having been assaulted by the appellant. She was cross-examined on the basis that any touching there was had been innocent and that subsequent events had distorted her memory of what had happened. As with A, a number of possible motives for her to wish to harm the appellant were put to B. 19. C's evidence in chief was given by way of her recorded interview by the police in the company of a Social Worker. She was cross-examined on the video link. In her recorded interview the following dialogue was recorded:- "..... We came to school today because your Mum told us that you've got something to tell us and you told us about a time when somebody touched you C Yeah 284 Alright. Can you tell us everything you can about that please? C Ok. Well, it's a bit of a blur 'cause it, it was a while ago when I was only young so I don't really think anything <indistinct> I think it started I was about eight, 'cause my Mum used to work for H and then me and my sister used to always go down the road to play and I used to get on with his um, girlfriend and we used to play a bit there and then I used to always go on his computer and he used to always get me to sit on his lap and I said I just

want to sit on the chair he was like "no sit here on my lap" and then I'd sit on his lap and then he would just like put his hands up my top and then touch me, all around, but I didn't really have boobs yet but he used to just touch all around there....." And a little later:- "284 Alright. Urn, ok, you told us. You'd go down there, on your own? C Yeah 284 And sit on his computer C Yeah this was about when I was about eight, nine, up to year 6 <indistinct> about year 5 'cause that's when I started like getting boobs 284 Ok C 'cause I always remember when I just, I just remember when I started getting boobs and <indistinct> remember him touching them and then that's when I started <indistinct> 284 And did you keep, you said you're thirteen when you stopped, had you been going down on your own all the time? C Yeah, I wasn't going down on my own all the time this is when I was playing with G or to go down there and sleep over 284 Mm hm. Tell us about that, sleeping over C Urn, er we just, I'd stay over at hers and her mum would cook dinner, we would just play around the house and do makeovers and stuff and sometimes we go downstairs and sit down and he'll just ask me to sit down next to him and he would just sometimes just ask to um, he was like "oh where's my kiss" and stuff but I don't. .. well I don't know, then I just give him a kiss on the cheek 'cause I felt really bad cause I thought I'd be really rude if I didn't that's then, so we used to just play around all the time....." Then a little later "284 Alright. Going back a little to when you were sitting in front of the computer with him and you said he, he touched you on the breasts, ex ... describe to me how he did that C Urn, <indistinct> um, right say this, say he was sitting there C Like, he was so his lap, that's his lap and I was sitting on like that and he would just, say they were my boobs and he'd just go round like that and just do that 284 Mm hm C And then he'd just go like that with the nipple bit, like that 284 Ok RF Ok, you're doing really well, well done Alright. If you need a break just say please RF Yeah, take a breath <Clears throat> C *Crying* 284 Ok" 20. She was cross-examined about possible motives to lie or exaggerate and the possibility that she had been influenced by one or both of the other complainants. 21. The appellant was interviewed under caution. He maintained that although he had touched A in the way he had admitted to others on two occasions the touching had not been intended as indecent by him. There had been no self-gratification involved. It had been "a bit of devilment". 22. As to B he said:- "284.... This statement from B OK. .. she'd sit on your lap on the computer and you'd touch her on the breast area, again inside her t-shirt. Do you think that's right for a man to do that to somebody else's children? H Its not, it's not like that at all, I mean, they, as I said previously they were almost like family, they were with us and I'd just cuddle them and that was it

284. But you've agreed that you put your hands inside their t-shirt in the area of their breasts H Probably, yeah, you know, its urm" And a little later:- "284 Ok. Why do you think she'd say that? H No just to get back at us probably H Pff, no comment it, nothing other than I've already said I, I cuddled him (sic) and that was it, but that's... 284 And you did say earlier that you put your hands up inside their shirts H Yeah well they were just loose shirts in fact they might have been just, like I can't remember 687 Just, I know you did the actions... H Well they might have just been you know they little short things 687 And where would they be, on... H I, I, I can't remember 687 Do you mean short as in shorts that you wear on your legs

