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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

LIAM DOMINIC ADAMS

Before: Morgan LCJ, Coghlin LJ and Gillen LJ

COGHLIN LJ (delivering the judgment of the court)

[1] This is an appeal by Liam Dominic Adams ("the appellant"). On 1 October 2013, following a trial before Her Honour Judge Philpott, Deputy Recorder of Belfast, and a jury the appellant was convicted by majority verdicts of ten sexual offences including indecent assault on a female contrary to Section 52 of the Offences Against the Person Act 1861 ("the 1861 Act"), gross indecency with a child contrary to Section 22 of the Children and Young Persons Act (Northern Ireland) 1968 ("the 1968 Act") and three counts of rape committed against his daughter between 23 March 1977 and 24 March 1983 during a period when the complainant was aged between 4 and 9 years of age. On 27 November 2013 the learned trial judge imposed upon the appellant in respect of the said offences an effective determinate sentence of 18 years being 16 years in custody and 2 years on probation. For the purposes of the appeal the appellant was represented by Ms McDermott QC and Mr Brolly while Mr Murphy QC and Mr McDowell QC appeared on behalf of the Public Prosecution Service. The court is grateful to both sets of counsel for their well-constructed and attractively delivered written and oral submissions.

Background facts

[2] The offences of which the appellant was convicted relate to a continued period of sexual abuse of the complainant commencing when she was approximately four years of age. It commenced with the appellant coming into her room and touching her inappropriately and continued until he separated from her mother and left the jurisdiction in order to commence life with a new partner. Counts 2, 3 and 4 relate to an incident when the complainant was approximately

5 years of age and her mother was in hospital giving birth to another child. The appellant entered the complainant's bedroom, touched her inappropriately, put his fingers inside her vagina, made her commit acts of gross indecency and give him oral sex before raping her. During the period of abuse the appellant committed further sexual offences upon the complainant including rape and compelling her to provide him with oral sex at different locations.

[3] In December 1986 the complainant informed her mother of the abuse and on 15 January 1987 her mother informed the health visitor. The matter was reported to Social Services and on 20 January the complainant and her mother were interviewed by a social worker. On 21 January 1987 a statement was taken from the complainant by a female police officer. On 11 February 1987 the complainant and her mother attended Grosvenor Road police station and informed the police that the complainant no longer wished to proceed with her complaints. On 9 March 1987 the complainant, her mother and her uncle went to Buncrana to put the allegations to the appellant who maintained a complete denial. In January 2006 the complainant returned to the police and renewed her allegations. The appellant was interviewed by the police in February 2007 and maintained his denial. The appellant then left the jurisdiction and went to live in the Republic of Ireland. The police obtained a European Arrest Warrant and extradition proceedings were commenced by the PPS. The appellant contested the extradition proceedings upon the ground that the case had generated so much media publicity that it would be impossible for him to receive a fair trial in this jurisdiction. The appellant returned to the jurisdiction and a trial initially commenced on 9 April 2013 before the learned trial judge. However, that trial had to be aborted on 24 April 2013.

The grounds of appeal

[4] The grounds of appeal advanced on behalf of the appellant by Ms McDermott may be usefully summarised as follows:

(*i*) The learned trial judge failed to direct the jury as to how they should approach their assessment of the issues in the context of the extensive publicity both before and after the first trial of the appellant.

(*ii*) The learned trial judge misdirected the jury on a number of issues including:

(*a*) The burden and standard of proof.

(*b*) Inconsistencies.

(*c*) Lies.

(*d*) Recent complaint.

(*iii*) The learned trial judge failed to properly and effectively review the defence case in the course of her directions to the jury.

(*iv*) The learned trial judge improperly intervened during the evidence of the complainant's mother so as to assist the witness and, ultimately, the Crown case.

(*v*) The learned trial judge failed to properly and effectively direct the jury with regard to the evidence that the appellant had been employed in youth clubs for a period of time without any complaints of sexual misbehaviour.

(*vi*) The closing speech to the jury delivered by counsel for the PPS had improperly undermined the appellant's attack upon the credibility of the complainant and her mother with regard to the 1987 decision not to proceed further with the complaint.

