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Neutral Citation Number: [2018] EWCA Crim 2454

Case No. 2018/01666/C4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Date: Thursday 11th October 2018

B e f o r e:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lady Justice Hallett DBE)

MR JUSTICE STUART-SMITH

and

MRS JUSTICE MAY DBE

R E G I N A

- v -

PETER MADER

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(Official Shorthand Writers to the Court)

Mr J Hingston appeared on behalf of the Applicant

Miss C Bray appeared on behalf of the Crown

J U D G M E N T(Approved)

LADY JUSTICE HALLETT:

Background

1. The Registrar has referred the applications for an extension of time of 158 days in which to apply for leave to appeal against conviction and the application for leave to appeal itself to the full court for us to consider the circumstances in which reference may be made or evidence called as to the good character of a prosecution witness.

2. On 16th October 2017, in the Crown Court at Northampton, before Her Honour Judge Adrienne Lucking QC and a jury, the applicant was convicted (by a majority of 10:2) of the offence of wounding with intent, contrary to section 18 of the Offences against the Person Act 1861. He was sentenced to nine years' imprisonment.

The Facts

3. The applicant lived on a narrow boat on the Grand Union Canal. On 4th May 2016 he met the two main prosecution witnesses, Mr Waterhouse (the complainant) and Ms Crouch (his partner) in a public house. He invited them back to the narrow boat where alcohol and cannabis were consumed.

4. After an amicable start, things took a turn for the worse. Ms Crouch called the police. Mr Waterhouse was found to have suffered lacerations to his face, neck and right hand. They formed the basis of the charge and conviction under section 18.

5. On his arrest, the applicant said: "All I've done is stab him. He was trying to rob me. This must sound a bit violent, I suppose. I did stab him in the neck". Later, he said: "He was trying to rob me and he didn't think I'd pull out a knife and stab him. Where I'm from, you can't let people get away with that".

6. When interviewed, and subsequently at trial, he said that a ring and some cannabis had been taken by the two prosecution witnesses and that when he tried to retrieve the ring from Ms Crouch, Mr Waterhouse had grabbed him and a scuffle ensued. The applicant said that he had acted in lawful self-defence when he stabbed Mr Waterhouse.

7. Mr Waterhouse and Ms Crouch claimed that nothing had been stolen and that the applicant launched an unprovoked attack upon them. They had no criminal convictions or cautions recorded against them.

8. After the applicant had given evidence, the Crown submitted that it was justifiable to admit evidence to this effect in rebuttal because the defence case involved the assertion that Ms Crouch was dishonest and Mr Waterhouse was a very violent aggressor.

9. The defence submitted that the question whether cannabis had been stolen was a distraction from the main issue in the case and the evidence generally inadmissible.

10. The judge referred to the decisions of this court in *R v Junior Lodge* [2013] EWCA Crim 987 and *R v IWAT* (also known as *Amado-Taylor*) [2001] EWCA 1898, to which we shall return below. In her ruling, she summarised the effect of those authorities as follows:

"... it is a well-recognised rule of evidence that in general evidence can be called to impugn the credibility of witnesses but not led in chief to bolster it up. There are, however, cases of which the disposition of the witness may be relevant to an issue in the case and therefore capable of proof.

I turn then to paragraph 19 and in particular the judgement of Keene LJ from the case of *Amado-Taylor* [2001] EWCA Crim 1898. It states at paragraph 21:

'But the general principle is that evidence which is relevant to an issue in the trial is admissible unless, of course, excluded by one of the normal exclusionary rules of evidence. Cases may arise where evidence of the victim's dispositional character may well be relevant to an issue in the case.'

... It seems to me that it is very much part of both the Crown and defence cases that both rely, in effect, on their version of the events that led up to the use of the knife because the [applicant] does not dispute that he picked up a knife. To see that in proper context it seems to me that the jury could not consider that in isolation and inevitably will look at the immediate events that preceded the use of that knife and, indeed, they must look at those circumstances. We are looking not only at the question of intent on the part of the defendant, but also the reasonableness or otherwise of the [applicant's] actions, what the [applicant] believed about whether he was acting in self-defence or not and, again, as I said, the reasonableness of the degree of the force which was used. You cannot separate this incident into separate parcels. It has to be looked at and viewed in its entirety.