or short tops? H No, no tops 687 Tops, ok H Very flimsy singlets or whatever, I mean" 23. As to C:- "284. We've also spoken to C, mmhmm and C's given us a statement by way of video interview because of her age and she says, yeah, she was round your house a lot urn and she'd go on your computer, which you've told us was right. While she was on your computer she'd either sit at the front of the stool in front of you or sit on your knee, which you've agree with 284 And while you, while she was there, you'd slide your hands up under her t-shirt and onto her breasts H She didn't have any breasts 284 Do you deny then sliding your hands up inside in her t-shirt and putting your hands there? H No, I mean, that's just, they loved me cuddling their back and what have you, I mean, you know 284 So you did rub your hands over her breasts, even though she didn't have any. Over the area of her nipples then? H Well I think nip... whether I actually got there or not, I, I don't know but I touch... I was holding them like this sometimes 284 Mmhmm and your hands were under her t-shirt at times H Well it was, yeah, it was er very loose 284 Mmhmm OK and you'd often ask her for a kiss H No 284 No, OK H Ah well if they came in the house H I don't know perhaps I did, perhaps I did say give me a kiss H But not, again, the way that this just mentioned, looked like I was running aft... after her for a kiss and that wasn't the case H A kiss, hello, yes" 24. The appellant did not give evidence but called a former partner of his who gave no evidence concerning the incidents but said that she never witnessed anything untoward between the appellant and B or C. The Grounds 25. The appellant relies on the following grounds of appeal:- (i) The counts in respect of the two sisters should have been severed from the A counts. Although the evidence of B and C may have been admissible on the counts in respect of A it was not admissible the other way. (ii) Having ruled that the counts be tried together the Commissioner misdirected the jury as to cross-admissibility. (iii) The defence were wrongly prevented from cross-examining the witness A about the fact that she had recently had an abortion. (iv) The convictions on Counts 4 and 6 are unsafe since there was no inherent indecency involved in the acts alleged by the complainant. A submission of no case was wrongly rejected. (v) Non-disclosure of material by the Crown which may, if put before the jury, have materially altered the jury's finding of the credibility of A. (vi) Non-disclosure of material which may have affected the credibility of the sisters B and C. Grounds 1 and 2. 26. These involve consideration of the law relating to evidence of misconduct other than that alleged in a given count to assist in proof of that count. We, like so many courts since 1893 when *Makin v Attorney General for New South Wales*

(1894) AC 57 was decided, have revisited, with the assistance of counsel in their written and oral submissions, the "pitted battlefield" described by Viscount Hailsham in *Boardman v DPP*

[1975] AC 421 at p 445 up to the case of *DPP v P*

[1991] 2 AC 447 . 27. We have been careful to dismiss from our minds the changes in English law brought about by provisions of sections 98 onwards of the Criminal Justice Act 2003 in respect of evidence of bad character. 28. From those cases we have drawn the following principles:- (i) The Indictment Rules in England and Wales have, for nearly a century, given courts the right to try multiple counts in the same indictment if "based on the same

or similar facts or are part of a series of offences of the same or of a similar character" . The same rule is to be found at Rule 3 of the 1972 Indictment Rules of Jersey. (ii) Over the same period the practice has developed so that indictments routinely contain counts in respect of which the evidence is separate and mutually inadmissible but which are conveniently tried together. (iii) The test in cases where joinder is disputed is the two-fold one described in *U v AG* .

- [2012] JCA 085 by Nutting JA at paragraphs 12-14 which we gratefully adopt:- "12. It is common ground that the relevant legal test for the introduction of similar fact evidence involves a two stage analysis. The first is a hard-edged question of relevance, at which stage the question is whether the material has any probative value. The second stage involves a discretionary exercise to determine whether the evidence should, in all the circumstances of the case, be admitted.
13. None of this is controversial or new. It Is well established that similar fact evidence is admissible If it is relevant to an issue before the court, e.g. because it tends to prove one of the elements in the alleged offence, or to rebut a defence which would otherwise be open to the accused: *Styles. Day, Carney & De Sousa v. AG*
- [2006] JLR 210 , following *O'Brien v. Chief Constable of South Wales*
- (2005) 2 AC 534 , at para 67 et seq and ultimately *Makin v. AG for NSW*
- (1894) AC 57 . The question of coincidence lies at the heart of the analysis. Evidence is likely to be admissible if an attempt to explain It away by coincidence would be an affront to common sense, or would be against all probabilities, or would only be accepted as an explanation by an ultra cautious jury: *DPP v. P*
- (1991) 2 AC 447.
14. It Is worth emphasising that in order to admit similar fact evidence, it Is not necessary for the prosecution to wait until a specific defence has been set up. It is sufficient If the defence Is reasonably available: *Harris v DPP*
- (1952) 36 Cr. App. R. 39, at p.52-54. Nevertheless, the prosecution must not be allowed to adduce prejudicial evidence by imputing to the accused an intention to set up some improbable or fanciful defence: *Thompson v. DPP*
- (1918) AC 221, at p.232. This qualification is illustrative of the more general principle mentioned above, which requires the court to balance the probative value of any admissible similar fact evidence against Its prejudicial effect, and to exercise a discretion in deciding whether to allow it to be adduced - a discretion which is exercised by reference to the Interests of justice: *Noor Mohamed*

