

JERSEY / JUDGMENT

Gavin Neil Roberts v The Attorney General

COURT

Court of Appeal

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Leave to appeal conviction for grave and criminal assault, assault, rape, sexual penetration without consent and voyeurism. Leave to appeal sentence of 15 years' imprisonment.

[2025]JCA222

Court of Appeal

11 September 2025

Before :

R. J. MacRae, Esq., Deputy Bailiff;
Jonathan Crow, CVO, KC;
David Perry, KC;
Helen Mountfield, KC, and
The Rt Hon James Wolffe, KC.
Gavin Neil Roberts
-v-
The Attorney General
Appellant representing himself on appeal
against conviction.
Advocate O. A. Blakeley as amicus for
conviction and instructed on sentence.
E. L. Hollywood, Crown Advocate for the
Respondent.

JUDGMENT

PERRY JA:

INTRODUCTION

1. This is the judgment of the Court to which we have all contributed. It arises from applications for leave to appeal against both conviction and sentence and concerns the safety of the Appellant's conviction for six offences following trial by jury, the practice and policy of the Royal Court when sentencing in cases of rape and whether the particular sentence imposed on the Appellant for serious sexual offences was manifestly excessive. The background to the applications is as follows.
2. On 15 February 2024, following a nine

day trial on indictment before Sir Timothy Le Cocq and a jury, the Appellant, Gavin Neil Roberts, was convicted of a total of six offences involving domestic violence, rape and sexual assault. 3. The offences were committed by the Appellant against two different victims, each of whom was a partner of his at the relevant time. Victim 1, Lisa Pugsley, was at the time of the offending the Appellant's wife and the Appellant was convicted of two offences of common assault in respect of her (Counts 7 and 8 of the indictment). Victim 2 was Suzannah Mahe. The Appellant was convicted of committing against her the offences of grave and criminal assault (Count 1 of the indictment), rape (Count 2 of the indictment) and sexual penetration without consent (Counts 3 and 4 of the indictment). In the Royal Court proceedings Ms Mahe waived her right to the anonymity ordinarily available to a victim of sexual abuse. This explains why she can be referred to by name in this judgment. 4. The Appellant had initially pleaded not guilty to these and two other counts on the indictment but on the first morning of the assize trial he entered guilty pleas to these two other offences; both were grave and criminal assaults committed against Ms Mahe (Counts 5 and 6 of the indictment). 5. Of relevance to the sentence appeal and the overall quantum of punishment is the existence of a further indictment involving a separate victim, Victim 3, which contained a total of six offences of voyeurism. These offences came to light after the examination of a portable external hard drive belonging to the Appellant showed that he had videoed consensual sexual activity between himself and Victim 3. Victim 3 had no knowledge of the filming and would not have consented to it. On 16 February 2024, that is following his conviction on the first indictment, the Appellant entered not guilty pleas to all six voyeurism offences and a trial was fixed to take place on 18 June 2024. The Appellant maintained these not guilty pleas until 7 June 2024, when, on re-arraignment, he entered guilty pleas to three of the offences (Counts 1, 4 and 6) and, following consultation with Victim 3, the remaining counts were (properly) discontinued on the ground that further proceedings would not be in the public interest. 6. On 8 November 2024 the Appellant appeared for sentence on all these offences before the Superior Number of the Royal Court (Sir Timothy Le Cocq, Bailiff and nine Jurats). On any view, it was a complicated sentencing exercise involving 11 different offences committed against three separate complainants. Following a lengthy hearing, the Appellant was sentenced to a total of 15 years' imprisonment and made the subject of various ancillary orders.[1] The written reasons for the sentence were provided by the Superior Number, as previously constituted, on 24 March 2025 (AG v Roberts [2025] JRC 081) ('the Sentencing Judgment'). Later in this judgment we explain the individual parts of this sentence. 7. In support of his application for leave to appeal against conviction the Appellant relies on arguments which he himself formulated first in a letter to the Greffier, dated 14 November 2024, and subsequently in 17 pages of closely worded text provided to the Court on 19 June 2025. There is of course no appeal against conviction in respect of the offences to which the Appellant pleaded guilty, that is Counts 5 and 6 of the 8-count indictment (the grave and criminal assaults against Ms Mahe) and Counts 1, 4 and 6 of the voyeurism indictment. These offences were nevertheless relevant to the sentencing exercise and remain relevant to the appeal against sentence. It is also to be noted that the facts giving rise to Counts 5 and 6 were admitted in evidence at the

trial. As such those offences are relevant to some of the issues arising in the conviction appeal, such as whether the jury's verdicts were capable of being supported by a sufficient quantity of probative evidence. 8. At his trial the Appellant had been represented by Advocate David Steenson. Following his conviction the Appellant instructed new counsel, Advocate Olaf Blakeley, to act as his legal representative, and it was Advocate Blakeley who represented him at the sentencing hearing in November 2024 and before us at the hearing of the appeal on 21 July 2025. One of the Appellant's grounds of appeal against conviction is that he was inadequately represented at his trial. In accordance with the usual practice in such a case, the Appellant has waived the privilege that would ordinarily apply to communications that pass between client and lawyer. This has enabled Advocate Steenson, who disputes the complaints, to provide a detailed affidavit to the Court setting out his response to the Appellant's contentions. We address this aspect of the proceedings in more detail below. 9. The application for leave to appeal against sentence is directed at the sentences imposed in respect of the sexual offences committed against Ms Mahe, that is Count 2 (rape), Count 3 (penetration without consent) and Count 4 (sexual penetration without consent). For these offences the Appellant received a total of 11 years' imprisonment. Having acted in person in pursuing his conviction appeal, the Appellant relies on submissions prepared by Advocate Blakeley, dated 20 June 2025, in support of his arguments on sentence.

10. At the hearing of the applications we were greatly assisted by the skilful and economical presentation of their cases by Advocate Blakeley and Crown Advocate Emma Hollywood and we express our thanks to them for their written and oral submissions.
11. Before coming to the numerous issues raised by the Appellant it is necessary to give a brief summary of the facts. THE FACTS
12. The Appellant is a 46-year-old Jersey man with an established history of committing offences of violence against his partners. His criminal record was adduced in evidence as an admitted fact at his trial because of its probative relevance to the prosecution case. It was also relevant to the sentencing exercise. We refer to his previous convictions later in this judgment. Counts 7 and 8
13. Counts 7 and 8 of the trial indictment came first in time. These two offences of violence were committed against Victim 1, Lisa Pugsley, who met the Appellant on an online dating application in 2018. She was then aged 33. They began living together and embarked on a joint business venture. They married in October 2020. There were significant pressures associated with the running of the new business and the Appellant turned to drink. At the trial, Ms Pugsley described seeing a different side to the Appellant's character and she recalled enduring verbal and physical abuse at his hands.
14. Count 7 of the indictment arose from events on 4 September 2021. That evening the Appellant and Ms Pugsley attended a formal dinner. The Appellant had booked a corporate table and invited guests, including a woman with whom he was having an affair. This was

known to Ms Pugsley. The Appellant drank heavily during the evening and became drunk. Later in the evening he had an argument with Ms Pugsley who left the event with the other woman and took a taxi home. Several hours later, the Appellant returned home angry and drunk. He threw accusations at Ms Pugsley and while she was sitting on a sofa the Appellant lashed out at her and put his hands around her throat. Ms Pugsley broke free and went upstairs to the bedroom. The Appellant followed her, angry and shouting. When Ms Pugsley left the bedroom, the Appellant followed her and pulled her back by her shoulder. He then pinned her against a wall and grabbed her by the throat with one hand. The other woman, who was still present at the premises, heard the commotion and came to the bottom of the stairs. She saw what was happening and told the Appellant to let go, which he did.

15. The events giving rise to Count 8 of the indictment occurred sometime between 28 February 2022 and 1 September 2022. Ms Pugsley recalled an occasion during a dinner at home when the Appellant lost his temper and grabbed her neck. Ms Pugsley tried to calm him down but he was drunk and she was ignored. Ms Pugsley said she was going to bed. The Appellant then launched himself at her and pinned her back onto a sofa. He had his bodyweight on her and his hands around her throat. Ms Pugsley managed to escape and out of fear locked herself in her bedroom. She was crying, upset and afraid. The next morning the Appellant behaved as if nothing had happened.
16. Ms Pugsley did not make a complaint to the police at the time of either of the assaults and later felt like a “fool” for not doing so. She had invested all of her finances into the joint business and felt that there was no way out. She subsequently moved out of the matrimonial home and returned to live with her parents. She ultimately brought the relationship to an end when she discovered that the Appellant was having affairs with two other women. She and the Appellant separated in August 2022.
17. Ms Pugsley did eventually report the assaults to the police but only after the Appellant had tried to force her to resume their relationship and sent her threatening and abusive messages. On 9 February 2023, the Appellant was arrested on suspicion of committing the assaults giving rise to Counts 7 and 8. By this time the offences in relation to Victim 2, Ms Mahe, had come to light and the Appellant was consequently under investigation for far more serious offences. When interviewed under caution about these two assaults the Appellant answered ‘no comment’ to the material questions.
18. Ms Pugsley was not examined by a doctor and did not claim that the assaults had left any physical marks. She did however state that the psychological and emotional impact of the offences had been considerable, and an expert concluded that she had suffered severe psychological harm with symptoms of post-traumatic stress disorder. Count 1

19. Victim 2, Ms Mahe, met the Appellant on a dating website in July 2022 (while he was still in a relationship with Ms Pugsley). She was then aged 27. The Appellant purported to be a wealthy man with a lifestyle to match. The Appellant moved into Ms Mahe's flat in September 2022, just after his separation from Ms Pugsley and following the assaults (the subjects of Counts 7 and 8). Ms Mahe was unaware of these events.
20. Count 1 arose from a serious assault that took place at an early stage of the relationship. On 1 October 2022, the Appellant and Ms Mahe went out for dinner and drinks in St Helier. They went on to a nightclub on Bath Street. They left the nightclub at around midnight by which time the Appellant was drunk and increasingly unpleasant. While waiting for a taxi to take them back to Ms Mahe's flat, they sheltered from the rain in a shop doorway. The Appellant became verbally abusive and grabbed Ms Mahe's neck and pinned her against the door of the premises. He spat at her, scratched her neck and continued the verbal abuse. When giving evidence, Ms Mahe described the Appellant squeezing her neck as hard as he could, so much so that she momentarily blacked out. The Appellant also punched her more than twice to the left side of her head. During this violence, Ms Mahe's eyelashes were torn off and her stud earring was broken and pulled from her ear.
21. Police CCTV footage from the vicinity recorded some of the events between the Appellant and Ms Mahe but the view of the assault was obscured. This CCTV footage was played to the jury at the trial.
22. Following the assault, the Appellant left Ms Mahe in the doorway. Ms Mahe made her own way home in a taxi. The Appellant later arrived at her flat and pleaded to be allowed in. Ms Mahe gave in to his pleas because she "felt sorry for him as he had nowhere else to go".
23. Within a few days of the incident, on 7 October 2022, the States of Jersey Police provided Ms Mahe with information about the Appellant's history of domestic abuse. This disclosure was made under the Domestic Violence Disclosure Scheme (also known as Clare's Law). Having received this information Ms Mahe took photographs of the injuries suffered as a result of the earlier assault. These included bruises to her face and scratches to her neck. She did not at that stage make a formal report of the incident to the police. She explained at the trial that this was because "there was a lot going on and he told me he wouldn't do it again".
24. The Appellant was eventually interviewed under caution about this incident on 30 October 2022, that is after other offences had come to light. He answered 'no comment' to all material questions. Counts 2, 3 and 4
25. The sexual offences giving rise to Counts 2, 3 and 4 occurred during a holiday in Turkey. Ms Mahe and the Appellant had travelled there on 10 October 2022 to stay at a 5-star all-inclusive resort.