Accordingly, therefore, the disposition of the witnesses is relevant, in my judgment, to an issue in the case."

11. The judge then referred to a passage from Phipson on Evidence, also cited by Keene LJ in the judgment in *Amado-Taylor (IWAT)*. She continued:

"The prosecution very properly in this case did not attempt to put evidence of the good character of either of the witnesses in evidence at an early stage. Imputations have now been made, in effect, in respect of both, not only the main complainant but also against the key eye witness, Ms Crouch, alleging that she was violent as well, in direct contradiction of her own evidence.

I am perfectly satisfied that this is unusually a very proper case where it goes to the heart of the issues in the case. Accordingly, the Crown may adduce that evidence by way of rebuttal."

12. When she came to sum up the case to the jury, the judge did so clearly and thoroughly. With one exception, there is no criticism made of the summing-up. The exception relates to the fact that she reminded the jury of the previous good character of Mr Waterhouse and Ms

Crouch. It is now said that such evidence should not have been admitted. The judge said this:

"Now, the good character of the witnesses Mr Waterhouse and Ms Crouch. You heard that neither Mr Waterhouse nor Ms Crouch have any previous convictions recorded against them. You heard about their lack of previous convictions because the [applicant] says that it was Ms Crouch who started this incident by refusing to return the ring and that Mr Waterhouse attacked him when he tried to recover the ring. The fact that neither witness has any previous convictions does not mean that they could not have used unlawful force against the [applicant] on this occasion. But it is something you may take into account when you are deciding whether or not the prosecution have made you sure that it was the [applicant] and not Mr Waterhouse who started the violence and that the [applicant's] use of force was unlawful."

She then gave a full and extremely fair standard direction on the good character of the applicant.

The Appeal

13. In advancing the appeal, Mr Hingston (who was not counsel for the applicant at trial) submits that the admission of the evidence that Mr Waterhouse and Ms Crouch were of previous good character was prejudicial to the defence, so much so that it has rendered the conviction unsafe. He does not accept that this was a case in which it was appropriate to adduce the evidence because it was irrelevant to any issue in the trial. He contends that it was a case where a legitimate but robust defence was advanced but it was not one that justified bolstering the credibility of the prosecution witnesses by adducing evidence of their good character. In any event, the evidence of good character was far too broad and it may well have weighed far too heavily on the deliberations of the jury. It would have been the last piece of evidence they heard before they retired to consider their verdicts and it would have resonated with them. He maintains that this was a "delicately balanced case" in which extra caution was required to ensure that the balance did not tip unfairly towards the prosecution

14. In her response to the appeal, Miss Bray (who appeared in the court below) submits that the attacks on the character of the prosecution witnesses were so extensive as to make this an exceptional case which justified the admission of the evidence. If the test is lower and simply that it should be relevant to the issues, then that test, too, was satisfied. If that submission is rejected, she submits that, in any event, the applicant cannot satisfy the court that the safety of the conviction was undermined by the admission of this evidence in the context of all the evidence called at the trial.

The Law

15. We now turn to the authorities. As will be seen, they encompass two strands, which were correctly identified by the judge in this case. The first strand is that evidence to bolster a non-defendant witness' credibility may not generally be led in chief. The second strand is that such evidence is admissible if the evidence is relevant to an issue in the case.

16. In *R v Hamilton* (TLR 25 July 1998), the facts involved a glassing in a public house. The appellant did not give evidence at trial, but he launched a strong attack on the credibility of the complainant in cross-examination, suggesting that the complainant was lying and was the aggressor. The judge allowed the prosecution to adduce evidence of the complainant's lack of convictions. This court allowed the appeal. It is a short report and it is not clear entirely what the reasons were, but it appears that the Court of Appeal took the view that what had happened was "no more than the robust pursuit of a legitimate defence case" and an assertion that the prosecution witnesses were lying. On that basis there was no particular issue to which the question of the credibility of the prosecution witnesses could be said to go.