v. R

(1949) AC 182 at p.192." (iv) The obiter dictum of Glidewell LJ in *R v Wilmot*

(1989) 89 Cr. App. R. 341:- "Theoretically, even if evidence in relation to one offence is inadmissible in relation to another, the judge has a discretion nevertheless not to sever the indictment, in other words, to allow the counts alleging two separate offences to be tried together. Clearly such a course fails within rule 9 of the Indictments Rules 1971, But in our view where evidence in relation to one count is clearly inadmissible to prove another it is normally right in such circumstances to sever the trial of the different offences." was not being applied in English and Welsh courts at the time and has not been since. For instance, offences of dishonesty on the one hand or violence on the other are regularly charged and tried in the same indictment without objection at trial or appeal to the Court of Appeal Criminal Division. Appeals brought in this jurisdiction - which follows the English and Welsh practice in this instance - solely on the basis of this dictum are therefore unlikely to succeed. 29. We have considered the question of cross-admissibility. If the Commissioner was right to find that the evidence of one complainant was capable of supporting the evidence of the others and vice versa then the counts were clearly both properly joined and properly tried together. If not, then either the indictment should have been severed in the way suggested by the appellant or the jury should not have been directed in the way that they were. Either way the conviction would undoubtedly be unsafe. 30. The appellant submits that the fact that the allegations shared the following features:- (i) They were committed against young girls. (ii) They involved touching the breast or breast area of each complainant. (iii) They took place at the same premises. (iv) The appellant was in a position of trust in respect of all 3, was insufficient for the Commissioner to conclude that the evidence of each was admissible to support the evidence of the others. The appellant accepts that the evidence of B and C might have been admissible to rebut the innocent explanation given by the appellant as to his admitted touching of A, but submits that the reverse was not true. If the counts were tried together the jury should have been strongly directed to that effect. They should have been directed to look at the evidence of the sisters, whose evidence was capable of being mutually supportive, and to decide on the defendant's guilt in relation only to those counts and then turn to consider the counts concerning A with or without the support of the counts relating to the sisters depending on how they had found. 31. He further submits that since the case for the appellant in respect of B or C was one of complete denial there was no defence of "innocent explanation" for the evidence of H to rebut. 32. The Crown submit that that was not the case. The appellant admitted putting his hands under the tops of both B and C and it was put on his behalf in cross-examination that any contact with the nipples was accidental. It was therefore relevant to the defence of innocent or accidental touching to adduce evidence of the deliberate touching of A. 33. We have reviewed the careful ruling of the Commissioner and the reasoning which led him to his conclusion that the indictment should not be severed and that the evidence was potentially mutually supportive. He accurately set out the counts and the evidence of the complainant against the admissions made to the complainant A, to the police and to others. In respect of three of the counts (those on which the appellant was later acquitted) there were complete denials. In respect of the 5 of which the appellant was eventually convicted by the jury he

had admitted, or at least not denied, the actions alleged but was claiming that those actions had not been indecent. He came to the conclusion that the Crown's submission was well-founded. He relied upon the decision of the House of Lords in *R v H*

[1977] CA 101 in ruling that the question of collusion between the witnesses should be dealt with later, if necessary, during the trial and ultimately, if the case was left to the jury, by means of proper directions. Having considered the further submissions made on behalf of the appellant we are unable to find fault with the ruling. The counts were properly joined and the evidence was in fact potentially mutually supportive because of the similarities in the allegations and the ability of the evidence on one count to negative the defence of innocent touching on the others. 34. In due course the summing up contained a model direction on the mutually supportive possibilities of the evidence of the complainants, and an equally sound direction on the possibility of collusion or unconscious influence of the account of one upon the account of the others. 35. We unhesitatingly accept the Crown's submissions on both grounds. Once the appellate courts in England and Wales had got rid of the so-called "striking similarity" requirement posited in some of the earlier cases this class of case was clearly eligible for trial in one indictment and for directions on cross-admissibility and the possibility of collusion or contamination between the complainants. No criticism has been or could be made of the directions in this respect. Ground 3 The cross-examination of A 36. This was, as we have already commented, extensive - more extensive than might have been expected when the acts forming the foundation of two of the three counts in which she was the complainant were broadly accepted. 37. The Crown introduced evidence in chief from A of a pre-existing medical condition called PANDAS syndrome which, according to A, resulted in panic attacks, her being unable to go to school for long periods and thus having to spend time either at home or at her grandfather's home. 38. In cross-examination, when asked why she had not complained to anyone at the time of the alleged assaults she referred to this illness. After reporting the assaults to her mother in 2010 she said that she had been admitted, in January 2011 to the Priory. She had never approached the police and never wanted to. At page 44 of the transcript of her evidence, picking up on an answer concerning a pony bought for her when she first became ill, Advocate Baker got her agreement that it had been a "long term illness". He elicited the name of her anti-depressant drug which, as the witness remarked, had not been so strong as to prevent her from studying for and obtaining a university degree. 39. Advocate Baker then linked the illness to her recent visits to the Priory and treatment by psychiatrists and psychologists. A replied "Well as you can imagine after something like this you would need it." Mr Baker then went back into the past to remind her that her PANDAS syndrome had predated the allegations. He continued to ask questions about A's mental state over pages 46-48 of the transcript. At page 55 when the defence version of what had happened was being put he suggested that a panic attack - or the syndrome in general - may have affected her memory. The topic of her mental health was raised again at pages 68-70 in connexion with the original illness and counsel's speculation that "something" may have happened to cause it. A reminded the court once again that her