26. On 15 October 2022, the Appellant spent the day drinking. In the evening, he and Ms Mahe went on an organised group excursion to a local nightclub with representatives from the hotel and other guests. Toward the end of the evening, when the drinks bill came, the Appellant became angry. Ms Mahe became scared. She told the Appellant she needed to use the toilet but in fact left the nightclub because of her fear of what the Appellant might do.
27. Ms Mahe did not go back inside the nightclub, nor did she get on the bus back to the hotel. She heard the Appellant and hotel staff looking for her and saw angry text messages from the Appellant asking her where she was. Ms Mahe spoke to a man outside the nightclub who offered to help and local police officers attended and put her in a taxi to take her back to the resort.
28. When Ms Mahe arrived at the hotel, she was met by the Appellant who was very angry. He walked her through the lobby of the hotel and manhandled her into the hotel lift. The Appellant accused her of sleeping with another man and became abusive. Ms Mahe was crying. The Appellant dragged her out of the lift and into their hotel room.
29. Once in the room the Appellant subjected Ms Mahe to a violent assault. He hit her several times to her face with his fist. He then threw her onto the bed. Ms Mahe sat up and the Appellant pushed her onto the floor. The Appellant stripped her clothing off, ripping her underwear in the process, and poured a bottle of water over her prostrate body.
30. As a result of the commotion, members of hotel staff came to the door of the room and the Appellant opened the door and apologised to them. Ms Mahe was on the floor, naked and crying.
31. Once the hotel staff had gone away, the Appellant returned and put Ms Mahe on the bed. The Appellant used his hands to penetrate her vagina and anus. The Appellant then got on top of her and had vaginal intercourse (Count 2). He also used two sex toys to penetrate her vagina and anus at the same time (Counts 3 and 4). While this was going on, Ms Mahe saw the Appellant holding his phone and believed that he was recording what was taking place. She also recalls him standing over her while masturbating and ejaculating on her while calling her a “dirty cheap whore”.
32. Ms Mahe said that the intercourse and other penetration was painful and that she repeatedly told the Appellant to stop. She did not consent to any sexual activity with the Appellant.
33. The next morning Ms Mahe had bruises on her face, arms and legs. Her neck was tender, and her vagina and anus were sore. The Appellant left the hotel room without speaking to her. When Ms Mahe spoke to the Appellant later that day he sought to persuade her that she had caused the bruises herself. He told her that she had fallen in the lift and bedroom and that this was the explanation for her injuries.

34. The Appellant sent a number of messages to Ms Mahe's friend Arcadia Lockhart claiming that Ms Mahe had gone missing and was "off her face". This caused Ms Lockhart concern and she contacted Ms Mahe who sent her a photograph of a bruise on her chin.
35. On her return to Jersey, Ms Mahe disclosed to Ms Lockhart what had happened in Turkey. Ms Lockhart was called as a prosecution witness at the trial and gave evidence of this complaint.
36. Ms Mahe allowed the Appellant to continue living at her flat but she was fearful of being alone in his company. Count 5
37. On 28 October 2022, the Appellant and Ms Mahe returned to her flat after an evening out. They had both been drinking. The Appellant was drunk and fell asleep at the kitchen table. Ms Mahe decided to go upstairs to bed. She heard the Appellant coming up the stairs and started a recording on her mobile phone. The recording was played to the jury at the trial. It clearly demonstrated the Appellant losing his temper and becoming verbally abusive. In anger, the Appellant broke a glass candle lantern. The Appellant then assaulted Ms Mahe by placing his hands around her neck and strangling her with such force that she was caused to vomit. Shortly afterwards, Ms Mahe made another recording on her mobile phone. This was also played to the jury at the trial. The Appellant referred to his suspicion that during their holiday in Turkey Ms Mahe had had sex with someone else and blamed her for being the cause of his violence.
38. The following day Ms Mahe told Ms Lockhart that she had been assaulted. As a result of this disclosure, Ms Lockhart made an anonymous online report to the police. Count 6
39. The final assault took place at around 11.30pm on 29 October 2022. Ms Mahe was asleep in bed when the Appellant burst into the bedroom and proceeded to assault her. He put his hands around her neck, grabbed her wrists and punched her face using her own hands. He also punched her using his fists. The assault progressed into various parts of Ms Mahe's flat. She eventually managed to escape from the premises and spoke to a neighbour, Anthony Fitzmaurice. It was now about 1:15am. Ms Mahe told Mr Fitzmaurice that she had been assaulted by her boyfriend. She was upset, shaken and distraught. At approximately 1:40am Ms Mahe sent pictures of her injuries to Ms Lockhart and told her that she had again been assaulted by the Appellant. Ms Lockhart reported the incident to the police.
40. Police officers arrived at the flat at around 4:10am. They spoke to Ms Mahe who at that stage said very little. The Appellant was arrested in an upstairs bedroom. Following his arrest and removal from the premises, Ms Mahe was more forthcoming and told the officers "He literally tried to kill me, he strangles me to the point where it goes black".
41. Following his arrest the Appellant was interviewed under caution and initially answered 'no comment' to the material questions. When the recordings made by Ms Mahe were played to him, he stated that on 28 October he and Ms Mahe had argued and that the smashing of the lantern was accidental. He stated that Ms Mahe had been violent to him and that, acting in

self-defence, he had pushed her back with an open palm. He stated that on 29 October the couple had another argument but he denied assaulting Ms Mahe or threatening to kill her. He accepted causing an injury to Ms Mahe's left eye, by a push, not a punch, but denied causing any of her other injuries.

42. On 30 October 2022, Ms Mahe was seen by a doctor. She displayed injuries consistent with the events she described. She was further examined on 4 November 2022. She had a sore throat and a hoarse voice consistent with internal trauma following repeated non-fatal strangulation. As a result of the offences she had suffered severe psychological harm with post-traumatic stress disorder and a perceived risk of psychological difficulties in the future.
- THE DEFENCE CASE AT TRIAL

43. The defence case at trial was that the allegations made by Ms Pugsley and Ms Mahe were untrue (that is, apart from Counts 5 and 6, to which the Appellant had belatedly pleaded guilty). The Appellant accepted having arguments with Ms Mahe but denied violence. He denied rape and stated (when questioned about his history of domestic violence) that he had put his anger issues behind him. He was unable to explain Ms Mahe's injuries, contemporaneous messages in which she challenged him about what he had done, or the disclosures she had made to her friend Ms Lockhart.

44. The Appellant did not advance a case of collusion between the complainants and the fact that the two women were making similar allegations against him was a matter of mere coincidence, at least on his case.
- THE VERDICT

45. As we have noted, the jury unanimously rejected the Appellant's evidence and found him guilty on the six counts: Counts 1, 2, 3, 4, 7 and 8. Following his conviction, the sentencing on all eight counts (including Counts 5 and 6 to which he had earlier pleaded guilty) was adjourned to a later date.
- THE VOYEURISM INDICTMENT

46. As we have noted, the voyeurism indictment is relevant only to the sentencing appeal. We can deal with the facts quite shortly. The Appellant and Victim 3 met through an online dating site in October 2019. The Appellant claimed to be a single man working as an accountant who managed hedge funds with offices in Jersey and London. Victim 3, who lived in London, considered the Appellant to be her boyfriend. The relationship lasted approximately four months. In fact throughout this period the Appellant was involved in a relationship and living with Ms Pugsley.

47. As part of an investigation into unrelated offences, a hard drive belonging to the Appellant was seized by the police and in March 2022 six videos were identified showing the Appellant and Victim 3 involved in sexual activity. Victim 3 had no knowledge that she had been filmed engaging in sexual relations with the Appellant. Had the Appellant sought her permission, she would not have consented.

48. In early 2020, Victim 3 discovered that the Appellant was in a relationship with Ms Pugsley. She confronted him and he said that he and Ms Pugsley were just friends. The relationship between the Appellant and Victim 3 thereafter became sporadic. The Appellant contacted Victim 3 in winter 2020 after his wedding (which had taken place in October 2020). In October 2022 the Appellant contacted Victim 3 and said he was getting divorced and that he was on holiday in Turkey with his children. This was when he was in Turkey with Ms Mahe.
49. The Appellant was arrested on suspicion of voyeurism on 5 April 2023. When he was interviewed under caution, he answered 'no comment' to all material questions. When asked if he wished to make any comment in relation to a statement made by Victim 3, he claimed that she was a sex worker whom he had met online. He stated that she had consented to the videos being recorded and that he had paid her to do so. His later plea of guilty shows that he knew these assertions to be untrue.
50. The three videos the subjects of Counts 1, 4 and 6 to which the Appellant pleaded guilty contained images of highly intimate sexual activity. They were recorded at hotels. THE APPELLANT'S CHARACTER
51. At the time of the trial the Appellant had a number of previous convictions, the most relevant of which were included in the formally admitted facts which were reduced into writing and placed before the jury.
52. In July 2011 he pleaded guilty to three counts of common assault committed against his then wife and was made the subject of a community sentence and probation order.
53. In February 2014 he appeared before the Royal Court to be sentenced for 38 counts of fraudulent conversion. The offences involved an abuse of his position as the treasurer of an association and the misappropriation of the association's funds for his own use. The offending took place over a period in excess of two years and involved the Appellant's concealment of his frauds by lies and other means. He was sentenced to a total of 33 months' imprisonment.
54. In June 2016 the Appellant appeared before the Magistrates' Court to be sentenced for an offence of common assault committed against his then partner. The Appellant attended a wedding reception uninvited and drunk. He grabbed his partner around the neck and held her against a wall until others intervened. He was sentenced to a probation order for 9 months and a community service order for 90 hours with 3 months' imprisonment in default.
55. In March 2017 the Appellant appeared before the Royal Court to be sentenced for an offence of grave and criminal assault and an offence of common assault. Both assaults were domestic in nature. The victim of the common assault was his former wife (not Ms Pugsley), who was held in a headlock during an argument. The victim of the grave and criminal assault was the Appellant's then partner. During the course of an argument at the Appellant's address the Appellant struck his partner once to the face with an open palm and poured

coconut water over her. He also grabbed her neck and ripped her jacket. For these offences (together with an associated offence of resisting arrest) he was sentenced to a total of 21 months' imprisonment.

56. In a pre-sentence report prepared for the purposes of the sentencing hearing in the present case, the author concluded that the Appellant presents a high risk of serious harm to women and in particular females with whom he is involved intimately. His willingness to use violence to meet his own ends within a domestic context, as evidenced by his longstanding history of domestic abuse, was described as deeply entrenched and a matter of great concern. THE SENTENCE
57. As we have observed, the Appellant was sentenced by the Superior Number to a total of 15 years' imprisonment. The sentence appeal is directed at the sentences imposed in respect of the sexual offences committed against Ms Mahe, namely Count 2 (rape), Count 3 (sexual penetration without consent), and Count 4 (sexual penetration without consent). The Appellant was sentenced to 11 years for the rape offence and 7 years concurrent for each of the sexual penetration offences, making a total of 11 years' imprisonment.
58. The sentences for the other offences were as follows: (i) Count 1 (the grave and criminal assault against Ms Mahe): 18 months' imprisonment to run concurrently with Counts 5 and 6; (ii) Counts 5 and 6 (the grave and criminal assaults against Ms Mahe): 2 years' imprisonment to run concurrently with Count 1 but consecutively to Count 2 (rape); (iii) Counts 7 and 8 (the common assaults against Ms Pugsley): 9 and 12 months' imprisonment respectively to run concurrently to each other but consecutively to Count 2 (rape).
59. On the voyeurism indictment the Appellant was sentenced to concurrent sentences of 12 months' imprisonment on each of the three counts (Counts 1, 4 and 6) but consecutive to Count 2 (rape on the other indictment). THE APPEAL AGAINST CONVICTION
60. Having set out some of the background, we can now introduce the Appellant's complaints directed at the trial. The Appellant has drafted extensive grounds of appeal alleging a number of errors and irregularities in the process leading to his conviction. Crown Advocate Hollywood helpfully grouped the arguments raised by the Appellant into the following seven categories: (i) Certain miscellaneous issues arising from the decision to charge the Appellant; (ii) Failures on the part of the States of Jersey Police properly to investigate the allegations made against the Appellant by Ms Pugsley and Ms Mahe; (iii) The absence of evidence/potential witnesses supportive of the Appellant's case; (iv) The wrongful admission of evidence;
- (v) Errors on the part of the trial judge; (vi) Inadequate representation by trial counsel; (vii) The absence of sufficient evidence to support the jury's verdict.