17. In *IWAT/ Amado-Taylor* (opt cit) the appellant had been convicted of rape. The issue was whether the complainant had consented to the admitted sexual intercourse. The complainant said, and had said to a previous boyfriend, that she was a virgin and for strong religious reasons was opposed to any sexual intercourse before marriage. The judge admitted the evidence from the boyfriend that they had never had sex during their relationship and that she had given her reasons at that time. The appellant submitted that the evidence should not have been admitted because it did not go to any identifiable issue in the case. In rejecting the appeal, the Court of Appeal identified the two strands to which we have referred. Keene LJ, giving the judgment of the court, said this:

19. It is established by the authorities that in criminal trials generally evidence is not admissible simply to show that a prosecution witness has a good character, in the sense that he or she is a generally truthful person who should be believed. That was the essence of the decision in *Beard*, to which reference has been made, and again in the case relied on by the Applicant of *R v DS*. The reason is that whether the witness is a truthful person or not is a matter for the jury to determine without the assistance of what are normally known as 'oath helpers'.

20. Despite this principle, it is generally accepted that the occupation of a prosecution witness may be put in evidence, as indeed it was in *DS*, even though this may have some relevance to the veracity of the witness. There is also a long-recognised exception where evidence may be given as to the reputation of a witness: see *Toohy v Metropolitan Police Commissioner* [1965] AC 595 at 605G–606E.

21. But the general principle is that evidence which is relevant to an issue in the trial is admissible unless, of course, excluded by reason of one of the normal exclusionary rules of evidence. Cases may arise where evidence of the victim's disposition or character may well be relevant to an issue in the case. One of the more obvious instances would be where the defence of self-defence is raised on a charge of personal violence. For example, on a murder charge, it appears to be accepted that the accused may adduce evidence to establish that the victim was of a violent disposition if self-defence is being run as a defence. We note that in *Phipson on Evidence*, 15th Ed, the following passage is to be found:

'If the accused's defence to a charge of some

crime of violence is that he was defending himself against an attack launched by the complainant, it is apparent that the non-violent character of the latter is no less relevant as a matter of logic than that of the former': paragraph 19–02.

22. We agree with that proposition. Since the defence in such a case can in any event call evidence of good character of the accused, as is recognised by the very existence of section 1(f)(ii) of the Criminal Evidence Act 1898, it would seem anomalous if the complainant were not able to seek to establish his non-violent disposition."

18. Applying those principles, the Court of Appeal concluded at [32] that:

"... The applicant was very nearly a stranger to the complainant, certainly not a friend or real acquaintance. Yet the applicant gave evidence not merely that she consented to intercourse but that she actively participated in it, helping him penetrate her and putting both her legs around his waist. Her evidence was also that she had told him to stop because it was against her religion and she was a virgin. In those circumstances evidence about her virginity, about her attitude towards sexual intercourse before marriage and her religious beliefs on that topic were relevant to the basic issue of whether there was indeed consensual intercourse. It seems to us that the judge was correct to rule that A's evidence was not just dealing with an isolated incident in the past but was dealing with her attitude and was therefore relevant to the issue of consent. It follows from that that it was admissible evidence."

We respectfully endorse the statement of principles as set out in *IWAT* and its application to the facts of that case.

19. The *IWAT* decision was followed by *R v RG* [2002] EWCA Crim 1056, [2003] Crim LR

43. At [30] this court held:

"In deciding what evidence is admissible about the character, disposition and previous known behaviour of the victim of alleged unlawful violence, a trial judge has to apply the principles

referred to ... in [*IWAT*] in the light of the issues raised in the case he is trying and the quality of the available evidence."

20. On the facts of *RG*, which was a case of murder, the Court of Appeal held that the evidence of a friend of the deceased of comparatively short standing that he had never known the deceased to carry a knife was described as of minimal probative value and, together with evidence from the same witness that the deceased was a lovely man, should not have been admitted without detailed explanation to the jury. On that basis the appeal was allowed.

21. A similar approach and statement of principle to that established in *IWAT* and followed in *RG* is to be found in the case of *R v Ali* [2006] EWCA Crim 1976, another case of murder. One ground of appeal was that the trial judge had referred to the good character of one of the prosecution witnesses, saying that there was no evidence that the prosecution witness was "of other than good character". In dealing with the applicable principles, the court identified again the two strands to which we have referred. Maurice Kay LJ, giving the judgment of the court, said at [34]:

"We accept that as a matter of general principle and historic doctrine, whereas the good character of a defendant is relevant and admissible, the good character of a prosecution witness is not — a position described as 'anomalous' as long ago as 1865, in the case of *Rowton*. That doctrine was more recently referred to by Buxton LJ in the case of *R v Errol Hamilton*. Nevertheless, there are cases in which the good character of a prosecution witness may become relevant and admissible, not least because it may go to an issue in the case."