Pre-trial publicity

[5] The appellant's brother and complainant's uncle is a Mr Gerry Adams the former member of the Westminster Parliament for West Belfast. He is a person who has attracted significant media interest over many years in a number of differing contexts. Prior to the first trial an application was made on behalf of the appellant to stay the proceedings on the grounds of adverse publicity. The application was heard by Burgess J who was critical of the publishers of an article in 2007 and a television programme, "Insight", which, in turn, spawned a large number of reports in newspapers. He also referred to a radio interview on the "Nolan Show" relating to the role of Mr Gerry Adams. After carefully reviewing the effect of all of the pre-trial publicity Burgess J reached the view that, having regard to the time that had passed and the fact that it had been made clear that the appellant was denying all allegations, the trial should proceed as quickly as possible.

[6] Mr Gerry Adams gave evidence in the first trial of the appellant when he was cross-examined at length with regard to his credibility. Unsurprisingly, his evidence received very wide publicity in terms of newspaper, radio and television exposure. In the circumstances a further application was made to stay the second trial again on the basis that the appellant would not receive a fair trial. After careful consideration, that application also was rejected by the learned trial judge and the trial proceeded. In that context it is important to note that, when the jury was being initially sworn the learned trial judge had identified the appellant, who was present in court, and the nature of the counts upon which he was to be tried. The panel had then been asked "Does anybody know Mr Adams?" When one individual said "from the television" that person was excused from selection. Similar questions were

addressed to the jury with regard to the identity of the remaining witnesses, including the police officers.

[7] After the jury had been sworn on 11 September 2013 the learned trial judge addressed them in the following terms:

> "Now ladies and gentlemen, as I said at the outset you try this case on the evidence you hear in court, and only on the evidence you hear in court. We now live in a much more widely based media world and there is lot of information available to jurors. For that reason judges now have to specifically direct you that you are not to use the internet to access any information about this case; either generally or specifically. Now, do you understand that? It is not saying you can't use your internet, but you do not look up the names of the parties on the internet. You do not go searching for information and when we get into the trial, if technical evidence is given (which it may or may not be) you do not go to check it and see if you can find sources about forensic evidence. This is the type of thing that sometimes happens in trials, it is not appropriate for you to do, and the reason it is not appropriate for you to do is (I am not saying forensic evidence is relevant in this case, but it is a good example) you try the case on the evidence you hear in court. The evidence you hear in court is then tested by cross-examination or other experts and that is what you base your decision on, not on what somebody else says about a fact that may be right, or a piece of material that is found in different circumstances, or a view that is taken because one thing follows in one case it must be followed in another. If the jury system is going to be credible it has I am afraid on these types of issues to follow directions of the judge. So you just come in, you hear the case solely on the evidence you hear in this court. You do not go looking for information or evidence anywhere else. That is how you get unsafe, or maybe how you get unsafe verdicts."

[8] On 30 September 2013 towards the end of the first day of delivering her closing directions to the jury the learned trial judge was reminded by Mr Murphy about publicity. Her response was "I am going to do that, that's not a problem".

The jury was then brought back into court and, in the course of her final remarks that day the learned trial judge said:

> "So do not be discussing this case with anyone, avoid the news today and avoid newspapers, don't be looking at anything until you have come back tomorrow morning, you will get any brief final direction and then you will go and decide the case, as I have said, on the evidence you have heard in this court. That is very important because, as you can see as we are going through this, there is a lot of evidence, you are have heard it all, you have seen the witnesses, you need to just concentrate on that and decide this case without anybody else's spin or outside interference. So don't even be reading papers just come tomorrow and you will be sent out to decide."

[9] There is no doubt that, as a consequence of the personalities involved, these proceedings attracted a very considerable degree of media publicity both before and, to a certain degree, subsequent to the initial trial. As is often the case the standard of that publicity varied. In such cases the trial judge has to exercise his or her discretion as to how, if at all, to deal with such pre-trial publicity when giving directions to the jury. Any specific reference to such publicity is likely to carry with it the risk of stimulating rather than suppressing interest on the part of a jury. In Ex parte The Telegraph Plc [1994] 98 Cr. App. R. 91 Lord Taylor LCJ said, at page 98:

> "In determining whether publication of matter would cause a substantial risk of prejudice to a future trial, a court should credit the jury with the will and ability to abide by the judge's direction to decide the case only on the evidence before them. The court should also bear in mind that the staying power and detail of publicity, even in cases of notoriety, are limited and that the nature of a trial is to focus the jury's mind on the evidence put before them rather than on matters outside the courtroom."