illness had predated the incidents she described. Between pages 80-84 when the court adjourned for the day, she was cross-examined over her treatment

- including the drugs she was prescribed and the various doctors who had treated her over the years. The following day - by which time she had been in the witness box for a whole day - the cross-examination continued concerning her 2 stays at the Priory in January and September/October 2011. At page 104, after a sustained attack which suggested that the allegations were motivated by greed, the witness became distressed. 40. There then followed an argument in the absence of the jury about the length and extent of cross-examination. We have studied this with interest. Crown Advocate Fitz was initially concerned at the length of the cross-examination rather than the topics which were being covered. The Commissioner said that he did not believe he could exercise any control over cross-examination either apparently as to the issues - it being sufficient that the defence believed it necessary - or as to its length. However, after submitting that he should not be prevented from putting his case (whatever its relevance or not to the allegations before the court) Advocate Baker indicated that he proposed to cross-examine her about an abortion she had had in 2011. At p110 he fell back on his previous record as a cross-examiner to justify his line of questioning. Advocate Fitz now objected on the ground of relevance. What possible relevance, she submitted, to the truth or otherwise of the allegations of indecent assault could her abortion many years later have? In the course of his ruling the Commissioner stated:- "That Defence is emerging to be that A was in a very emotional state when she confronted her grandfather, but she has a tendency to exaggerate and can be irrational. In order to demonstrate this and complete his cross examination Mr Baker requires a further half, half an hour, but he has given the Court notice that he wishes to put to A the fact revealed by her medical records that apparently she had an abortion in July of 2011. At one level, evidence of the abortion might be considered to be irrelevant (NB the word used was almost certainly "relevant") to whether in July 2011 she was in an emotional state, but I accept what Miss Fitz says, namely that they can assess for themselves her emotional state, in that they can actually and have heard, the recording of that interview. Furthermore the Defendant appears in that interview to accept the conduct of which she makes her complaint. My assessment of the demeanour of the witness is that cross-examination on the issue of an abortion in public will have a devastating effect on her ability to give further evidence and to assist the Jury. Its relevance is, in my view, tenuous and in the interests of fairness as between the Complainant and the Defendant I have decided to exclude the evidence of the abortion. I have given Mr Baker a great latitude to pursue his client's case but I'm now going to limit of one hour for the completion of your cross-examination which is over and above that which you've indicated to the Court." 41. The cross-examination about the Priory was really concerned with why it was she had chosen to tell her mother, to confront the appellant and thereby to bring into the open at least within the family things which until then had been known only to her and the appellant. The cross-examination about the abortion was aimed, so Advocate Baker informed the court, to show that the confrontation and the complainant's attitude to the appellant during was possibly a result of