He continued at [36 to [38]:

"36. There have been other cases in which, one way or another, or favourable aspects of the character of a prosecution witness have been held to be relevant and admissible. This has happened particularly in the context of sexual offences and a careful consideration of the problem in that context is to be found in the

case *R v Amado Taylor* [2001] EWCA Crim 1898. We have also been referred to the case of *R v Tobin* [2002] EWCA Crim 190, where this court upheld a conviction in a case where the judge had allowed evidence of the complainant's good character to be given by the mother of the complainant. It did so by analogy with the well-known case of *R v Funderburk* [1990] 1 WLR 587, in which Henry J had adopted the words of the current edition of *Cross on Evidence*, observing that the difference between questions going to credit and questions going to the issue may reduce 'to vanishing point' in sexual cases. Henry J observed of the traditional 'collateral test', 'the utility of the test may lie in the fact that the answer is an instinctive one based on prosecutors' and courts' sense of fair play rather than any philosophic or analytical process'. It is apparent that in *Tobin* the questions were allowed on the basis of perceived fairness, which approach seems to have received the support of this court. It is right to record that the judgment in *Tobin* has been the subject of some criticism in the present edition of Archbold at paragraph 20–11, the present edition of Phipson on Evidence, at paragraph 18–24, and in [2003] Crim LR 408. We do not propose to involve ourselves in that criticism one way or the other. It seems to us that in the present case the good character of Zara became relevant because of the central issue in the case, namely, which of Zara and the applicant was the murderer. Whilst no burden lay upon the applicant to prove that it was Zara who had killed Tahir, if the prosecution were to prove their case that the applicant was the murderer, in reality it also had to prove that Zara was not. In these circumstances, in our judgment, the good character of Zara became, to borrow Mr Wetherby's words, 'issue relevant' and where good character is 'issue relevant', it is beyond dispute that it is potentially admissible (see Phipson on Evidence 18–20). In fact, Zara's good character in the sense of lack of convictions had not been adduced in the present case. Hence the language of the judge 'There is no evidence that Zara is other than of good character'.

37. In the circumstances of this case, we do not consider that the direction given by the judge, either as it related to Zara or by reason of its textual proximity to the good character direction which was given in relation to the applicant, amounted to a misdirection in any way. We consider that her evidence had become 'issue relevant'. If there is to be a criticism of it, it is that although relevant and admissible as going to a central issue the judge dealt with it solely in terms of credibility. Mr Wetherby is particularly critical of that. However, we consider that the present case bears a similarity to sexual cases in which the boundary of issue and credit is ill-defined. The similarity is the domestic provenance of the offences and that two people were describing events which occurred in the privacy of their own home.

38. For all these reasons we do not consider that the judge fell

into significant error in the way in which he treated Zara's character."

22. The passage from Phipson on Evidence, to which the Court of Appeal referred in the above passages, survives unchanged to the current day (see the 19th edition at 18-21).

23. In *R v SB* [2013] EWCA Crim 899 (an appeal against convictions for rape and indecent assault), one of the numerous grounds on which the appeal was allowed was that the judge had admitted opinion evidence from the child complainant's mother to the effect that she believed her daughter: (see [18]). We do not consider that *SB* adds anything to the issues we have to consider.

24. More to the point, in *Lodge* [2013] EWCA Crim 987, the appellant had been convicted of offences of inflicting grievous bodily harm on a man called Richard Stickler, contrary to section 20 of the Offences against the Person Act 1861, and of one offence of assault. The main ground of appeal was that the trial judge admitted in evidence Mr Stickler's good character in rebuttal of the defence.

25. It was not in dispute in that case that the appellant had inflicted grievous bodily harm. His case was one of lawful self-defence. In short, the incident happened by the roadside after the appellant had stopped his car near to where Mr Stickler was standing with some friends. A female passenger opened the door of the appellant's cars and vomited onto the road. What happened thereafter was in dispute. The prosecution case was that the appellant took exception to Mr Stickler's reaction and became abusive and then violent, launching an attack. In interview after his arrest the appellant said that Mr Stickler's group had been laughing and shouting racist abuse at the girl who was being sick. The appellant claimed that he had asked them to moderate their racist language, but they continued to abuse and threaten the two girls

with such language. In evidence he gave a similar account. When it was put to the complainant that he had been racially abusive, he denied it in categorical terms. Later in the trial the prosecution sought and obtained leave to adduce the evidence that lay at the heart of the appeal: namely, that in October 2007 the complainant had been one of a number of people who had made on a charity climb to raise money for people in Tanzania and had been photographed carrying a young black Tanzanian boy.