61. Before addressing each of these points we must consider whether the Appellant has brought his appeal within the time limit provided for appeals against conviction, and, if not, whether we should grant him leave to appeal out of time. LEAVE TO APPEAL AGAINST CONVICTION OUT OF TIME
62. The Appellant's notice of appeal against conviction was filed with the Court on 6 November 2024, just under nine months since his conviction, and two days before he came to be sentenced.
63. In this case any notice of appeal against conviction should have been filed by 14 March 2024. [2] It follows that the Appellant's appeal notice is almost eight months out of time. In his application for an extension of time the Appellant claims that at no time was he advised of the time limit by his lawyers. This claim is at odds with Advocate Steenson's affidavit in which he says: "The idea that Mr Roberts did not know that there was a time limit for his appeal of 28 days is not accepted... I spoke with Mr Roberts immediately after his conviction... I advised him that I could see no sensible grounds for appealing... Specifically, I recall advising him that an appeal would have to be lodged within 28 days but that I saw no merits in it."
64. Advocate Steenson's account is supported by the contemporaneous documentation, produced as exhibits to his affidavit. A letter sent by Advocate Steenson to the Appellant, dated 15 February 2024 but dictated on 14 February 2024, addressed the merits of an appeal. There was a further letter dated 4 March 2024 which also addressed the merits of an appeal. While there is no specific reference to the time limit in either letter, we note that Advocate Steenson is a highly experienced lawyer who would have been aware of the statutory time limit as well as the need to advise the Appellant of its existence. In a subsequent letter dated 23 September 2024, Advocate Steenson responded promptly to a letter from the Appellant in relation to a possible appeal: "The reason for doing so is that you are massively out of time in respect of an appeal against conviction. It needs to be brought within 28 days of conviction and you would now need to seek leave to appeal out of time and I am unaware of any particular good reason for the delay."
65. The Appellant (who disputes receiving the letters of 4 March 2024 and 23 September 2024) issued his notice of appeal six weeks after the date of the September letter.
66. When considering whether to exercise the discretion under Article 32(3) of the Court of Appeal (Jersey) Law 1961 ("the 1961 Law") to extend the time limit for bringing an appeal, the Court will always be astute to avoid injustice and will ordinarily consider the length of the delay, the reasons for not appealing in time and the merits of the proposed appeal: see, for example, *Da Silva v Attorney General* [2021] JRC 028 at paragraphs [9]-[10].
67. In this case we accept the evidence given by Advocate Steenson and reject the reasons given by the Appellant to justify the delay. We are satisfied that at the conclusion of the trial the Appellant was properly advised of the time limit, and the eight month delay in filing his notice of appeal is both inexcusable and a matter for which he is solely to blame. On this

basis we are disposed to refuse his application for an extension of time. We are also mindful that the final conclusion of these proceedings is desirable, not only in the public interest but also in the interest of all those involved in the case, not least the complainants. However, before reaching a final decision on this issue we consider it right to assess the potential merits of the proposed appeal and whether there is any realistic prospect of setting aside the jury's verdicts. We address the substance of the Appellant's arguments after explaining our function as an appeal court. TEST ON APPEAL

68. The limited basis on which the Court of Appeal may review criminal convictions is set out in Article 26(1) of the 1961 Law. Article 26(1) empowers the Court of Appeal to allow an appeal against conviction if it thinks that: "the verdict should be set aside on the ground that it is unreasonable, or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that, on any ground, there was a miscarriage of justice..."
69. The form of appellate jurisdiction which exists in criminal appeals in Jersey was described by Lord Hoffmann, giving the reasons of the Judicial Committee of the Privy Council in *Edmond-O'Brien*
- [2006] JSC 133, as a "limited appeal which precludes the court from reviewing the evidence and making its own valuation thereof...". The important point to emerge from Lord Hoffmann's analysis is that the appellate court must take care not to usurp the functions of the jury whose constitutional role it is to act as the fact-finding tribunal. This is relevant to the present appeal because the Appellant's trial was quintessentially a case about disputed facts. The jury saw and heard the witnesses (including the Appellant) giving their evidence. It was for the jury to decide whether Ms Pugsley and Ms Mahe were credible witnesses and whether based on their evidence the prosecution had proved its case beyond reasonable doubt. It is obvious from the verdicts that the jury were sure of guilt and disbelieved the evidence given by the Appellant. Subject to any errors of law or unfairness in the trial process, the jury's verdict is entitled to stand. It is our role to decide if there was any such error or unfairness and, with that in mind, we now turn to address the Appellant's particular grounds of appeal. THE GROUNDS OF APPEAL The Threshold for Prosecution
70. In his letter to the Greffier dated 14 November 2024 (see para 7 above), the Appellant states: "My understanding is that I was charged after the threshold for rape charges had been lowered... I believe the Police waited on purpose for the threshold to [be] lowered before charging me."

71. In his more detailed written contentions the Appellant makes the point that in October 2022 he was interviewed about the rape and sexual assault in Turkey but he was only charged with those offences some eight months later, in June 2023, and only after he had been charged with the other offences in relation to Ms Mahe and Ms Pugsley. He claims that the delay was a device to take advantage of a change in charging practice.
72. The Appellant's arguments in this respect are incorrect. The evidential test for bringing charges for sexual offences, or any offences, is set out in the Code on the Decision to Prosecute, issued by the Attorney General in 2016 and which remains in force to this day. Under the Code, the prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. This is an objective test; "it means that the Magistrate, a jury or bench of Jurats properly directed in accordance with the law is more likely than not to convict the defendant of the charge alleged".
73. The Code test was satisfied by the evidence in the Appellant's case and powerful support for this conclusion is provided by the jury's verdicts. The jury were directed by the Bailiff that the burden of proof rested with the prosecution and that the prosecution was required to prove all the necessary ingredients of the offences beyond any reasonable doubt before it would be right to convict. There was, unsurprisingly, no submission of no case to answer. The evidence of guilt was particularly compelling, coming as it did from two separate complainants whose evidence was mutually supportive. Their evidence was reinforced by the other evidence in the case which was explored before the jury in great detail. The strength of the case and the weight of the evidence is a complete answer to the Appellant's contention that there was no proper basis for him to be charged and we see no substance in this aspect of his complaint.
74. In a related point, the Appellant complains that his lawyers failed to challenge by way of judicial review the prosecution decision to charge. There is no merit in this complaint. Save in certain exceptional circumstances, not present in this case, judicial review is not available to challenge decisions to prosecute. The charges against the Appellant were properly brought and there was no legal basis for any challenge separate from the challenges that arise in the ordinary course of a criminal trial process or on appeal. It was open to the Appellant to argue that there was no case to answer but, as we have noted, no such argument was advanced at the trial, and rightly so. Clearly there was a case to answer and the jury, as they were entitled to do, found the evidence to be compelling. The Failure Properly to Investigate
75. The Appellant is critical of the States of Jersey Police's investigation which he characterises as negligent and biased. He claims that the failure properly to investigate his case caused the trial to be unfair and has led to a miscarriage of justice. It is his belief that had the investigation been carried out with reasonable skill and diligence evidence would have been found that supported his case. The specific areas of failure on the part of the police are alleged to be: (i) The failure to obtain any CCTV footage from the shop doorway where the grave and criminal assault against Ms Mahe had taken place (Count 1); (ii) The failure to

obtain any CCTV footage from any of the nearby properties or businesses in respect of the same incident (Count 1); (iii) The failure to appeal for witnesses who may have been in the vicinity of the grave and criminal assault committed against Ms Mahe (Count 1); (iv) The failure to obtain a statement from the taxi driver who drove Ms Mahe to her home following the grave and criminal assault (Count 1);

- (v) The failure to obtain statements from witnesses who were present at the Clare's Law disclosure meeting and who would have been in a position to give evidence of any visible injuries to Ms Mahe (Count 1); (vi) The failure to travel to Turkey and obtain evidence from staff at the hotel or the nightclub (Counts 2, 3 and 4); (vii) The failure to obtain WhatsApp/text messages or phone records of calls between Ms Mahe and the hotel representative and others in relation to the events in Turkey (Counts 2, 3 and 4); (viii) The failure to obtain material that would have supported a case that Ms Mahe was trying to blackmail the Appellant (a point alleged to be relevant to Ms Mahe's credibility as a witness); (ix) The failure to obtain a statement from a female family support officer who could have confirmed that she had seen no bruising on Ms Mahe or received any complaint of violence or rape;
 - (x) The failure to obtain a statement from a social worker who had seen Ms Mahe in the period following the assaults and after her return from Turkey; (xi) The failure properly to investigate communications between Ms Mahe and friends such as Ms Lockhart and Andy Santos (a person who had been spoken to by the police but who had declined to make a statement).
76. We begin our consideration of the Appellant's complaints by reference to the core responsibility of the States of Jersey Police which is to protect the public by detecting and preventing crime. The power to investigate crime is not only part of the customary law; it is supported by various legislative powers and codes of practice. These powers and codes provide a framework for the collection of evidence of the type necessary to identify suspects and support their fair and effective prosecution. Among the many legislative provisions in this area, we note the Criminal Procedure (Jersey) Law 2018 ("the 2018 Law"). Article 2 of Part 2 of the 2018 Law makes explicit that the overriding objective of the criminal process is to ensure that criminal cases are dealt with justly. This includes dealing fairly with both the prosecution and the defence and dealing with the case efficiently and expeditiously. The 2018 Law exists alongside the Attorney General's Guidance 6/2019 for investigators, prosecutors and defence practitioners. The Guidance provides practical as well as legal guidance relating to the active management of cases in furtherance of the overriding objective. The Guidance makes clear (at paragraph 18) that a fair investigation involves the pursuit of material following all reasonable lines of inquiry. It goes on to state: "What is "reasonable" will depend on the context of the case. A fair investigation does not mean an endless investigation: investigators and disclosure officers must give thought to defining, and thereby limiting, the scope of their investigations, seeking guidance from the prosecutor where appropriate."