the stress caused by the abortion rather than her righteous anger at what she believed to be abuse. 42. We unhesitatingly dismiss this ground. We cannot see any, let alone a tenuous, connexion between the abortion and the offences, or any connexion between it and the admissions made by the appellant during the recorded conversation, or any connexion between it and A's credibility in relation to any relevant issue in the trial. The fact was that an over-long and, in our judgment, an over-intrusive cross-examination had already subjected the witness to distress beyond what was appropriate or necessary for the defence to the allegations to be put. If there is any criticism to be made of the conduct of the trial it is that the Commissioner did not intervene earlier. Any idea that a trial judge cannot limit cross-examination to issues which on proper analysis has no true relevance or to a length which does not unduly oppress a witness should be put to rest. The court has a duty of fairness to all those appearing before it. 43. All of this also has to be judged against the background of the fact that the appellant did not advance any positive case at trial: the suggestions put by Advocate Baker to the witnesses in cross-examination as to the possibility of an innocent explanation for his actions could not provide a substitute for any evidence from the appellant himself. And in any event the suggestion that there was an innocent explanation was belied by his words to the police describing the first assault on A as "a bit of devilment". Ground 4 No inherent indecency. 44. At the close of the Crown case the defence submitted that in the case of Counts 4 and 6 there was no case to answer. The argument was that the particulars of the offences stated that the appellant had touched B's "breasts" and since she had no developed breasts at the time the allegation was incapable of being proved. The Commissioner rejected this submission. 45. The appellant submits that, as a result, the Commissioner misdirected the jury on this issue. In summing up he said:- "In her case In her case (the defence say) it might be said that even if you are sure he did this, it cannot be indecent; it cannot be indecent they say, it might be said, to play with the chest of a pre-pubescent girl or to rub your fingers over her nipples. I can assist you on this to this extent. The test as to indecency is not whether the part of the body touched is of itself a sexually developed part of the body but whether the manner and circumstances in which the body is touched is indecent. So for example it could be indecent for a man sitting by a woman on a train to stroke her leg with his hand, because it is the manner in which he strokes her rather than the part he touches that counts. So in the case of B the issue for you, if you are sure that the defendant deliberately touched her breast albeit undeveloped, is not whether her breast had developed sexually but whether the manner and circumstances in which he touched her breast was indecent. It is for you the jury who decide whether right-minded people would consider the manner and circumstances in which the defendant touched her breasts, if you are sure he did so deliberately, was indecent." 46. We have reviewed the evidence of B, the ruling, and the case of *R v Court* [1989] 2 AC 28. In that case the defendant pulled a 12 year old girl across his knees and spanked her 12 times over her shorts. The House of Lords had to consider whether the judge had been right to direct the jury that the victim's opinion as to whether the assault had been indecent was irrelevant and whether the evidence of the defendant's motive had been relevant. His appeal was dismissed. Evidence of either or both is admissible, but neither is decisive since the decision as to whether the assault was an

indecent is to be left to the jury to decide using the standard of ordinary reasonable people. Lord Ackner:- "I, therefore, conclude that on a charge of indecent assault the prosecution must not only prove that the accused intentionally assaulted the victim, but that in so doing he intended to commit an indecent assault i.e. an assault which right-minded persons would think was indecent." 47. The Commissioner rejected the submission. We conclude that that decision and his later direction to the jury were impeccable. The offence charged was one of indecent assault. In any case where an accused fondles a child's upper chest there would (absent any innocent explanation) be an indecent assault, irrespective of the child's state of sexual development. The fact that the particulars in this case used the word "breast" instead of "breast area" or "upper chest" cannot possibly provide a defence. 48. Any other outcome is unacceptable. It would be intolerable for the appellant to avoid conviction on the grounds that whatever he did and however sexual his motive, since B had no developed breasts any fondling of the chest or nipples is incapable of being indecent. 49. The defendant is not to be allowed to set his own standard of indecency. The standard is the standard of ordinary reasonable people. We reject this ground. Ground 5. Non-disclosure re A 50. Following the trial, on January 13 th 2013, the appellant received a Letter before Action in respect of a possible claim by A in respect of the assaults upon her. It turned out that a lawyer advising her had been in court during the trial and that the officer investigating the case had been aware that A had had some contact with lawyers in advance of the trial. 51. During her evidence there were a number of passages which had a potential relevance to the possibility of financial gain or loss for A:- (i) During the confrontation between A and the appellant there were angry exchanges in which, having referred to the alleged assaults, A accused the appellant of meanness towards her father and the family generally. At page 13 of the transcript she returned to the topic of the assaults as follows : "I didn't come down here to have conversation with you about money...." (ii) When cross-examining her Advocate Baker was anxious to establish - as was the case - that his client had not attempted to buy her silence at or following the confrontation. In the course of those questions there were the following exchanges:- "ADVOCATE BAKER: And despite this focus on property, money your grandfather didn't pay your parents anything did he, following this? A: Now I re ... all of our family kept as far away from possible as they could. ADVOCATE BAKER: He didn't pay you - anything towards your student loan did he? A I wouldn't have accepted a penny off him. If there's really financial motive, I think I would have tried to blackmail. In actual fact I think you'll find I say I don't want anything to do with him. I don't want any relationship with him, I want nothing to do with him so... you know, what saying is just completely" (iii) Later he suggested that in summer 2012 when A had had an argument with the appellant's new wife - not her grandmother or E's mother - the reason for it was concern that she would lose her inheritance as a result. She rejected the suggestion. (iv) In re-examination Crown Advocate Fitz asked her:- "CROWN ADVOCATE: Do you ... do you stand to gain anything from this Prosecution? A : Absolutely nothing. CROWN ADVOCATE: Do to lose anything from this Prosecution? A: Yeah, everything really, I mean my family have been through hell. Obviously we have nothing to do with him anymore. There's ... as you, as Mr Baker's kindly pointed out, obviously my father stands to lose a business, our family home, he's trying to take it,