In a similar vein Lord Hope, delivering the judgment of the Privy Council in Montgomery v HM Advocate [2003] 1 AC 641, after referring to the risk that widespread, prolonged and prejudicial publicity might affect the minds of at least some members of the jury, went on to say:

> "The principal safeguards of the objective impartiality of the tribunal lie in the trial process itself and the

> conduct of the trial by the trial judge. On the one hand there is the discipline to which the jury will be subjected of listening to and thinking about the evidence. The actions of seeing and hearing the witnesses may be expected to have a far greater impact on their minds than such residual recollections as may exist about reports about the case in the media. This impact can be expected to be reinforced on the other hand by such warnings and directions as the trial judge may think it appropriate to give them as the trial proceeds, in particular when he delivers his charge before they retire to consider their verdicts."

[10] In this case the learned trial judge had polled the individual members of the jury with regard to any knowledge they might have had about the personalities involved and, on the first morning of the hearing, had coupled the standard exhortation to restrict themselves solely to evidence heard in court during the trial with a warning not to resort to any outside sources of information. In the course of hearing the application for a stay of proceedings on 17 September 2013 the learned trial judge when pressed by Ms McDermott in relation to the "massive publicity" in April had made the following observations:

> "I think it is relevant to this point Ms McDermott, that on the last occasion when there was the breach of the press order, I was very concerned of the effect of information leading jury members to the red button as it was may lead them to having received information and if you remember I polled the jury and I am sure to the surprise of the journalist in question, nobody had pressed the red button. So sometimes people are not as tied up with the press as we and the press think. Plus the fact that in this case I have had four people, the man who indicated in open court and three other jurors when they were in the jury room indicated that they had seen the programme and they were discharged. Now, if the jury system is going to survive one has to has to have confidence that the jury will follow judicial direction, they do not always follow judicial direction, that is no doubt true, but it is for judges to set in place the rules and be cautious and aware of situations where they might not follow them. I have not, either with the last jury in this particular case or with this jury, anything to suggest that these jurors won't take directions."

In the circumstances we are not persuaded that the learned trial judge erred in the exercise of her discretion and, accordingly, we reject this ground of appeal.

Burden and standard of proof

[11] Ms McDermott made a number of criticisms of the way in which the learned trial judge dealt with this topic in the course of her directions to the jury. She drew the attention of this court to the reference to the jury's task as "your decision as to guilt or innocence" reminding the court that no burden rested upon the defendant to prove himself innocent. She noted the absence of the standard observation that it would not be adequate to come to the conclusion that the appellant was "possibly guilty" or even "probably guilty". She also drew attention to what she described as a "wholly unnecessary" reference to "recklessness" on the part of the appellant given the fact that, at all material times, the complainant would have been beneath the age of consent. She was also critical of the use by the learned trial judge of the phrase "… you are looking at the evidence as a whole and working out what you believe to be the truth and where you believe the truth lies" without setting such words in the context of the appropriate burden and standard of proof.

[12] The learned trial judge opened her final remarks to the jury by reminding them that the burden of proof meant that the prosecution had to prove the defendant guilty of the charges against him. She specifically observed that "the defendant does not have to prove his innocence". She went on to explain that:

> "The prosecution, as I have said, had to prove their case, and the standard to which they must prove that case is beyond reasonable doubt. Beyond reasonable doubt in law members of the jury, the prosecution must leave you firmly convinced of the defendant's guilt. There are a few things in the world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt, but, if based upon your considering of the evidence you are firmly convinced, that is sure in your minds, that the defendant is guilty of the crimes with which he is charged you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty you must give him the benefit of the doubt and find him not guilty."

[13] In our view, while some of the phraseology might well have been worthy of further consideration, overall, we are satisfied that the jury received effective directions relating to the burden and standard of proof and, accordingly we reject this ground of appeal.