77. In response to the Appellant's complaints, Crown Advocate Hollywood submits that all reasonable lines of enquiry were followed and that any perceived failings on the part of the investigators were raised at the trial by Advocate Steenson and were, by implication, rejected by the jury. Advocate Steenson had placed positive reliance on the absence of certain evidence in his submissions to the jury that the evidential picture was incomplete and that it would be accordingly unsafe to convict.
78. Crown Advocate Hollywood drew our attention to three matters in particular in support of her submission: (i) The lengthy non-sensitive unused material schedule which contained at least 100 items and gave some indication of the extensive nature of the investigation; (ii) The detailed cross-examination of Detective Constable Carla Garnier, who was the officer in the case, on the alleged gaps in the investigation; (iii) Advocate Steenson's closing speech to the jury in which he criticised the rigour and thoroughness of the investigators.
79. It seems to us that a partial answer to the Appellant's criticisms is to be found in the affidavit of Advocate Steenson, who notes that the evidence against the Appellant included photographs produced by Ms Mahe of the injuries she suffered as a result of the assault in the shop doorway (Count 1). These "extremely damaging" photographs were taken by Ms Mahe on 7 October 2022, one week after the incident. Advocate Steenson goes on to note: "There was no prosecution statement from the driver of the taxi who picked up Ms Mahe, as Mr Roberts indicates, but Mr Roberts gave no instructions to the effect that he should be traced and called as a defence witness. That was hardly surprising as it was likely that he would at the very least have witnessed Ms Mahe in a distressed state because, even though Mr Roberts maintained that there was no physical altercation, they had parted on bad terms. Moreover, Mr Roberts' instructions in relation to the charge, and others, were not always entirely consistent."
80. In relation to the sexual offences committed in Turkey (Counts 2, 3 and 4), informal enquiries were directed to the hotel but information was not forthcoming and no formal letter of request was submitted to the Turkish authorities. Advocate Steenson notes "it is not for the Defence to dictate to the Prosecution/Police how to conduct investigations", and goes on to state: "We had a number of photographs of the holiday and some were put to Ms Mahe. The point is that there are photographs demonstrating that Ms Mahe appeared, in such photographs, to be enjoying the holiday. That point was put to her repeatedly in cross-examination. ... There was no dispute that the hotel representative tried to call Ms Mahe at the time she disappeared. There was no dispute that she went missing. Ms Mahe accepted this. ... Ms Roberts mentioned the idea that Ms Mahe was trying to blackmail him but his instructions, despite repeated requests, remained unclear and unfocused. In any event, Mr Roberts' case was that the sexual offences alleged in Turkey simply did not happen. It is not, therefore clear over what Ms Mahe would have been blackmailing him."
81. As a general observation we further note that the Appellant's submissions proceed on the implied premise that further investigative steps or additional witnesses would have yielded material that would have been of assistance to his case. This is no more than speculation on

his part and is in all likelihood misplaced. We are satisfied that the States of Jersey Police conducted a fair and effective investigation within appropriate parameters, consistent with the overriding objective and the Attorney General's Guidance. On analysis, the case boiled down to a clash of testimony, with Ms Pugsley and Ms Mahe on the one hand and the Appellant on the other. It is not unusual for criminal cases to proceed on this basis. The material generated by the investigation was either served as used material or included on the detailed schedule of unused material. Any material which met the disclosure test was disclosed. The disclosure process was overseen and reviewed by Crown Advocate Maletroit, who had conduct of the case on behalf of the Attorney General. To the extent that evidence was unavailable or that there were 'holes' in the prosecution case, this provided Advocate Steenson with the platform for comment in his closing speech to the jury. The jury were clearly in no doubt that they had a sufficiently clear picture of the events to reach unanimous verdicts.

82. Having read the verbatim record of the trial, we are satisfied that the facts were exhaustively explored over a period of nine days. We see no possible prejudice or unfairness arising from the conduct of the investigation and we are fortified in our view by the fact that Advocate Steenson's original advice to the Appellant was that there was no basis for any appeal. The Appellant's complaints in relation to the police investigation are without substance. Wrongly Admitted Evidence
83. The Appellant contends that certain pieces of information were wrongly admitted as evidence at the trial and that this has led to a miscarriage of justice. We identify the evidence, the Appellant's arguments and our response to them in the following parts of this judgment. The Clare's Law Disclosure
84. As we have noted, a week after the first grave and criminal assault (Count 1), a Clare's Law disclosure (formally known as a Domestic Violence Disclosure) was issued to Ms Mahe by the States of Jersey Police. This disclosure was made on the basis of the Appellant's past history of domestic violence and prompted Ms Mahe to take photographs of the injuries she had suffered as a result of the assault.
85. At trial, the Crown Advocate did not initially seek to rely on the Clare's Law disclosure and it did not form part of the 'bad character' evidence which had earlier been ruled admissible and formed part of the admitted facts. The first reference to the Clare's Law disclosure was volunteered by Ms Mahe, who made a passing reference to it in the course of her evidence-in-chief. The matter was later raised by the parties in the absence of the jury. At that stage the Bailiff did not consider that any explanation of the disclosure was required (correctly, in our view). Further references to the Clare's Law disclosure followed in cross-examination of Ms Mahe and Advocate Steenson clarified the position with his own explanation to the jury: "Clare's Law is just when the police tell you that someone you are seeing had had previous incidents of domestic violence." The issue was addressed again in the absence of the jury and it was suggested by the Bailiff and agreed by the advocates that the matter would be dealt with by way of a written admission. This agreement led to an admission, signed by

both advocates on 12 February 2024, in the following terms: “On 7 October 2022, a police officer accompanied by an Independent Domestic Violence Advisor (IDVA) served a public information disclosure document on Ms Mahe (sometimes referred to as a Clare’s Law disclosure).”

86. The Appellant’s complaint is that the admission was incomplete and gave a misleading impression of what had taken place. The Appellant submits that the police officer and Independent Domestic Violence Advisor who attended the meeting should have been called to give evidence in person as they would have been in a position to explain whether or not Ms Mahe had any visible signs of injury.
87. In our view there is no merit in the Appellant’s argument. The evidence concerning the Clare’s Law disclosure was one of the less significant features of the case, at least in terms of the issues the jury had to decide. This is why it only really emerged as a point once it was volunteered by Ms Mahe. The Appellant’s suggestion that the witnesses, if called, would have provided evidence in support of his case is entirely speculative. The photographs taken by Ms Mahe after the visit provided the best evidence of her appearance at the time of the disclosure. There was in any event ample evidence to support Ms Mahe’s account of events, not least the violent assaults at the end of October 2022, when some of the Appellant’s conduct was captured on the recordings made by Ms Mahe. The jury were aware of the Appellant’s criminal record and of his guilty pleas to Counts 5 and 6 of the indictment. Once Ms Mahe had volunteered the evidence concerning the disclosure, it was not prejudicial for the jury to be provided with an explanation of what it involved. We are not surprised that Advocate Steenson agreed that the matter could be dealt with by way of an admitted fact. This ensured that the disclosure was not given a prominence it did not deserve and that the jury were not distracted by an event that was peripheral to the actual assaults.
88. In our view the matter was dealt with appropriately at the trial and we see no merit in the Appellant’s complaint. The Photographs of Ms Mahe’s Injuries
89. The Appellant submits that the trial judge was wrong to admit into evidence photographs of Ms Mahe’s injuries taken on 7 October 2022.
90. The relevant background to the complaint is as follows. In the course of the police investigation Ms Mahe provided a witness statement in which she made clear that she had taken photographs of her injuries after receiving the Clare’s Law disclosure. She provided two photographs to the investigating police officers. By oversight, the photographs were not formally exhibited to her witness statement and were instead included as items listed on the schedule of unused material, described as “Tagged extraction report from the complainant’s mobile device”. Prior to the trial both the Crown Advocate and Advocate Steenson made enquiries of the States of Jersey Police as to the existence of the photographs. At that stage, Detective Constable Garnier was unable to locate the photographs. In the belief that the photographs were unavailable, the Crown Advocate did not seek to adduce from Ms Mahe during her evidence-in-chief that she had photographed the injuries in question (the injuries

suffered as a result of the grave and criminal assault giving rise to Count 1). Advocate Steenson, knowing that Ms Mahe claimed that she had taken photographs of the injuries, made the decision to question her about the photographs. This was a tactical decision taken in the belief that the photographs could not be located. Having confirmed that she had taken photographs of her injuries, Ms Mahe was asked if she would be upset to discover that the police had lost the photographs, and she affirmed that she would be. Following this exchange, further efforts were made by the Crown Advocate to locate the photographs and as a result two relevant images on the phone download, taken on 7 October 2022 and showing Ms Mahe with physical injuries to her neck, came to light. These photographs were supportive of Ms Mahe's evidence.

91. Not surprisingly, the prosecution applied to adduce the photographs as relevant evidence. Advocate Steenson objected on the basis that it would be unfairly prejudicial to admit the photographs and the prosecution should be forced to proceed on the basis of its own mistake. The Bailiff gave an initial formal ruling in favour of the prosecution. This was followed with a reasoned decision dated 7 March 2024. The Bailiff's essential conclusions were as follows: "It was clearly the case that the complainant had taken photographs of the injuries approximately one week after the event. Although the defence had not seen those pictures, nor indeed had the Crown Advocate. It was not suggested to her that she was lying and that such photographs did not exist. The most that the questioning could have given rise to was a submission on the part of the defence that there was simply no photographic evidence there before the court. The issue of photographic evidence being raised, however, and the photographs being identified after the event, it would to my mind be entirely wrong to withhold that evidence from the jury. The risk would arise that the jury would be left with an entirely incorrect impression and potentially concerned about the fact that no photographs had in fact been taken when the complainant asserted that she had. It is clear that if the photographs had been known to the Crown Advocate they would have been deployed in the Crown's case and, as with the other photographic evidence that went before the jury, they were clearly both relevant and admissible. They were also of not insignificant probative value. This was clearly an error on the part of the prosecution (in its wider sense) and it was necessary for me to consider fairness both to the defence and to the complainant, and indeed to the jury. In my view there was no real prejudice to the defence in this case and it was therefore entirely appropriate that the photographic evidence went before the jury. I offered to give a direction to the jury explaining that the defence questioning on the basis that there were no such pictures should not be held against the defendant and the ignorance of the existence of the pictures was no fault of either the defendant or counsel for the defence. In the event, defence counsel did not wish for such a direction to be given. In those circumstances, I allowed the pictures to go before the jury."
92. In our view the Bailiff's decision was correct for the reasons he gave. It is not necessary for us to add more and suffice it to say we see no merit in the Appellant's arguments to the contrary. We are fortified in our view by the comments expressed by Advocate Steenson in his letter to the Appellant dated 15 February 2024. In that letter, Advocate Steenson noted

that the Bailiff had permitted the photographs to be admitted into evidence on the basis that it was in the interests of justice to do so. This is what Advocate Steenson had predicted would happen and he advised the Appellant that “no appeal points lie”. In his letter, Advocate Steenson makes clear that he “touted the possibility of pursuing an application to discharge the jury” but concluded that “such an application would have been unsuccessful because the learned Bailiff had already determined that it was in the interests of justice to admit the photographs”. This seems to us to be an accurate and sensible assessment. The Admission of the Sex Toys

93. The Appellant submits that the trial was unfair because of the great prejudice caused by the admission into evidence of two sex toys (used to commit the offences the subjects of Counts 3 and 4). His complaint is encapsulated in the following extract of his written submissions: “... the 2 sex toys were produced in court during the trial in front of the Jury, when it had been agreed in the pre-trial by the Judge that only photos could be produced. The 2 toys were produced last thing on a Friday and left the Jury thinking about them all weekend. The trial judge permitted them as they were produced so quickly and the Jury had unfortunately seen them before a legal argument could be had. This caused great prejudice... The trial judge was wrong in law to allow the 2 sex toys in.”
94. By way of response, the Respondent submits that there was no agreement that the sex toys would not be produced in evidence and nor was there any ruling to that effect by the judge; the two sex toys were exhibits in the case; they had been used to commit the sexual penetration offences (Counts 3 and 4 of the indictment), and there was no unfair prejudice to the Appellant in producing them as exhibits.
95. We have no hesitation in rejecting the Appellant’s complaint and note that there is a complete answer to it in Advocate Steenson’s affidavit: “I had understood that the Prosecution was simply going to rely upon photographs of the sex toys. I may have misunderstood or Advocate Maletroit may have changed his mind but, in any event, there would have been no proper basis for seeking to prevent the production of the sex toys.”
96. We agree. The jury were entitled to have the physical exhibits produced for their consideration. They had probative value and the Appellant’s complaint is really directed to the support the exhibits provided to the prosecution case. This was the very purpose for which they were produced. The Appellant’s complaint is without merit. The Evidence of Ms Lockhart
97. The Appellant submits that the trial judge’s decision to permit Ms Lockhart to give hearsay evidence of her discussions with Ms Mahe was wrong in law.
98. The context for the Appellant’s complaint is as follows. Ms Lockhart was a close friend of Ms Mahe and they were in contact on a daily basis. Ms Mahe had sent Ms Lockhart messages during the holiday in Turkey but had not, at that stage, told her about the violence or sexual abuse. Following her return from Turkey Ms Mahe told Ms Lockhart that she had been assaulted and sexually abused. Ms Mahe also sent messages to Ms Lockhart on 29 October

2022 complaining of an assault by the Appellant (Counts 5 and 6). This prompted Ms Lockhart to make an online crime report of violence via the Crimestoppers website on 29 October 2022. This report included details of what Ms Lockhart had been told by Ms Mahe about events in Turkey and also in Jersey. The prosecution applied to adduce this evidence under the relevant provisions of the Police Procedure and Criminal Evidence (Jersey) Law 2003. The Bailiff granted the prosecution application in advance of the trial on 27 November 2023. The probative value of these contemporaneous communications was that they were consistent with Ms Mahe's account of events and provided support for her credibility and this was how the Bailiff directed the jury to approach the evidence.