26. The trial judge in that case acknowledged the general rule but identified an exception when the evidence went to a specific issue in the case and gave leave to adduce the evidence on the basis that it went to the complainant's propensity to behave in a racist fashion. He held that it was for the jury to consider whether Mr Sticker was the sort of person who would have started the incident by using racist language, which was the central issue in the case.

27. This court upheld the conviction, repeated the two strands of principle and stated at [18]:

"It is a well recognised rule of evidence that 'in general evidence can be called to impugn the credibility of witnesses but not led in chief to bolster it up' (see the judgment of Lawton LJ in *Turner* [1975] 1 QB 834 at page 842C). However, Mr James recognised that there were circumstances in which evidence of the specific disposition of a witness may be relevant to an issue in the case and, therefore, capable of proof."

28. Having referred to *IWAT* and to *RG*, the court dismissed this ground of appeal. It gave its conclusion at [25]-[26]:

25. ... When he came to direct the jury as to the effect of Mr Stickler's evidence in response to the allegations of racist aggression the judge said this:

'Similarly, and it is the other side of the coin in a way, you have exhibit 2, the details of Mr

Stickler's work with charity and his charitable activities, particularly for Tanzanian orphans and others. They are not before you and you do not use them for you to see what good character Mr Stickler has, because that is not relevant. They are there to assist you with whether or not he is telling the truth when he says he is not a racist and did not and would not make racist remarks. That is why you have had exhibit 2 put before you. It is on that issue, to decide whether or not someone who does that sort of work and has that sort of relationship with Tanzanian orphans, would make the remarks alleged here.'

26. The judge's directions upon the issue of self-defence are not the subject of criticism; nor could they be, because the judge's direction was full and fair. In our judgment there was no unfairness to the defendant generated by the admission of this evidence. The jury understood the relevance of the evidence and its limitations and were well able to make the judgement whether on the night of the incident Mr Stickler may have acted out of character."

29. Finally, we refer to the recent case of *R v Green* [2017] EWCA Crim 1774, the judgment in which was delivered shortly after the applicant's trial had concluded. The appellant Green had been convicted of an offence of indecent assault. The defence case was one of complete denial. In cross-examination it was put to the complainant that she was fabricating her evidence. The appellant was of previous good character and the judge gave a direction to that effect. There was no evidence of the complainant's character. In the course of his summing-up the Judge said:

"The other thing about [the complainant]: I have told you about the defendant's character, but there is no suggestion that [the complainant] is somebody who has ever been in trouble with the police or ever committed any offence or has a reputation for untruthfulness or anything of that sort. So, bear that in mind. In a sense, it is a level playing field here between [the complainant] on the one hand, and the defendant on the other."

30. In *Green* it was submitted that this was a misdirection in law; that it undermined the direction given in the appellant's favour; and that no evidence, in any event, of the complainant's character had been before the jury, one way or another. At [24]-[26] the court dealt with this submission as follows:

"24. As we said to counsel in the course of argument, it is the universal experience of the members of the court that directions of the type here in issue are never given in summing-up to a jury. We asked whether the point had arisen in any reported authority and both counsel told us that they had been unable to find any case dealing with the point.

25. In considering the helpful arguments of counsel, we considered that in the vast majority of cases, it will be positively undesirable to direct a jury in the manner in which the judge did in this case. The burden of proving guilt, so that the jury is sure, is on the Crown. One element of our procedure in securing that a jury has to be sure of the guilt of an accused person of good character, before convicting him or her, is to direct the jury that his or her good character is a matter that they must bear in mind, in the accused's favour, in two respects: first, with regard to his or her credibility; and secondly, as suggesting that it might be less likely than otherwise might be the case that he or she should commit an offence now. Those elements in an accused person's favour are expressly stated to each jury. Unless a jury hears (for good reason) that a Crown witness is not of good character, they will no doubt assume that there is nothing to speak against his or her credibility.