Lies/Inconsistencies

[14] The evidence of the complainant and her mother was that, together with her uncle, they had gone to Buncrana on 9 March 1987 and put the allegations of sexual misconduct to the appellant. He denied the allegations. When the appellant was interviewed by the police in February 2007 he denied that any such meeting had taken place. The appellant's solicitor, Mr Breen, gave evidence that the appellant had admitted that he had told a lie to the police because of his concerns about the presence of his brother. The solicitor made a note of that admission. Accordingly, Ms McDermott submitted that the learned trial judge should have provided the jury with careful guidance as to the weight to be attributed to a lie, bearing in mind the significance of any motive for lying. She argued that the jury should have been told that the mere fact that a defendant tells a lie is not in itself evidence of guilt since the defendant may lie for many reasons including the desire to bolster a true defence, to protect someone else, to conceal disgraceful conduct of his, short of the commission of an offence, or out of panic or confusion. The jury should have been warned that unless they were satisfied beyond reasonable doubt that the appellant had not lied for some irrelevant or other innocent reason they should take no notice of his lies.

[15] Any such directions require to be modified to fit the particular case – see R v Lucas 73 Cr. App. R. 159. In the course of her directions to the jury the learned trial said, with regard to the issue of lies:

> "The defendant has admitted he lied to the police. You must consider why he lied. The defendant told you that he lied about the confrontation in Buncrana because it had been drummed into him by his father not to mention Gerry Adams to the police, in the barracks, to the army, to the media or when he got older socially to anyone. He said in the witness box you just didn't mention Gerry Adams. And he says if he had, in terms he has told you that if he had mentioned the confrontation in Donegal it would have necessitated mentioning Gerry Adams and that's why he did not do it.
>
> You heard from Mr Breen the solicitor who told you that he lied to the police in respect of the confrontation in Buncrana and that he advised Mr Adams that that was not a sensible thing in terms to do. His solicitor was concerned about him not taking his advice and he, because of that, wrote down that he had given advice that he should tell the police about the confrontation in Buncrana and he actually went as far as getting him to initial it. So that is the

> first lie. If you think there is a reasonable explanation given for that and you accept it, you should not hold it against the defendant. ….
>
> If you decide it is a relevant lie and that it was told for the reason to avoid him being suspected or to avoid any issue going towards guilt as opposed to the explanation he gave you, you can take it and you can take it into account and you can add it into support any other prosecution evidence that you think is relevant. But you have to be sure that there is not a reasonable explanation for this series of lies other than that he wanted to avoid incriminating himself in any way in any connection with the allegations that have been made."

[16] Again, while the direction might have been improved e.g. by giving the standard Lucas direction recommended by the Judicial Studies Board and then carefully putting that direction into the factual matrix of this case, we are satisfied that there was sufficient compliance with the relevant authorities to ensure that the jury were properly and effectively directed with regard to lies alleged to have been told by the appellant.

[17] Ms McDermott questioned whether there was any real purpose in the distinction made by the learned trial judge between lies and inconsistencies. She gave as an example the complainant's initial account to social workers that she had not been abused in New Barnsley as compared to her later position that abuse had taken place at that location. Ms McDermott argued that such a difference was relevant to the credibility of the complainant and that nothing was to be gained by using the term 'inconsistency' as opposed to a ' lie' other than a potential for reducing the significance of the latter term.

[18] Further conflicts of evidence identified by the learned trial judge as 'inconsistencies' included whether the reason that the complainant and her mother had not pursued their original complaint in 1987 had been because the police had shown themselves to be more interested in questioning them about paramilitary activities in the local area than in the allegations of sexual abuse made by the complainant, whether the complainant and her mother had been told by a social worker that the police wanted to meet them in Belfast but the social worker advised them not to attend, whether, as she had maintained in the course of the television programme, the complainant's mother had stayed in bed all night holding her daughter when she first learned of the abuse or whether she had gone to Scotland for Hogmanay.

[19] Ms McDermott focused her submissions upon the inconsistency between the evidence of the complainant and her mother on the one hand and WDC Lowry on the other as to whether they were questioned by other police officers in relation to paramilitary activities when they attended for interview and to the internal inconsistency between the complainant and her mother as to the number of times that they had visited Grosvenor Road police station. During cross-examination the complainant was adamant that at least two police officers at Grosvenor Road police station had spoken to her with a view to obtaining information about the appellant's movements and paramilitary activities in the area. When asked as to whether such conversations had taken place when she was engaged with WDC Lowry and her male colleague the complainant said that she "thought so". Ms McDermott suggested that nothing like that had ever happened to which the complainant responded:

> "I can assure you Ms McDermott that if that hadn't have happened, I would have went and done this procedure with Liam Adams in 1986 and that would have been over and done with. If I hadn't felt that I was asked questions that didn't involve child abuse then I would have went ahead with the system then and have Liam Adams face what he done to me then instead of waiting to now and I could have got on with my life. I have no reason to lie."