99. This aspect of the case is also addressed by Advocate Steenson in his affidavit. He states: "The evidence given by Miss Lockhart was admissible and I do not recall any specific instructions from Mr Roberts to challenge her evidence at any stage."
100. We see no basis to disagree with the views expressed by Advocate Steenson. The evidence was plainly relevant, and the Bailiff was right to conclude that it was admissible. Having been admitted, the jury were properly directed in relation to it. There is no merit in the Appellant's argument to the contrary. The Recordings in Connection with Counts 5 and 6
101. As we have noted, having initially pleaded not guilty to all eight counts on the trial indictment, the Appellant pleaded guilty to Counts 5 and 6 (two grave and criminal assaults on Ms Mahe) on the first morning of the trial. The Appellant now complains that the jury were informed of these guilty pleas and that the recordings made at the time of these assaults were wrongly admitted in evidence. He further submits that the trial judge erred by admitting into evidence the video of the Appellant's arrest on 30 October 2022. This latter complaint is advanced on the basis that the video had no proper connection to the issues in the trial.
102. The context for the Appellant's complaints is as follows. Ms Mahe agreed to provide the police with her mobile phone for evidential purposes. It was made available to the investigating officers at approximately 2:50pm on 30 October 2022. Two video files, designated as Recording A and Recording B, were recovered from the phone. Ms Mahe had made the recordings because she was afraid that something violent was going to happen (as indeed it did). Recording A was created at 12:31am on 29 October 2022, shortly before the grave and criminal assault giving rise to Count 5. At the trial, the recording was produced as an exhibit and an agreed transcript of the recording was included in the jury bundle. Recording B was created on the device at 1:02am on 29 October 2022, a short time after the grave and criminal assault giving rise to Count 6. This recording was also produced as an exhibit at the trial and, as in the case of Recording A, an agreed transcript of the recording was included in the jury bundle. The recordings provided the best evidence of the nature of the relationship between the Appellant and Ms Mahe and the events surrounding the serious violence that occurred at the end of October 2022. During the recordings the Appellant accused Ms Mahe of having sex with another man while they were on holiday in Turkey. This was obviously a reference to the night she had gone missing and was the same night on

which the rape, sexual penetration and violent assault had taken place. On the recordings the Appellant is argumentative, verbally abusive and there is the sound of damage being caused to property. Importantly, Ms Mahe accuses the Appellant of being violent towards her for a number of weeks and of raping her in Turkey, which he denies. At the end of Recording B, Ms Mahe declined the Appellant's request to give him a hug because "You just smacked me in the face and strangled me". The Appellant's recorded response was to say "You're just being a fucking dick".

103. The recording of the Appellant's arrest arose in the following way. At approximately 4:10am on 30 October 2022, police officers attended at Ms Mahe's address. This followed text messages sent by Ms Lockhart who was concerned for Ms Mahe's safety. The officers observed that Ms Mahe had visible injuries to her face and neck. When asked what had happened, Ms Mahe was initially reluctant to provide an account. The Appellant was found by the officers in an upstairs bedroom. He was arrested on suspicion of assault at 4:32am and taken to Police Headquarters. The arresting officer was wearing a body-worn camera and an agreed extract of the footage recorded by the camera was produced as an exhibit. An agreed transcript of the footage appeared in the jury bundle. We have been provided with transcripts of both the footage and the recordings.
104. While the recordings were proximate in time to the events giving rise to Counts 5 and 6, they had a broader significance at the trial; they were relevant to the other counts on the indictment and provided an unassailable record of the Appellant's domineering and abusive behaviour. Indeed, Advocate Steenson did not argue to the contrary. In his affidavit he explains the position in the following way: "These recordings [Recordings A and B] were part and parcel of the overall picture of the prosecution case and, until the weekend before the trial was due to start, Mr Roberts had pleaded not guilty to charges [5 and 6]. In discussion over that weekend, it was made plain to him that the prosecution would nonetheless intend to play these recordings and to show the images [also recovered from the phone]. Mr Roberts' arrest was proximate to the grave and criminal assault charges to which he pleaded. It constituted part of the explanatory evidence in the case and had evidential value, even if minor. There was no basis to object to it."
105. We have no hesitation in accepting Advocate Steenson's evidence that the Appellant was fully aware that the recordings would be played to the jury and that he was properly advised as to their admissibility. This explains why the facts giving rise to Counts 5 and 6 were included in the admitted facts and why it was that the agreed transcripts were included in the jury bundle. There is no substance in the Appellant's argument on this point. The Photographs in Connection with Counts 5 and 6
106. The Appellant also complains that photographic images connected to Counts 5 and 6 were shown to the jury and that this was unfairly prejudicial to his case.

107. The context for this complaint is as follows. Following the Appellant's pleas of guilty to Counts 5 and 6 of the indictment, Advocate Steenson objected to the admission in evidence of photographs showing the injuries sustained by Ms Mahe as a result of the grave and criminal assaults. This was the subject of argument before the Bailiff who agreed that, because of their graphic nature, the photographs should be removed from the jury bundle provided that there was a sufficient description of injuries in the agreed facts. The agreed facts contained a description of the injuries which were noted by the doctor who examined Ms Mahe on 31 October 2022 and 4 November 2022: "Ms Mahe had injuries to her head, face, neck, left arm and wrist, right arm, right hand and chest. The injuries mainly consisted of bruising and swelling caused by blunt force trauma or pressure to the skin. There was significant bruising surrounding Ms Mahe's left eye which was consistent with her having been punched in the face. There was significant bruising which covered the front of Ms Mahe's neck. There was also an area of reddening to the right side of Ms Mahe's neck which consisted of petechial bruising (small red pinpoint bruises) which is caused by increased pressure in the blood vessels. The neck injuries were consistent with non-fatal strangulation. Ms Mahe's injuries were consistent with her account of the grave and criminal assaults giving rise to Counts 5 and 6, and it is accepted that her injuries resulted from the assaults."
108. It follows from this that the Appellant is mistaken in his assertion that the photographs were shown to the jury. They were not. Even if they had been, there could have been no legitimate complaint.
109. We also note that the description of the injuries was sufficient in itself to demonstrate the seriousness of the assaults and it is difficult to discern what additional prejudicial impact the production of the actual photographs would have had on the trial process. The pleas of guilty to Counts 5 and 6 and the facts giving rise to these counts (including the injuries) provided compelling evidence of the Appellant's violent and abusive conduct and were probative of his guilt on the other counts. There is no merit to the Appellant's complaint in relation to the photographs. Failures of the Trial Judge
110. In addition to his other complaints, the Appellant has advanced a number of criticisms of the trial judge which we summarise in our own language as follows: (i) Failing to mention to the jury the lowering of the charging threshold in cases of rape; (ii) Failing to discharge the jury once they were informed of the Appellant's pleas of guilty to Counts 5 and 6 of the indictment; (iii) Failing to discharge a member of the jury who was on "close terms" with the prosecution's assistant (Ms Farley); (iv) Failing to allow the defence the same time to cross-examine as the prosecution had been allowed to present its case;
- (v) Allowing the trial to continue even though Ms Pugsley confirmed when giving evidence that she had spoken to Ms Mahe (about her proposed divorce) and after it emerged that Ms Mahe was aware of compensation to which she might be entitled in a civil claim; (vi) Allowing Ms Mahe to have the assistance of special measures when giving her evidence.

111. In relation to points (i) and (ii), we have already explained that there has been no change to the charging threshold and why it is that the Appellant's pleas to Counts 5 and 6 of the indictment and the facts giving rise to those pleas were relevant and admissible at the trial. There is no substance in either point, nor was there any relevant failure on the part of the Bailiff.
112. In relation to point (iii), failure to discharge a juror, the factual position is as follows. Ms Farley, a representative of the prosecution, attended the trial from the sixth day in order to assist Crown Advocate Maletroit. The Bailiff was informed that Ms Farley had a "tenuous connection" with one of the jurors. This was explained as meaning that they had a mutual friend but did not themselves socialise with each other. The Bailiff dealt with this by bringing the juror into court and making enquiries as to the connection. The juror could not give any reason why she could not make an entirely fair assessment of the evidence and the Bailiff ruled on the matter in the following way: "My own view then is that, bearing in mind the realities of living in an island of this size and the connections people have, I think this is a suitably indirect connection and is unlikely in any way to influence the outcome of the trial. Accordingly I do not propose to ask [Ms Farley] to step down, or indeed to discharge the juror at this point".
113. In our view the Bailiff dealt with the point in a realistic and commonsensical way. A fair-minded and impartial observer would not consider that there was any real risk of bias and there was no requirement to discharge the juror. The Appellant's complaint to the contrary has no merit.
114. In relation to point (iv) (the failure to allow the defence the same time to cross-examine as the prosecution was allowed to present its case), we have read the transcript of the trial and we are satisfied that there is no merit in the Appellant's complaint. The Bailiff was even-handed in his conduct of what was a difficult case for all concerned. We also note that Advocate Steenson made no complaint of the type now advanced by the Appellant and there is no suggestion in the trial record that he felt under any pressure of time when conducting the defence case.
115. In relation to point (v) (the fact that Ms Mahe and Ms Pugsley had been in communication and the possibility that Ms Mahe's complaint was motivated by a desire to obtain compensation), the position is as follows. Both Ms Mahe and Ms Pugsley confirmed in evidence that they had not discussed with each other the case or each other's evidence. In the course of his summing up, the Bailiff directed the jury to consider whether the two complainants were truly independent of each other and that if they were not this might cast doubt upon the reliability of the accusations as a whole. He went on to make clear that if any realistic possibility of influence, conscious or unconscious, by each complainant of the other had been excluded, the evidence of each complainant could be supportive of the other. It is to be assumed that the jury's verdicts demonstrate that they were sure that Ms Pugsley and Ms Mahe were telling the truth and that their evidence was accurate. In his affidavit, Advocate Steenson addresses this particular complaint in emphatic terms: "The idea of

collusion between Ms Mahe and Ms Pugsley was fanciful. Their respective allegations were of a different nature and gravity.”