obviously he'll try and take it away from us, so I stand to gain absolutely nothing from this. CROWN ADVOCATE: 'Cause who owns the house you live in? A: He does. CROWN ADVOCATE: Did you during that confrontation or at any time, ask H for money? A: I said I wanted nothing to do CROWN ADVOCATE: Are you, I think this was put to you subtly. Are you inventing allegations so-that your father can take over your grandfather's company? A: No, my father has run the business for ... I don't know how many years now and if anything it would probably serve to do the complete opposite." 52. Against that background Advocate Baker submits that he should have been made aware of the fact that A was considering the possibility of suing the appellant, and that his inability to do so through no fault of his or his client has rendered the convictions unsafe. 53. The Crown concedes that this is a matter which would have been disclosed if it had known about it at the time. It is accepted on all sides that the Crown did not know. 54. It seems to us likely that if Advocate Baker had wished to cross-examine the witness about it he would have done so either without objection from the Crown or, if there was objection, with the leave of the judge. 55. However we reject this ground of appeal. 56. None of A's answers are impugned by the new information. A was saying that she would not have accepted money to pretend the assaults had never happened or to have her anger assuaged by a bequest in the appellant's will. She anticipated adverse financial consequences to her and her family as the result of the family break up caused by her revelations. Refusing to accept gifts or bequests is one thing. Suing someone who has done you wrong is quite another. There is no force in a submission that the evidence would have shown her to be a liar. 57. So far as her general credit is concerned there was no challenge to her evidence that if her allegations had stood alone and she had been able to decide, they would never have been reported to the police. The cross-examination would therefore have been to an issue which, as we have already ruled, and in respect of the counts upon which the appellant was convicted, was not, on proper analysis, an issue at all. 58. In any event all those who have suffered physical, mental or pecuniary loss as the result of another's crime have a financial advantage in the outcome. Compensation may be awarded - as it was in this case - by the sentencing court. The Criminal Injuries Compensation scheme may award compensation to the victims of crime. And of course a civil action may result in an award of damages. 59. Of course a suggestion that the original allegation has been fabricated in order to extort money is a proper subject for cross-examination and - if there has been a significant failure to disclose such information - may be a proper ground for interfering with a conviction. As we have said in dealing with earlier grounds that was emphatically not the case here in connexion with Counts 1 and 2. The case against the appellant was based not on acts alleged by the complainant and denied by the appellant but on acts admitted by him to the complainant, members of her family and the police. 60. We cannot see that the ignorance of the jury as to the possibility of litigation by A possibly affects the safety of the verdicts on the counts upon which the appellant was convicted. Ground 6 61. This concerns material relating to B and C. It falls into 2 categories. The first concerns information which again emerged after the trial but in time to be added to the existing grounds of appeal. The second concerns material which emerged during the hearing of the appeal and formed the subject of an application to add a new ground almost

at the end of the hearing. 62. The first complaint concerns the fact that both B and C were interviewed following the conviction of the appellant by professionals. The purpose of the interviews was to provide the court with an assessment of the impact of the offences:- (i) At the time of their commission, (ii) During the period between their commission and disclosure, (iii) At the time of the disclosure until trial, (iv) Following the experience of giving evidence to date. 63. B described suffering from nightmares, panic attacks, and fears of being separated from her mother. C described night terrors, feeling sick and other symptoms resulting from the offences. 64. Both recalled therapeutic input soon after the assaults from the Child and Adolescent Mental Health Service. 65. Complaint is made that the fact of the therapy should have been disclosed so that it could be explored in cross-examination. Once again it is accepted that the Crown were unaware of this until the reports were compiled after the convictions had been recorded. 66. Material which falls for disclosure is material which "tends or may tend in any way to undermine the prosecution case or does or may assist the defence..." HM A-G's Guidelines to Police and Prosecutors 2006 . If anything the fact that the behaviour of an offender has caused the victim to have to seek medical treatment of any kind is more likely to assist the prosecution or undermine the defence rather than the reverse. If of course records of such treatment were to cast doubt on the truth of the allegations they would of course be disclosable. Courts in England and Wales have long set themselves against ordering disclosure of medical records unless the need to do so in the interests of ensuring a fair trial under Article 6 outweighs the right to privacy of the complainant under Article 8 of the European Convention on Human Rights (ECHR) . The material in these reports falls a long way short of satisfying either the requirements for disclosure or of passing the test under the ECHR . While those investigating offences of this kind should be careful to try to elicit whether the complainant did seek treatment of any kind due in part or in whole to the offences he or she alleges