Under further questioning the complainant said that she "didn't remember" whether WDC Lowry and her male companion were present in the room at the time when she was being asked about the other matters by two other officers. In cross-examination WDC Lowry was asked whether any other officers came into the room in which she and DI Molloy were taking a statement from the complainant and her response was "that wouldn't happen at all, no", "it didn't happen". The complainant's mother, Mrs Campbell, also gave evidence that the reason for not proceeding with the complaint of sexual abuse in 1986 was her impression that the police officers were more interested in information about paramilitary activities rather than her daughter's allegations.

[20] Ms McDermott identified this conflict of evidence as important and submitted that the jury should have been made fully aware that it was the defence case that the complainant and her mother were lying about the reason for withdrawing the initial complaint.

[21] In the course of her directions to the jury the learned trial judge informed them that they could take into account any inconsistencies which they found to exist with regard to the evidence given by the complainant and her mother when considering their reliability as witnesses. In doing so she said:

> "It is for you members of the jury to judge the degree of inconsistency and the extent of the importance of any inconsistency. So you have got to think how significant is the inconsistency and whether or not it is explained to your satisfaction.
>
> Is the inconsistency, you also ask yourself is the inconsistency fundamental to the issue you are considering? If so, is there an explanation, (like I suggested earlier), if not how does the inconsistency affect the reliability of either witness. If you come to the conclusion that either Aine or her mother have been inconsistent on an important matter you should treat their evidence with considerable care."

She also told the jury that:

> "You will have to consider where the truth lies and you should do this by considering all the evidence that you have heard in this case."

[22] We are satisfied that, in directing the jury in relation to inconsistent statements the learned trial judge sensibly drew significantly upon the suggested directions contained at paragraph 4.16 of the Crown Court Bench Book (27 February 2013). In the circumstances, we reject this ground of appeal.

Recent complaint

[23] During the course of her ABE interview the complainant told the police that her grandmother had died in 1985 and that, about that time, she first became aware that her father, who had remarried after separating from her mother, had another two year old daughter. She said that her complaint to the police had been stimulated by a desire to protect that daughter but it appears that she did not make any relevant complaint to her mother for a further year in December 1986.

[24] Admission of evidence of complaint is subject to the provisions of Article 18 of the Criminal (Evidence) (Northern Ireland) Order 2004 ("the 2004 Order"). In R v King [2007] NICC 17 Gillen J held that Articles 18(1)(*d*) and 24 of the 2004 Act may be availed of in the circumstances of a sexual offence when young people may make disclosures over a long period, observing at paragraph [38] of his judgment:

> "[38] An important potential use of Article 24 and 18(1)(*d*) of the 2004 Order may arise in the context of sexual offences where experience has revealed that

> victims, especially children and young persons, often make disclosures over an extended period of time i.e as soon as could be reasonably be expected in the particular context of each case (see R v O (2006) EWCA Crim 556)."

[25] In the circumstances we are persuaded that this ground should also be rejected.

Failure to properly and effectively put the defendant's case to the jury

[26] As she approached the end of her directions to the jury on 30 September 2013, at approximately 4.00 pm, the learned trial judge put the defence case to the jury in the following terms:

> "The defence have, through Mr Adams, he has told you of his employment record and how when he was in Dundalk he took courses to work with young people and do community work and that he had been employed by the Belfast Education and Library Board to help out. He had worked for a period of a year voluntarily in Dundalk unpaid so that he could get the qualifications and the experience that he had to get to get the qualifications. He has told you that he has worked with young people, cross-community and that he has carried out residential work and gone canoeing etc. He has told you that his age group is 14 to 18, although the youth club stretches from 8 to 18. He told you that he worked at Clonnard and he worked in the youth club. Of course Ms Adams says because she knew that he was working there that she went back to the police in 2007. Nonetheless he had been working there for a period of time and there have been no allegations made against him during that period. That does not of course mean that the offence that Ms Adams complains of could not have happened but it is something that you should take into account when you are judging the whole matter in the round. He appears to have been involved in community work for more than, before 1998 over a ten years period."