116. Nor is there any substance in the complaint that Ms Mahe may have been motivated by a desire to obtain compensation. On any view, as the photographs and recordings demonstrated and the medical evidence corroborated, she had suffered serious injury at the Appellant’s hands. Whether or not she had compensation in mind could not alter the underlying facts. We see no merit in the Appellant’s complaint.
117. In relation to point (vi) (the special measures provided to Ms Mahe), the position is as follows. As a result of an injury to her throat, Ms Mahe had difficulty speaking. This had been raised by the Crown Advocate as a potential problem before Ms Mahe was called to give evidence. When she was called to give evidence her voice was inaudible (“nothing more than a mumble” is how it was described by Advocate Steenson). It was clear that some measures had to be put in place to address the problem. The Bailiff suggested that somebody should sit next to Ms Mahe and repeat audibly what she said in evidence. It was not possible to find a registered intermediary in the time available. The Bailiff suggested that it would be appropriate to use a lawyer from the Law Officers’ Department. Advocate Lister, who ordinarily works in the Mutual Legal Assistance Team and who had no involvement or knowledge of the prosecution case, took the oath of an intermediary. No objection was taken to this obviously sensible course. Having been sworn, Advocate Lister repeated the words spoken by Ms Mahe so that all those present in court could hear what she said.
118. Advocate Steenson, in his affidavit, explains the events from his perspective: “Ms Mahe was struggling to speak. It was suggested that someone would stand close to her and repeat what she said. That someone was an employee of the Law Officers’ Department who simply repeated what Ms Mahe had said but more loudly. There is no suggestion that she was inaccurate or invented evidence and, for perfectly sensible practical reasons, I had no objection to this. The presence of a representative from the Law Officers’ Department did not make Ms Mahe look vulnerable. Her wheezing and inability to speak loudly was what made her seem vulnerable and complaining about this would, in my opinion, have elicited more sympathy for Ms Mahe and would have done the perception of Mr Roberts little good.”
119. Crown Advocate Hollywood submits that the Bailiff correctly exercised his discretion to allow special measures for the assistance of Ms Mahe in accordance with sections 100 and 101 of the Criminal Procedure (Jersey) Law 2018 and there was no unfairness occasioned to the Appellant by the procedure that was put in place. She also relies on the fact that the trial judge gave the jury the conventional direction to the effect that the procedures were put in place to ensure the jury received the evidence in the most helpful way, and that this was something that was not to be held against the Appellant, or indeed in his favour.

120. In our view, the course suggested and adopted by the Bailiff was fair and operated in the best interests of all concerned, including the Appellant. The fact that Advocate Steenson was positively in favour of the procedure serves only to emphasise the absence of any substance in the Appellant's complaint to the contrary. We dismiss it as being without merit.
- Inadequate Representation by Counsel
121. A theme that runs through the Appellant's written submissions is his belief that he was inadequately represented in the Royal Court proceedings, both before and during the trial. It was for this reason that the Appellant was required to waive his legal professional privilege and Advocate Steenson was entitled to have fair notice of the criticism and respond to it by way of affidavit: see *Bennett v Attorney General* [2015] JCA 019.
122. Crown Advocate Hollywood resists this ground of appeal and relies on observations made by the Court of Appeal in *Lewis and Others v Attorney General* [2013] (1) JLR 325. In that case it was recognised that the test to be applied in a case of this type is not to assess the extent or quality of the advocate's alleged incompetence but to consider instead whether the conduct has led to a miscarriage of justice. It was also recognised, consistent with earlier authority, that decisions of advocates taken in good faith, having weighed the competing considerations and having consulted the client where appropriate, are unlikely to give rise to legitimate complaint.
123. The Appellant's complaints against Advocate Steenson are numerous and wide-ranging. It is not necessary for us to particularise them in detail; they share a number of broad themes. In relation to the first grave and criminal assault committed against Ms Mahe, the complaint is that Advocate Steenson was not sufficiently vigorous in dealing with the prosecution and failed to call witnesses (such as the driver who drove Ms Mahe home after the assault and the police officer and the Independent Domestic Violence Adviser who gave the Clare's Law disclosure). In relation to the rape and sexual assault (Counts 2, 3 and 4), the complaint is that Ms Lockhart was allowed to give hearsay evidence, that Advocate Steenson failed to ask for messages and emails passing between Ms Mahe and Ms Lockhart and failed to object to the production in evidence of the sex toys. He also failed to follow up on information that a friend of Ms Mahe, Andy Santos, had seen her on her return from Turkey and had not seen any injuries. The Appellant also claims that Advocate Steenson should have cross-examined Ms Mahe about the future trips and holidays that she and the Appellant had been planning. In relation to the offences of common assault committed against Ms Pugsley (Counts 7 and 8), the Appellant claims that his son should have been called as a witness as he had been living with the Appellant and Ms Pugsley at the time of the material events. The Appellant's more general criticisms are directed at Advocate Steenson's failure to object to evidence, to cross-examine Ms Mahe about her supposed attempts at blackmail, or to object to the special measures.

124. We begin our consideration of this aspect of the case by reference to Advocate Steenson's letter to the Appellant, dated 15 February 2024 but dictated on 14 February 2024, the penultimate day of the trial. The letter is introduced in this way: "Allow me to begin by thanking you for your very kind words about my overall presentation of your case and, especially, what you said about my closing speech. Naturally I am very glad that you are pleased."
125. This document, contemporaneous with the trial (but written before the guilty verdict), suggests that the Appellant was at that time entirely satisfied with his legal representation. In his affidavit Advocate Steenson amplifies this point. He says that he spoke to the Appellant immediately after the verdict and the Appellant thanked him for his efforts on his behalf. There was no hint of criticism. It is also noteworthy that Advocate Steenson continued to represent the Appellant in respect of the voyeurism charges and one of his colleagues continued to represent the Appellant in respect of his fraud charges. This sequence of events suggests that the self-serving complaint now made against Advocate Steenson was concocted by the Appellant some time after the trial was concluded. The first intimation of a possible complaint appears in the Appellant's letter and notice of appeal sent to the Greffier in November 2024.
126. Whatever the Appellant's motivation may be, we are satisfied that Advocate Steenson has provided a convincing answer to each of the complaints. We have no hesitation in accepting his evidence. Among other matters, Advocate Steenson makes clear that the Appellant "was keen to leave as much of the preparation and conduct of the case to me... he was content to rely on my judgment and was in fact very complimentary of what I had done for him even after the jury returned its verdict." We have read the transcripts of the trial and in our opinion Advocate Steenson conducted the Appellant's case with exemplary skill and professionalism. The evidence against the Appellant was compelling and we reject his complaints (many of which have been addressed earlier in this judgment) and add the following observations for the sake of completeness: (i) There was no basis to object to the admissibility of any part of the prosecution evidence; (ii) Even though Andy Santos (a friend of Ms Mahe's) was not called as a prosecution witness having indicated that he did not want to get involved in the proceedings, Advocate Steenson managed to elicit evidence from the officer in the case to the effect that Mr Santos had not seen any marks on Ms Mahe when he had seen her on her return from Turkey. This was simply one factual part of the evidence and is unlikely to have had much impact on the case as a whole, having regard to the Appellant's pleas to Counts 5 and 6 of the indictment and the photographs and descriptions of Ms Mahe's serious injuries; (iii) As for the planning of future trips, Advocate Steenson has noted it could not realistically have been suggested that after the grave and criminal assaults Ms Mahe had any intention of going on further trips with the Appellant; (iv) Advocate Steenson makes the point that it is not clear what the Appellant's son could have added to the case as he was not present with the Appellant and Ms Pugsley at the time of the assaults. Advocate Steenson also notes there were practical difficulties in speaking with him and obtaining a statement because, for at least a substantial part of the time, he was himself

facing criminal charges for serious offences involving dangerous drugs. The Victim Personal Statement

127. While not a matter directly relevant to the conviction appeal, the Appellant has raised an issue regarding Ms Mahe reading her victim personal statement at the sentencing hearing. The Appellant complains that he was not informed of the hearing at which Ms Mahe was given permission to read her statement. He claims that he only became aware of this once he had secured alternative representation. This point has also been addressed by Advocate Steenson: "I did not attend a hearing in respect of this matter. It was dealt with on the papers and the learned Bailiff permitted Ms Mahe to read her impact statement herself, as I understand it. I had objected."
128. We note that the Appellant was represented at the sentencing hearing by Advocate Blakeley. No objection was then taken to the reading of the victim personal statement by Ms Mahe. The Royal Court was right to permit Ms Mahe to read her statement. We see no merit in this point and the Appellant's complaint is rejected. Verdict Not Supported by the Evidence
129. In the course of his written submissions, the Appellant has raised a general complaint that the police failed to investigate his case and gather relevant evidence and that the case against him was not proved. We can deal with this argument quite shortly. Ms Mahe provided clear evidence of serious violence and sexual abuse. Her evidence was supported by photographs of her injuries, videos, medical evidence and the Appellant's own pleas to Counts 5 and 6 of the indictment. Ms Pugsley also provided clear evidence of the assaults she had suffered at the Appellant's hands. Their evidence was capable of being mutually supportive. It was a matter for the jury to consider all the evidence and they were properly directed to do so. The Bailiff also properly directed the jury on the burden and standard of proof. The jury were entitled to conclude that the Appellant was guilty of the offences as charged. Having heard all the evidence the jury accepted the evidence of Ms Mahe and Ms Pugsley. Having read the transcript of the trial proceedings, the unanimous verdict is not at all surprising. The case against the Appellant was strong, there was ample evidence to implicate him in the offences, and we have no hesitation in concluding that his conviction is safe.
130. For all these reasons, we see no merit in the Appellant's challenge to his conviction and we now turn to the application for leave to appeal against sentence. THE APPEAL AGAINST SENTENCE
131. The Appellant seeks leave to appeal his sentence in relation to the sexual offences committed against Ms Mahe. These were the offences of rape (Count 2 of the indictment) and sexual penetration without consent (Counts 3 and 4 of the indictment). For these offences the Appellant received a total sentence of 11 years' imprisonment, with 11 years' imprisonment for the rape and concurrent sentences of 7 years' imprisonment for each of the sexual penetration offences. We have set out the sentences for the other offences at paragraph 58 above.

132. In the Sentencing Judgment the Royal Court explained its reasons for imposing the Appellant's sentence. It also set out a framework for the approach to sentencing in cases of rape and identified the key principles to be adopted when assessing the appropriate level of sentence. The Royal Court adopted this approach in order to provide clarity following the decision of the Court of Appeal in *Nunes v Attorney General*
- [2024] JCA 160. There, the Court of Appeal held that the Royal Court had been wrong, when sentencing an offender in a case of rape and sexual touching, to rely on its previous judgment in *Attorney General v Vieira* [2021] JRC 293, which the Court of Appeal considered to have been wrongly decided. We consider the framework set out by the Royal Court and its application to the Appellant's case later in this part of our judgment. Before doing so we formally grant the Appellant leave to appeal. THE LAW
133. The Court of Appeal's jurisdiction to hear appeals against sentence is set out in section 24 of the 1961 Law, which, so far as material, provides that: "(1) A person convicted on indictment by the Royal Court, whether sitting with or without a jury may appeal... to the Court of Appeal... with the leave of the Court... against any sentence passed on the person for the offence..."
134. The powers of this Court on such an appeal are set out in section 26(3) of the 1961 Law which provides that if the Court of Appeal thinks that a different sentence should have been passed, it shall quash the sentence and pass such other sentence warranted in law in substitution thereof as it thinks ought to have been passed, and in any other case dismiss the appeal.
135. The principles which apply to a sentence appeal are contained in authorities of long standing. In broad terms, the Court of Appeal will interfere with a sentence: where it is not justified in law; where the sentence has been passed on the wrong factual basis; where some matter has been improperly taken into account or there is some fresh matter to be taken into account; or where the sentence is wrong in principle or manifestly excessive: see, for example, *Harrison v Attorney General* [2004] JLR 111 and *Bhojwani v Attorney General* [2011] JLR 249.
136. The case law has also identified two significant features of criminal sentencing in this Island. The first is that by Article 13(3) of the Royal Court (Jersey) Law 1948, in all criminal cases the Jurats "determine the sentence fine or other sanction to be pronounced or imposed". The relevance of this point is that any sentence imposed by the Royal Court reflects a broad spectrum of judicial opinion. There are only 12 Jurats and five or more will sit on each case for a superior number sentence. The second significant feature of sentencing practice is that the Crown, acting through the Attorney General, enjoys an important role in the sentencing process. The role of Crown counsel is to represent the public interest and to give guidance and help to the Royal Court in deciding on the appropriate level of sentence, no matter how minor or grave the offence. The Crown will remind the Court of the relevant cases and principles and move for a particular sentence

which reflects local practice and the values and standards of the right thinking members of the local community as they are understood by the Crown; see, for example, Harrison, *supra*, at paragraph [38], and Bhojwani, *supra*, at paragraph [202]. Defence counsel also has an important role to play, in challenging the Crown's position and in drawing to the attention of the Jurats any relevant mitigation, so that the Jurats can perform their central function of determining the sentence which is appropriate in the particular case. The importance of these features cannot be overstated. The Royal Court is aware of current attitudes to sentencing and knows, in particular, what crimes are prevalent in the Island and for what crimes it is desirable to retain a severe deterrent sentence: see for example Attorney General v Pagett [1984] JJ 57. The combined roles of the Jurats and Attorney General ensures not only consistency in sentencing but also, having taken into account any mitigation advanced on behalf of the defendant, that (subject to oversight by this Court) any particular sentence properly reflects what is considered to be right for Jersey, irrespective of what may be right for the social conditions in other jurisdictions. THE APPROACH OF THE ROYAL COURT