26. We consider that, in all but a very exceptional case (of which we can think presently of no examples), judges should refrain from directing juries in the manner that the judge did in this case. We think that Mr Sergeant is right in saying that, to do so, is to 'water down' a protection that our procedure affords to an accused person of good character, and to reduce, to that limited extent, the burden of proof on the Crown. In our judgment, this was a material error in the summing-up."

31. It seems from those observations that, despite the court asking for the help of the advocates before them, none of the relevant authorities to which we have referred so far were cited to the court. Perhaps because of this, the court did not reiterate the two strands of principle to which

we have referred and did not analyse the appeal along those lines. Had the court been aware of the authorities, we have no doubt that the court would not have expressed itself in the terms of paragraphs 24 to 26 and those paragraphs, therefore, should not be taken as having any wider or general application. Having said that, the decision may well have been the same if subjected to the sort of analysis identified in previous authority, for four main reasons. First, there was no evidence of the complainant's character, good or bad. Second, even if there had been evidence that she did not have a reputation for untruthfulness, this was not explained to the jury as a relevant issue or how they should approach the evidence as being probative of any relevant issue. Third, the effect of the remarks was to water down the impact and protection afforded by the direction which the judge gave to the appellant Green.

32. Drawing those strands together, we consider the following propositions are now well established and should be applied when considering if evidence of good character of a non-defendant witness should be admitted:

i) The starting position is that, generally, evidence is not admissible simply to show that a prosecution witness has a good character in the sense that he or she is a generally truthful person who should be believed: see *IWAT* at [19]; *RG* at [30]; *Ali* at [34]; and *Lodge* at [18].

ii) However, evidence is admissible if it is relevant to an issue in the trial (unless, of course, excluded by one of the normal exclusionary rules of evidence): see *IWAT* at [21]; *RG* at [30]; *Ali* at [34]; and *Lodge* at [18].

iii) The category of issues to which evidence of disposition may be relevant is not closed. However:

(a) The issue of consent in a trial involving sexual conduct is an issue to which evidence of character or disposition may be relevant: see *IWAT*; and *Ali* at [36].

(b) If the accused's defence to a crime of violence is that he was defending himself against an attack launched by the complainant, it is apparent that the non-violent character of the latter is no less relevant as a matter of logic than that of the former: see Phipson, as endorsed by *IWAT* at [22]; and *Lodge* at [26].

iv) If admitting evidence on the basis that it is "issue-relevant", a trial judge should be astute to ensure that the issue to which it is relevant and its limitations are understood by the jury: see *Lodge* at [26]. The judge should also ensure that the effect of admitting the evidence is not to water down the protection provided by the primary obligation upon the prosecution to prove its case and any good character direction that may be given for the defendant.

33. Nothing that we have said in setting out those general principles should be taken to ignore the exclusionary powers that a judge has to refuse to admit evidence that he or she feels will have an unduly prejudicial and less than probative impact upon the jury.

Conclusions

34. Returning to the facts of the present case, we note the following:

(1) In her Ruling, the trial judge correctly identified the two strands of principle established by the authorities.

(2) The trial judge correctly identified that there was an issue to which the good character of the prosecution witnesses was relevant, namely, the context in which the applicant picked up the knife with which he stabbed Mr Waterhouse.

(3) The trial judge adequately and correctly identified and explained to the jury the issue to which the evidence was relevant and how it was relevant. She also indicated the limitations of the evidence and explained that it did not follow that, because they had a good character, the prosecution witnesses could not have used unlawful force against the applicant on this occasion.

(4) The trial judge avoided watering down the effect of the good character direction in favour of the applicant by placing it after what she said about the character of the prosecution witnesses and giving the direction in full, fair and correct terms.

35. For these reasons, in our judgment, the trial judge reached the correct conclusion on the admissibility of the evidence and gave suitable directions in her summing-up. In this case the application to admit the evidence was made because the defence as raised by the applicant went far beyond the normal, robust defence to which Mr Hingston made reference.

36. Furthermore, the application for the lengthy extension of time sought (158 days), in our judgment, was not satisfactory, based as it was entirely on a change of representation. Given our conclusions on the merits, although we are indebted to Mr Hingston who has carried out the

necessary research to place the relevant authorities and principles before us and whose submissions were extremely helpful to the court, we are driven to the conclusion that the applications for an extension of time and for leave to appeal against conviction must be refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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