[27] It will be appreciated that in the course of making those observations, the learned trial judge did not specifically deal in any detail with the actual evidence given by the appellant in the course of examination and cross-examination. She did

not remind the jury that there was no obligation upon the appellant to give evidence nor did he have to prove anything. At this point the learned trial judge did not make any reference in her charge to the delay that had taken place and/or any consequent difficulties faced by a defendant seeking to refute allegations of historical sex abuse. It appears that, immediately prior to the commencement of closing speeches, two daughters of the appellant had given evidence in his support. The observations of the learned trial judge did not include any reference to those witnesses or the supportive evidence that they had provided.

[28] In the familiar quotation from his judgment in R v Lawrence [1982] AC 510 Lord Hailsham said at page 519:

> "It has been said before, but obviously requires to be said again. The purpose of a direction to a jury is not best achieved by a disquisition on jurisprudence or philosophy or a universally applicable circular tour round the area of law affected by the case. The search for universally applicable definitions is often productive of more obscurity than light. A direction is seldom improved and may be considerably damaged by copious recitations from the total content of a judge's notebook. A direction to a jury should be custom built to make the jury understand their task in relation to a particular case. Of course it must include references to the burden of proof and the respective roles of jury and judge. But it should also include a succinct but accurate summary of the issues of fact as to which a decision is required, a correct but concise summary of the evidence and arguments on both sides, and a correct statement of the inferences which the jury are entitled to draw from their particular conclusions about the primary facts."

[29] It is important to bear in mind that the fundamental issue in this case was that of credibility on the part of the complainant and the appellant. In terms, she made a number of serious allegations all of which he denied.

[30] After a resume of the counts in the indictment the learned trial judge had dealt specifically with delay, warning the jury that delay could cause difficulties particularly for the defence. In terms she said:

> "It is important to appreciate that because of the delay there may be a danger of real prejudice to a defendant."

She referred to the substantial gap between withdrawal of the allegations in 1987 and their renewal in 2006. She gave examples of a number of matters that, had such a delay not ensued, the appellant might well have been able to clarify by calling evidence or otherwise. She concluded that section of her charge by again reminding the jury:

> "That even if you decide that the delay is understandable you still have to consider has a defendant been placed at a real disadvantage in putting forward his case, taking that into account in his favour when deciding if the prosecution evidence has left you satisfied beyond reasonable doubt of his guilt."

[31] Also in relation to credibility the learned trial judge directed the jury's attention to the fact that the appellant had admitted lying to the police but reminded them of the need to take into account the reason that he had put forward for telling such a lie. In that context she reminded them of the note made by Mr Breen the solicitor. As noted above, she also reminded the jury about the need to consider several apparent inconsistencies in the evidence of the claimant and her mother warning them that if they came to the conclusion that either the complainant or her mother had given inconsistent evidence on an important matter their testimony should be treated with considerable care. She also drew their attention to the fact that the three other children of the family had been examined by social services without any adverse findings and that, after she learned of the allegations, Sinead Adams had continued contact with the appellant. While it is true that the learned trial judge did not specifically refer to the evidence of the appellant's daughters, we note that theirs would have been the final live testimony heard by the jury prior to the commencement of the closing speeches and, consequently, would have been fresh in the jury's minds. Taken as a whole and viewed fairly we do not consider that the learned trial judge failed to properly put the appellant's case to the jury given the specific factual circumstances of this case.

The learned trial judge improperly intervened in the evidence of the complainant's mother so as to assist her and the Crown case

[32] The complainant's mother was cross-examined in detail about a number of matters including when she had been first informed by her daughter of the abuse and whether that took place on or before 31 December 1985. She was asked about what she had told the social worker who had made the initial appointment with the police and the interviewing police officers about when she had first been told of the abuse by her daughter, whether she had been visited by a social worker who warned her not to meet the police in Belfast, what she had told the television programme about that visit, whether she had spoken to other police officers when she and her daughter were being interviewed at Grosvenor Road, whether she was

asked by any such officers about paramilitary activities in the area, whether such questioning took place in the presence of WDC Lowry and DI Molloy and the number of times that she and her daughter had attended at Grosvenor Road police station. Ms McDermott confirmed that it was accepted by the appellant that WDC Lowry was a perfectly honest person but, since she maintained that no such conversation took place in her presence, both she and the complainant's mother could not be right. We have carefully read the transcript of the examination and cross-examination of the complainant's mother on 23 September 2013, including the interventions by the learned trial judge, bearing in mind the complaints made by the appellant. Having done so we are satisfied that those interventions were essentially directed to attempts to clarify evidence for the benefit of the jury from a witness who was dealing with events that had taken place more than 30 years ago. We note that, despite being given more than one opportunity, the defence did not requisition the learned trial judge with regard to alleged excessive and/or unhelpful interventions. In the circumstances, we reject this ground of appeal.