137. The approach of the Royal Court when it came to sentence the Appellant was introduced by the Bailiff with two preliminary observations which, given their importance, we think it right to repeat: "4. The Superior Number of this Court in this hearing comprised 9 Jurats instead of the usual 5. The reason for doing so was to provide the broadest spectrum of judicial opinion in sentencing so that the Court could set out, in as authoritative a manner as possible, its approach to sentencing cases of rape of adults. The necessity for doing so arises to our mind out of an apparent tension in recent cases relating to sentencing for rape and, in particular, the relevance or otherwise of the guidelines produced by the Sentencing Council of England and Wales ("the SC Guidelines").
5. In order to do so we asked the Attorney General to provide detailed submissions relating to the sentencing of rape in Jersey and the use or otherwise of guidelines. We are grateful to him for those thorough submissions, which have informed the decision that we have taken and which we refer to hereafter."
138. With the assistance of the Attorney General's submissions, the Royal Court went on to conduct an impressive review of the approach to sentencing in cases of rape committed against adult victims, beginning with an emphasis on the fundamental constitutional position that Jersey is a separate jurisdiction with its own legal system. It is therefore free to set its own sentencing levels as the Island's courts think appropriate.
139. We can summarise the background to the Sentencing Judgment quite shortly.
140. In England and Wales, sentencing practice for all cases of sexual offending is governed by guidelines issued by the Sentencing Council ("the SC Guidelines"). The Sentencing Council is a statutory body established by the Coroners and Justice Act 2009 to prepare sentencing guidelines having regard, among other matters, to the need to promote consistency in sentencing and the need to promote public confidence in the criminal justice system. Judges, whether sitting in the Magistrates' Court or the Crown Court, are obliged by statute

(section 59 of the Sentencing Act 2020) to follow the SC Guidelines unless they consider that, in a particular case, it would be contrary to the interests of justice to do so.

141. The SC Guidelines provide a structured process for decision-making with the sentencing court determining the appropriate level of sentence by reference to a number of steps. The first step is to determine the category of the offence, that is, its seriousness, by considering the impact of the offence by reference to the harm it has caused and the offender's culpability, or level of responsibility, for committing it. Both harm and culpability are crucial in determining the severity of the sentence. Once the relevant category has been determined, the SC Guidelines indicate a sentencing starting point. The sentence is then adjusted upwards or downwards within a suggested range to take into account any aggravating or mitigating features. A further reduction is applied where the offender has pleaded guilty or assisted the prosecution. In cases concerning more than one offence, the sentencing court must also consider the principle of totality, which means that when a court imposes multiple sentences, whether concurrent or consecutive, the overall sentence should be just and proportionate to the totality of the offender's criminal behaviour viewed as a whole.
142. The introduction of the SC Guidelines for sentencing in cases of sexual offending in April 2014 (and updated since that time) marked a significant change to sentencing practice. Prior to the SC Guidelines, rape offences were sentenced in accordance with guideline judgments from the Court of Appeal as well as individual judicial experience and discretion. For over a decade the leading guideline judgment in England and Wales had been the decision of the English Court of Appeal in *R v Millberry* [2002] EWCA Crim 2891.
143. In *Millberry*, the Court of Appeal, following advice from the Sentencing Advisory Panel,^[3] revised the then current sentencing practice for offences of rape of adult victims and set starting points of 5 years, 8 years, and 15 years, having regard to features which might appear in particular cases and recognising that a life sentence would not be inappropriate where the offender, if at large, by reason of his personal characteristics would remain a danger to women for an indefinite period of time.
144. It was also recognised that if sentencers merely adopt a mechanistic approach to sentencing, sentencing guidelines can sometimes produce sentences which are inappropriately high or inappropriately low. The Court of Appeal noted that having taken the guidelines into account it was essential to stand back and look at the circumstances as a whole and impose the sentence appropriate to the circumstances viewed in their entirety.
145. In Jersey there are no formal sentencing guidelines as such for sexual offences, but there is an established body of local case law which sets out the principles to be adopted when assessing the seriousness of any particular case and the appropriate sentencing level. For many years the *Millberry* guidelines were routinely cited by the Royal Court when sentencing in rape offences, albeit that the Court consistently recognised that it was free to

set its own sentencing levels as appropriate for Jersey. The promulgation of the SC Guidelines in 2014 and the subsequent decision of the Royal Court in AG v K prompted debate in Jersey as to the continuing relevance of Millberry and the extent to which the more detailed SC Guidelines might assist the Jersey Courts.

146. It appears that from at least 2016 it became the usual practice, at least in cases of sexual offenders involving child complainants, for the SC Guidelines to be cited at sentencing hearings, not for the purpose of deciding the length of any particular sentence but for the assistance they might provide in relation to features of the offending relevant to harm and culpability and the presence or absence of any aggravating or mitigating features. It is not necessary for us to consider these cases in any detail. They were reviewed by the Royal Court at paragraphs [25] to [39] of the Sentencing Judgment and include: K v Attorney General, Attorney General v F [2016] JCA 219 (Court of Appeal); Attorney General v K [2016] JRC 158 (Royal Court); Attorney General v W [2018] JRC 061 (Royal Court); Attorney General v W [2021] JRC 329 (Royal Court).
147. The approach to sentencing in cases of sexual offences committed against adults was the subject of a separate body of case law in which the Millberry guidelines sometimes continued to feature, as on occasion did the SC Guidelines as a useful indication of the relevant factors to be taken into account. Again, it is not necessary for us to consider these cases in any detail. They were reviewed by the Royal Court at paragraphs [40] to [51] of the Sentencing Judgment and include: Attorney General v C [2019] JRC 074 (a case of indecent assault and rape); Attorney General v Dobrin [2019] JRC 097 (a case of rape); Attorney General v Kean [2019] JRC 155 (a case of rape and indecent assault); and Attorney General v B [2020] JRC 110 (a case of rape).
148. In Attorney General v Vieira, supra, (a case of rape), the Superior Number of the Royal Court decided that reference to the Millberry guidance was no longer helpful or necessary when determining sentencing levels in Jersey and that the SC Guidelines provided a “convincing” basis for the assessment of the seriousness of the offending with their more detailed identification of aggravating features and greater emphasis on the psychological impact of the offence on the victim.
149. Following the decision in Vieira, the Royal Court would routinely have regard to the structure of the SC Guidelines for the purpose of evaluating matters such as harm and culpability but would reach its own view as to the level of sentence to be imposed, often by reference to Jersey comparator cases. Examples of these cases, which were reviewed by the Royal Court at paragraphs [61] to [71] of the Sentencing Judgment, include: Attorney General v E [2023] JRC 044 (a case of rape) and Attorney General v Moody [2023] JRC 154 (a case of rape). In W v Attorney General [2022] JCA 117 the Court of Appeal (in a case involving sexual offences against a child) recognised the value of the SC Guidelines in comparing the English

sentencing levels for different categories of an offence so as to inform the opinions of Jurats as to the relative seriousness of a particular offence. While the Court of Appeal emphasised that there was no obligation or expectation to follow or even have regard to the SC Guidelines as to the absolute length of a sentence, the SC Guidelines could nevertheless serve as a useful “cross-check” and no rigid distinction was drawn between having regard to the various factors on the one hand and sentencing levels on the other.

150. The approach to sentencing in cases of rape was reconsidered by the Court of Appeal in *Nunes v Attorney General*, supra, where the Court decided that the Royal Court in *Vieira* had been wrong to decide that *Millberry* was no longer to be followed. For the purposes of this appeal it is important to note two features of the decision in *Nunes*. The first (at paragraph [39]) was the Court’s acceptance that the Deputy Bailiff had been right in *Vieira* to accept the submission that since 2002 a more victim-focused approach to sentencing had developed and there was a greater appreciation of the psychological impact which the offence of rape has on victims. The second was the acknowledgement (at paragraphs [39] and [41]) that it was open to the Royal Court, if it thought fit, to set its own sentencing levels and sentencing policy no matter what the equivalent sentencing in other jurisdictions may be.
151. The Appellant’s case was the first case of rape of an adult victim to be considered by the Royal Court following the decision in *Nunes* and the sentencing hearing provided an opportunity for a panel of nine Jurats to be convened and for the Court to carry out the review envisaged by the Court of Appeal.
152. After considering the detailed submissions from the Attorney General relating to the sentencing of rape in Jersey and the use or otherwise of guidelines, the Royal Court concluded that the *Millberry* guidelines are no longer appropriate and do not reflect the Court’s view of the gravity of the offence of rape. The Court itself declined to set specific guidelines, thus avoiding the potential problem of a rigid or inflexible approach and instead created what it described as a “framework” to guide sentencing courts on the correct approach.
153. The framework involves proceeding on the basis that rape in any of its manifestations is a serious crime which is capable of having profound effects on the victim and that ordinarily a sentence for rape would fall within a very broad range of 5 to 15 years’ imprisonment after a contested trial, with the possibility in unusual cases of lower or higher terms. Attached to the Sentencing Judgment is a non-exhaustive list of factors to inform the assessment of harm (Schedule 1) and culpability (Schedule 2) and the identification of aggravating (Schedule 3) and mitigating (Schedule 4) features.
154. In general terms the Royal Court explained that it is appropriate for the sentencing court to approach cases of rape of an adult by first analysing the seriousness of the offending by reference to the harm and culpability factors identified in Schedules 1 and 2 to the Sentencing Judgment. By this process the sentencing court will arrive at the initial point for sentence. The sentencing court will then consider the presence of any aggravating and

mitigating factors to establish the provisional sentence, before standing back to consider whether the provisional sentence is right having regard to all the circumstances of the case, including the principle of totality.