- and it is unfortunate that this appears not to have happened in this case so that the proper procedure for consideration of disclosure could be followed - we see nothing in the material now disclosed by the complainants which causes us to question the safety of the verdicts. 67. The second complaint arose during the hearing of the appeal. It became apparent that both B and C are considering whether to start a civil action against the appellant. By the last day of the appeal enquiries made by the police and counsel had revealed that:- (i) Some months before the trial B met a friend who worked at a well known firm of solicitors in England who said that he or she could help her and to get in touch after the trial. (ii) On 4 th and 5 th December 2012 both B and C gave their evidence at trial. (iii) On 5th December an appointment was made with the firm for both B and C which was kept on 15 th December. (iv) On 16 th January 2013 sentence was passed by the Superior Number. (v) On 1 st February the appellant's legal team was informed that B had been approached by a firm asking if she wished to make a legal claim. 68. The appellant argues in the same way that he argued in respect of the information concerning A:- (i) that, even accepting that the Crown knew nothing of the possible intentions of B and C until after they had left the witness box and therefore had nothing to disclose, the material now revealed means that the Court should

grant leave to appeal upon this new ground; and (ii) that the inability of the defence to cross-examine the sisters on their intentions renders the convictions unsafe, either on its own or cumulatively with the other matters, disclosure of which came too late to be put into evidence during the trial. 69. We grant leave on this ground since it clearly needed to be considered with the others of a like nature. 70. However our decision on this ground is the same as the others. Neither individually nor cumulatively, for the reasons we have already given when rejecting Ground 5 in respect of A, does this new ground cause us to doubt the safety of the convictions which were based on actions which were effectively common ground between the parties. 71. Accordingly we dismiss the appeal against conviction. Sentence 72. Following a hearing before the Superior Number, Commissioner Clyde-Smith presiding, the appellant was sentenced to terms of 30 months' imprisonment on each count concurrent. He now seeks leave to appeal against that sentence. An order was made under Article 5 of the Sex Offenders (Jersey) Law 2010 . Compensation Orders in the sum of £5,000 each were made in respect of B and C and the question of the amount of compensation to be awarded to A was adjourned until a future date. This last remains unresolved pending the determination of this appeal. He was ordered to pay £35,000 towards the cost of the prosecution. None of the ancillary orders are the subject of the application. 73. The prosecution in its Conclusions had submitted that the proper sentence would be one of 54 months' imprisonment. This submission was based on a single sentence passed in a particular case, AG v BR

[2006] JRC 155 , in which the accused, who had pleaded guilty to an offence of indecent assault, received a sentence of 42 months' imprisonment. Allowing for a reduction of one third for plea the starting point in that case was 5 years 3 months. 74. The court was asked to consider a number of other cases of a similar nature committed many years before arrest charge and trial by men on young girls. The sentences passed do no more than show that:- (i) There are no sentencing guidelines of this court for this class of offence. (ii) There remains a wide gap between the most lenient sentences - 2 cases in which the court "exceptionally" passed non-custodial sentences - and the sentence to which we have already referred. Equally there is a wide range of culpability depending on the circumstances of the offending for which sentence is to be passed. (iii) A plea of guilty accompanied by genuine remorse and a willingness to engage with Probation is likely the only way in which such offenders may escape an immediate custodial sentence. (iv) The way in which individual sentences are passed - concurrent or consecutive - is effectively irrelevant. The total sentence is what matters. 75. The appellant submits that the court fell into error when assessing the gravity of the offending overall. In particular:- (i) The sentences on counts 6 and 7 should have been passed on the basis that there were only two offences reflected in each verdict. This submission is based on directions of the Commissioner in summing up to the jury when at Tab 10 page 3 of the summing up he said:- "..... In count 6 the same point arises. The defendant is accused of indecently assaulting B "on various occasions" other than the occasions referred to in count 4. Again for you to convict the defendant on this count you must be sure that he indecently