The closing by prosecution counsel

[33] During the course of his closing speech Mr McDowell, junior counsel on behalf of the Crown, set out to deal with the reason that the complainant had withdrawn her complaint in 1987, less than a month after it was made. In doing so, he addressed the following remarks to the jury:

> "She (the complainant) says she withdrew her complaint because of police interest in her family. She felt it had got turned into who his friends were because he was Gerry Adams' brother and that she and her mother felt for their own safety that they should just leave it.
>
> Since she said that, there has been much discussion about whether this could have happened. Liam Adams' case as presented by Ms McDermott is that it did not happen, that Aine and her mother are lying about inappropriate police involvement, although no reason why they would lie about this was ever suggested to them. Aine says that police had come up to her in the foyer and said 'we will get him' or words to that effect, asking her about things that did not relate to her complaint. She had earlier said that she had been to the police station on another occasion in between the two recorded occasions and had met two other policemen who had asked about associates and who was in and out of their house. …. Her mother said that she thought the questioning

about this type of thing had taken place in the station on the days that they are actually recorded as being there, 21 January and 11 February when the statement was made and where it was, when the complaint was retracted.

It is fair to say it's a confused picture between the two of them and indeed Detective Constable Anne Lowry who says between Grosvenor Road and Strandtown they were with the police 3 or 4 hours on 21 January but that she doesn't know of them speaking to anybody else. Isn't this precisely the sort of thing, members of the jury, that you would expect people to be confused about looking back all that time? They are asked by the defence to recall in detail and in sequence 1987, 26 years ago when Aine was 13 coming 14. If it's not one of those memories that because of fear or trauma one remembers, then you might not remember it. She might not remember it. You might not be able to forget sexual abuse that occurred that length of time ago but might you forget the comings and goings of police officers and social workers?

I just want to ask you this about that particular criticism. Do you really think that in 1987 in the midst of the Troubles when perhaps people were not as sensitive to sexual complaints as they were now, and I leave aside Detective Constable Anne Lowry, who is clearly a nice woman, but when more serious considerations apply to Northern Ireland do you really think that the only officers who knew that Gerry Adams' niece was coming into Grosvenor Road that day to make a sexual allegation against her father were the one who Tommy Boyle spoke to who relayed it to Inspector McQuillan, Detective Constable Lowry, her colleague Detective Inspector Molloy and possibly Inspector McGladdery who attended the case conference later on 23rd? Do you think that the people who knew that Gerry Adams' niece was coming in for that purpose were confined to those five officers? Or do you think that someone in Grosvenor Road RUC Station might just have said to someone else something along the lines of 'wait until you hear what I have just heard'. Whether Detective

> Constable Anne Lowry was part of the office gossip or not, what she might know and what happened might be two very different things, members of jury. I suggest it's a matter of common sense.
>
> Do you really think in those troubled times police did not ask Aine questions that weren't strictly about sexual offences? And would there be a record of an extra meeting if it happened with police dealing in that sort of thing, information; or would there be a record of any questions asked about that sort of thing, even if it wasn't in a specific meeting about it? And would you get any policeman from back then to admit that they had done it? I ask you simply to use your common sense. Isn't it perfectly credible that police might have taken an unhealthy interest in her over and above the normal citizen?"

[34] After referring to "off the record conversations" and "family and community influences" Mr McDowell continued:

> "But whatever the truth of this whole situation I suggest it's a matter of common sense, but whatever the truth, you are entitled to ask, because cross-examination concentrated on it so much, what's the relevance of the reason? What is the relevance to these charges, to these offences? What relevance is it why they withdrew the complaint in 1987? It has not been suggested that it has any relevance. They don't say – - the defence don't say to Aine that she has lied about this for a particular reason. Is it just so that Liam Adams can accuse them of lying only so it can be said to you that they told some lies so they can be presented to you on a level with Liam Adams who lied in his interview? There is no evidence whatever that they were lying and common sense dictates that they were probably telling the truth."