155. It is not necessary for us to express any views on the earlier case law. It is sufficient for us to say that we agree with and endorse the approach adopted by the Royal Court in the Sentencing Judgment.
156. We also wish to emphasise that although the range of 5 to 15 years is very broad (as the Royal Court itself recognised), there is an established body of case law to provide an additional basis for assessment or comparison and the court will be reminded of the relevant cases and principles when the Attorney General moves for a particular sentence on the facts of an individual case.
157. We also agree with the Royal Court's conclusion that the sentencing court is entitled to have regard to the SC Guidelines as a useful "cross-check" in the sense that the Jurats may inform, test or confirm their opinion as to their approach to the sentencing exercise if they think it right to do so. The SC Guidelines are not binding and need not be followed. Whether or not this takes place on an occasional basis as the Royal Court envisaged, we anticipate that reference to the SC Guidelines, even for the purpose set out above, may diminish over time as the body of Jersey cases increases and the Royal Court establishes its own range of sentences appropriate for Jersey. Even so, counsel will be free to refer to the SC Guidelines until the Superior Number indicates that the SC Guidelines are no longer of assistance when considering cases of rape of an adult victim. There may also be unusual or difficult cases where such reference remains useful to the Jurats.
158. We also wish to endorse the Royal Court's non-exhaustive list of factors as to harm, culpability and aggravating and mitigating factors set out in Schedules 1 to 4 of the Sentencing Judgment. The Royal Court was at pains to emphasise that there might be other factors that the sentencing court might reasonably take into account depending upon the circumstances and that this was an aspect of the flexibility which the Royal Court was anxious to preserve so as to ensure that justice will be served on the facts of any particular case.
159. Our only reservation with the Royal Court's analysis relates to the inclusion of point (iii) in Schedule 3 (aggravating factors) to the Sentencing Judgment: "The offender shows no remorse for the impact upon the victim and/or takes no responsibility for the rape". While an early guilty plea together with remorse and admission of responsibility are properly to be regarded as mitigating factors (as indeed they are in Schedule 4 to the Sentencing Judgment at (i) and (ii)), we question whether lack of remorse or an unwillingness to take responsibility are properly to be regarded as aggravating factors. As a matter of general principle we think the correct approach is that where remorse is present it can be regarded as a mitigating factor but its absence is not ordinarily to be regarded as an aggravating feature. The behaviour of an offender in pleading not guilty is likely only to remove the

mitigation that would otherwise be available for a guilty plea. It may be otherwise if the behaviour relates to the offender's conduct immediately after the commission of the offence, for example by removing or concealing evidence or blaming others for its commission. THE SENTENCE IN THE APPELLANT'S CASE

160. At the sentencing hearing in the Appellant's case the Attorney General moved for a total sentence of 15 years' imprisonment. This sentence was comprised of 12 years' imprisonment for the rape, concurrent sentences of 7 years' imprisonment for the sexual penetration offences, with lesser periods of concurrent imprisonment for the offences of violence totalling 2 years' imprisonment consecutive to the 12 years, and 12 months' imprisonment on the voyeurism indictment, consecutive to the other sentences.
161. On the Appellant's behalf, Advocate Blakeley submitted that it was wrong in principle for the Royal Court retrospectively to adopt a higher level of sentencing for rape and that to apply a more severe sentence than would have been applied in earlier cases would occasion unfairness. Relying on the Millberry guidelines and Attorney General v Kean [2019] JRC 155, where the defendant after a trial was sentenced to a total of 7 years and 6 months' imprisonment for rape and indecent assault, it was submitted by Advocate Blakeley that the Appellant's sentence for the rape of Ms Mahe should be 8 years and 6 months' imprisonment.
162. The Royal Court rejected this argument. The Court considered the rape offence to be a very serious example of its kind. It was accompanied by evidence of humiliation over and above that intrinsic to the offence itself and had been committed against a vulnerable person. There had been other unlawful sexual activity during the course of a prolonged attack and the violence (which, because it had taken place in Turkey could not be the subject of a formal charge) was a serious aggravating feature. Ms Mahe had suffered severe psychological harm and severe emotional harm. There was the additional humiliation caused by her belief that the Appellant was filming her and the fact of his ejaculation. The culpability factors were the previous violence against Ms Mahe (Count 1), other unlawful sexual activity during the course of a single attack (Counts 3 and 4), and the humiliation associated with the suggestion that the offence had been recorded.
163. The Royal Court accepted the Attorney General's conclusion that the offence warranted an initial point of 12 years' imprisonment (taking into account Counts 1, 3 and 4 in respect of which the Attorney General moved for concurrent sentences). Having reached this provisional view, the Court went on to consider the aggravating and mitigating factors.
164. With regard to aggravating features, the Royal Court identified the location of the offence (accommodation shared by the Appellant and the victim), the fact that ejaculation occurred, and that the victim was vulnerable through intoxication. The Royal Court concluded that the aggravating features warranted an increase to the initial point.

165. With regard to mitigating features, there was in effect no mitigation as there had been no expression of remorse or acceptance of responsibility and the Appellant was a person with a record of relevant previous convictions.
166. The Royal Court went on to look at the offending overall (not just the rape and other sexual offending) and assessed what it considered to be the appropriate sentence taking all the harm, culpability and aggravating features into account and accepting that there was an absence of any mitigation.
167. The Royal Court concluded that the rape offences and the two counts of sexual penetration would ordinarily be marked by a sentence greater than 12 years' imprisonment (as proposed by the Attorney General). However, having regard to the totality principle the Court assessed the appropriate sentence for the rape (Count 2) combined with the grave and criminal assault (Count 1) and the sexual penetration without consent (Counts 3 and 4) to be one of 11 years' imprisonment.
168. As we have noted, the total sentence of 15 years' imprisonment was reached by adding to the 11 years the consecutive sentences imposed for the common assaults (Counts 7 and 8: 9 months and 12 months' imprisonment respectively), for the grave and criminal assaults (Counts 1, 5 and 6: 18 months' and 2 years' imprisonment, to run concurrently with each other but consecutive to the sentence for Count 2) and for the voyeurism offences (Counts 1, 4 and 6: 12 months' imprisonment, concurrent with each other but consecutive to the other sentences). THE APPEAL AGAINST SENTENCE
169. In his written submissions in support of the appeal against sentence, Advocate Blakeley raised two key arguments. The first was a general challenge to the Royal Court's review of sentencing policy in cases of rape and, in particular, its use of SC Guidelines by way of a cross-check and the retrospective application of the new policy to the Appellant's case. The second argument was a more conventional challenge advanced on the basis that the sentence for the sexual offences was manifestly excessive.
170. In an able address at the hearing of the appeal, Advocate Blakeley did not pursue the general challenge and accepted both that the Royal Court is free to set its own sentencing policy and that there was nothing wrong in principle with the approach adopted by the Royal Court in this case. He also submitted that the Royal Court had not made any real change to sentencing levels in cases of rape; the Court had instead explained the practice to be adopted by the sentencing court and identified the factors by which the length of sentence is to be assessed.
171. In light of Advocate Blakeley's submission, we consider it right to note that the Royal Court made clear that, viewed historically, sentences for rape of an adult victim in Jersey have been "somewhat lower" than is appropriate in modern times and that higher sentences are likely to be imposed in the future than was previously the case. This is in recognition of the effect and consequence to the victim of the offence and also the standards and expectations that govern the behaviour of individuals in a community such as Jersey. The Sentencing

Judgment is the upward review envisaged by the Court of Appeal in Nunes.

172. We also wish to make clear that there is nothing objectionable in developing current sentencing policy and practice and applying that policy and practice with immediate effect. The Sentencing Judgment is a reflection of current practice and standards and is to be used to provide assistance on sentences in different types of case. The maximum sentence for the offence of rape remains unchanged and there is no objectionable retrospectivity. Advocate Blakeley was right not to pursue this point but not necessarily for the reasons he gave.
173. In support of his more targeted argument that the sentence of 11 years' imprisonment (with the two concurrent sentences of 7 years' imprisonment) was manifestly excessive, Advocate Blakeley maintained the submission that the sentence for the rape offence should be 8 years and 6 months' imprisonment. He relied on a comparison with Attorney General v E, supra, where the offender was sentenced on three counts of rape following a trial. In that case, the SC Guidelines indicated a starting point of 10 years' imprisonment and a sentencing range of 9 to 13 years. The Attorney General moved for a sentence of 11 years from a 10-year initial point and the Royal Court imposed a sentence of 9 years and 6 months' imprisonment.
174. Advocate Blakeley also challenged the transparency of the Royal Court's methodology in that in his submission it was unclear what level of uplift was applied to the sentence for the rape offence to reflect the concurrent sentences imposed in respect of the sexual penetration counts (Counts 3 and 4). Advocate Blakeley also submitted that there is no evidence that the Appellant did in fact film the rape and it was unfair for this element to be regarded as an aggravating factor when fixing the appropriate sentence.
175. In her helpful submissions in response, Crown Advocate Hollywood argued that the sentences were not excessive (let alone manifestly excessive) and fell comfortably within the range open to the sentencing court.
176. We have no hesitation in dismissing the appeal against sentence. We agree with the Royal Court that the rape offence was a very serious offence of its kind. It was accompanied with multiple acts of penetration and violence and has occasioned severe psychological and severe emotional harm to a vulnerable victim. The Attorney General assessed an initial point of 12 years' imprisonment. This was amply justified. The aggravating features included the location of the offence and ejaculation which, coupled with the absence of any mitigation (at least for the sexual offending) might have justified a higher sentence (as the Royal Court itself recognised at paragraph [170]). It should be noted that the sentencing exercise was complicated by the range and number of offences for which the Appellant fell to be sentenced. This is also the answer to Advocate Blakeley's criticism of the Royal Court's methodology. The Court explained its reasoning with commendable clarity. No sentencing exercise lends itself to mathematical precision and the Appellant's case is no exception. There can be no doubt in the Appellant's mind as to why he is serving a total sentence of 15 years' imprisonment. The Royal Court was careful to apply the totality principle and the overall sentence is just.

177. In response to the criticism that the Royal Court was wrong to use the possibility that the Applicant may have recorded the rape as an aggravating factor, we note Ms Mahe's evidence at the trial was that she recalled the Appellant holding his phone and she believed that he was recording her. Whilst no video recording was found, on the basis of the evidence it was open to the sentencing court to conclude that the rape had been recorded and it was certainly open to the sentencing court to treat the fact that Ms Mahe thought it was being recorded as a relevant factor in the assessment of culpability.
178. For these reasons, we see no merit in the Appellant's arguments and his appeal against sentence is dismissed.

CONCLUSION

179. For the reasons set out above, we refuse to extend time in which to appeal against conviction and the application for leave to appeal against conviction is dismissed. Having granted leave to appeal against sentence, we dismiss the appeal. Authorities AG v Roberts [2025] JRC 081. Court of Appeal (Jersey) Law 1961 Da Silva v Attorney General [2021] JRC 028 Edmond-O'Brien [2006] JSC 133 Criminal Procedure (Jersey) Law 2018 Police Procedure and Criminal Evidence (Jersey) Law 2003 Bennett v Attorney General [2015] JCA 019 Lewis and Others v Attorney General [2013] (1) JLR 325 Nunes v Attorney General [2024] JCA 160 Attorney General v Vieira [2021] JRC 293 Harrison v Attorney General [2004] JLR 111 Bhojwani v Attorney General [2011] JLR 249 Royal Court (Jersey) Law 1948 Attorney General v Pagett [1984] JJ 57 R v Millberry
- [2002] EWCA Crim 2891 K v Attorney General, Attorney General v F [2016] JCA 219 Attorney General v K [2016] JRC 158 Attorney General v W [2018] JRC 061 Attorney General v W [2021] JRC 329 Attorney General v C [2019] JRC 074 Attorney General v Dobrin [2019] JRC 097 Attorney General v Kean [2019] JRC 155 Attorney General v B [2020] JRC 110 Attorney General v E [2023] JRC 044 Attorney General v Moody [2023] JRC 154 W v Attorney General [2022] JCA 117
- [1] These orders were: notification under the Domestic Abuse (Jersey) Law 2022 until further order; a domestic abuse prevention order, preventing contact with Victim 1 and Victim 2 until further order; notification under the Sex Offenders (Jersey) Law 2010 for a period of 15 years; restrictive orders under the Sex Offenders (Jersey) Law 2010 for a period of 15 years; and a forfeiture order in respect of the hard drive containing the voyeurism images
- [2] By reason of Article 32(1A) of the Court of Appeal (Jersey) Law 1961 which provides: "Notice of appeal against conviction or notice of application for leave to appeal against conviction shall be given within 28 days of the date of the conviction".

- [3] The Sentencing Advisory Panel was the precursor of the Sentencing Council. It was established by the Crime and Disorder Act 1998 to draft and consult on proposals for guidelines and refer them to the Court of Appeal for consideration. The Court of Appeal was not obliged to accept the Panel's recommendations.
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