assaulted B at least two times other than those mentioned in count

4. Finally in count 7 the defendant is accused of indecently assaulting C "on various occasions". Again for you to convict the defendant on this count you must be sure that he indecently assaulted C at least two times." The appellant submits that the sentence must reflect the least culpable basis upon which the jury can have convicted and submits that for the Commissioner to say that the court was entitled to pass sentence on the basis that the appellant had been convicted of "a course of conduct" was wrong. (ii) This court should issue guidance to prosecutors concerning the undesirability of charging single counts "on various occasions" over periods of as long as 4 years. Prosecutors should be encouraged to prefer counts over no more than a 12 month period so that the sentencing court has a better idea of the number of offences and period over which the offences were committed. (iii) The sentence was, and should not have been, aggravated by the fact that the appellant had chosen to contest the case and to make serious allegations against the complainants who were thereby further victimised. The decision to contest the case was partly vindicated by the acquittals on counts 3, 5 and 8. (iv) Insufficient discount was applied to take account of the appellant's long life and his positive good character. Not only was this the first time he had ever been convicted of crime, he had contributed in many ways to the community - including children's charities. (v) In the result the sentence was manifestly excessive by reference to its nearest comparator, namely the case of AG-v-Wateridge

[2009] JRC 184. In that case the offender was almost the same age as this appellant. He had assaulted 3 girls 35 or 40 years earlier. He too was convicted by a jury. He received 21 months' imprisonment. The assaults were of a similar nature. 76. The Crown submits that the sentences are not manifestly excessive. While Crown Advocate Fitz did not seek to maintain her original stance based upon the sentence of the court in the case of BR she submitted that the sentence fell within the proper range of sentence for offences of this kind. 77. She further submitted that the offences represented gross breaches of trust. They were committed against 3 different

- and very young - victims over a period of 7-8 years. There were statements from the victims prepared after the trial which indicated that the offences had and continue to have a serious effect on the well-being of all three girls. There was no mitigation save the defendant's previous good character. Decision 78. This sentence was well within the range of sentences passed hitherto by the courts of the Island. 79. The Court was entitled to sentence the appellant on the basis of the indictment rather than on the minimum basis upon which a conviction could have been recorded. It is wholly impracticable in cases of this kind for the court to do anything other than to make its own finding on the extent of the "course of conduct" represented by an indictment which alleges offending "on various occasions". The evidence of both girls was to the effect that the offences had been committed on regular - or sporadic - occasions. The appellant accepted that he regularly sat them on his knee at the computer. 80. Of course the more specific investigators can be in eliciting information before trial, and the more detail prosecutors can elicit during the trial so that the indictment

left to the jury enables an informed assessment to be made by sentencers following conviction the better. However there will always be cases in which that is impracticable. 81. The impact of the offences upon the victim is now a relevant and often significant consideration for sentencers although of course only one of many. In cases of this kind the impact of the offending includes the experience of giving evidence and reliving the experience. In fact the Commissioner made no such express finding. He simply referred to the Crown's submission to that effect. 82. We have borne in mind the age of the offender and the fact that a sentence of imprisonment is likely to bear hard upon him. Having consulted the authority of *Bhojwani v AG*

[2011] JLR 249 in particular at paragraph 199 we are however unable to say that the sentence was manifestly excessive. The application for leave to appeal is granted but the substantive appeal is dismissed. *Authorities Makin v Attorney General for New South Wales*

[1894] AC 57 . *Boardman v DPP* 1975 AC 421. *R v Court* [1989] 2 AC 28. *R v Wilmot* (1988) 89 Cr. App. R. 341. *R v Wright* (1990) 90 Cr. App. R. 325 *DPP v P* [1991] 2 AC 447. *R v B (RA)* [1997] 2 Cr. App. R. 88. *X v AG*

[1998] JLR 221 . *R v Davis* [2000] All ER (D) 97. *R v Allan*

[2004] EWCA Crim 2236 . *U v AG*

[2012] JCA 085 . *R v H* [1977] CA 101. *AG v A* 2002/030. *AG v Welland*

[2003] JRC 179 . *AG v BR*

[2006] JRC 155 . *AG v Holland*

[2008] JRC 061 . *Michel v R*

[2009] UKPC 41 Privy Council Appeal No 0075 of 2008. *AG-v-Wateridge*

[2009] JRC 184. *Hamilton and Owens v AG*

[2010] JCA 136A . *Bhojwani v AG*

[2011] JLR 249 . Criminal Justice Act 2003. Indictment Rules 1915. Indictment Rules 1972. European Convention on Human Rights. HM A-G's Guidelines to Police and Prosecutors 2006. Sex Offenders (Jersey) Law 2010. Page Last Updated: 03 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2013/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-h-2013-jca-063-21-march-2013>

Prepared on 26 October 2026 · Esheria