[35] Ms McDermott submitted that there was a clear contradiction between the evidence of witnesses called on behalf of the Crown, namely, WDC Lowry and the complainant and her mother as to what took place in Grosvenor Road police station with regard to the identity of officers who had questioned the complainant and her mother together with the content of the questioning. She argued that it was not open to the Crown to raise the matter by way of speculation in a speech at the end of the case. The Crown should have investigated this apparent conflict, reached a

settled position and made any relevant disclosures required. The matter went to the heart of the case against the appellant who maintained that the reason for the complainant withdrawing the initial complaint was, quite simply, because it was not true rather than any concern about police questioning with regard to unrelated paramilitary activities. While the learned trial judge properly directed the jury that the appellant did not have to establish any motive for the allegations made by the complainant we note that, in this context, no other motive for the complainant withdrawing her complaint in 1987 was ever established or considered. On behalf of the prosecution Mr Murphy emphasised that, apart from WDC Lowry, no police officers or social workers were actually called as witnesses on behalf of the prosecution. No one had suggested that WDC Lowry had been party to questioning the complainant and her mother about unrelated matters and she was accepted by the defence to be an honest witness.

[36] Contrary to what appears to have been the impression formed by the single judge who granted leave in respect of this ground, none of the police officers who were alleged by the complainant and/or her mother to have questioned them about unrelated matters were called as witnesses in this case. This was not a case of the prosecution seeking to undermine the credibility of a witness without being compelled to treat that witness as hostile.

[37] On the other hand it is not uncommon for there to be witnesses whose evidence is regarded by the prosecution as largely, or in part, worthy of belief and reliable but not wholly reliable. It is a normal human experience that people do sometimes tell the truth about certain matters but may not be entirely reliable about others. Whether the prosecution choose to call such a witness and/or comment upon whether the evidence that he or she gives is wholly reliable is a matter for discretion but such discretion must be exercised in the interests of justice – see R v Cairns [2003] 1 WLR 796 and R v Clarke [2011] EWCA Crim. 407.

[38] In this case the only potential for conflict was between the evidence of WDC Lowry and that of the complainant and her mother. That conflict was one of the "inconsistencies" dealt with by the learned trial judge in the course of her directions to the jury. While both the complainant and her mother had described being asked questions by police officers relating to unrelated paramilitary activities in the area, there was no suggestion that WDC Lowry or her associate DI Molloy had been party to any such questioning. WDC Lowry simply maintained that no such questioning had taken place in her presence although at one point in her evidence the complainant's mother described the officer as "sitting there and listening". When asked whether she believed that other officers in the station were aware of the visit of the complainant and her mother, together with their relationship to Gerry Adams, WDC Lowry simply replied "I honestly didn't know". Mr Murphy reminded this court that the statement of Sheila Brannigan, the social worker, which was read into evidence by the defence as hearsay evidence referred to the complainant saying that she did not wish to proceed at that time because of the police questioning. The

complainant and her mother together with WDC Lowry were put forward by the Crown as credible witnesses. Insofar as some parts of their respective evidence may have appeared inconsistent such inconsistencies were drawn to the attention of the jury and it was a matter for them as to whether they were significant and, if so, how they were to be resolved. In the circumstances, this ground of appeal must also be rejected.

[39] We would simply remind prosecuting counsel of their role as ministers of justice and that when making their speeches they should restrict themselves to the case at hearing and resist any temptation to speculate about what might or might not have been done and/or said by individuals who have not given evidence before the jury.

Determination

[40] We have given careful consideration to the various grounds put forward in support of this appeal with the helpful assistance of Ms McDermott's eloquent submissions. The task to be performed by this court when determining an appeal has been clearly and authoritatively expounded by Kerr LCJ in R v Pollock [2004] NICA 34 after a review of the relevant authorities. At paragraph [32] of his judgment the learned Lord Chief Justice set out the following principles to be distilled from the authorities:

> "1. The Court of Appeal should concentrate on the single and simple question 'does it think that the verdict is unsafe'.
>
> 2. This exercise does not involve trying the case again. Rather it requires the court, where a conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.
>
> 3. The court should eschew speculation as to what may have influenced the jury to its verdict.
>
> 4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal."

[41] Applying those principles to the evidence and the submissions of counsel the court has not been persuaded that the verdict of the jury was unsafe and, consequently, the appeal must be dismissed.