All England Official Transcripts (1997-2008)

R v Baird

Criminal law - Trial - Jury - Jury requesting reminder of aspects of evidence - Oral rape - Assault by penetration - False imprisonment - Recent complaint - Question asking for summary of complainant's evidence relating to sequence of events before offences and to recent complaint - Judge failing to balance summary with words of caution or brief summary of defence case - Whether conviction unsafe

[2007] EWCA Crim 2887, (Transcript: Wordwave International Ltd (A Merrill Communications Company))

COURT OF APPEAL (CRIMINAL DIVISION)

RIX LJ, SWIFT DBE, TEARE JJ

29 OCTOBER 2007

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R Hallowes for the Appellant/Defendant

H Forgan for the Crown

Registrar of Criminal Appeals; Crown Prosecution Service

RIX LJ:

(reading the judgment of the court)

[1] On 21 December 2006 in the Crown Court at Guildford before His Honour Judge Addison and a jury the Appellant, John Baird, was convicted on retrial of oral rape (count 1), assault by penetration, that is to say digital penetration (count 2), and false imprisonment (count 3). The convictions on counts 1 and 3 were by a majority of 11 to 1 and on count 2 by a majority of ten to two. At his earlier trial, in July 2006, the Appellant had been acquitted by the jury of anal rape, which had then been the original count 1; and the jury had been unable to reach a verdict on the other three counts which later formed the subject matter of the retrial. He now appeals against conviction by limited leave of the Single Judge.

[2] The prosecution case in essence was that the Appellant, then 42 years old, used a knife and threats to detain the Complainant, who was 16 years old, against her will, forcing her to perform oral sex upon him and penetrating her vagina with his fingers without her consent.

[3] The defence case was that the Complainant was not unlawfully detained and that no knife was used or threats made and that any sexual activity which was, to some extent, accepted, although it was described as unsuccessful, was consensual. The issue for the jury was the credibility of the witnesses.

[4] The essential evidence for the prosecution came from the Complainant, CP, supported to some extent by her friend, RD (known as "Rocky"). Their evidence was contained in ABE video interviews of very great length and the judge had good cause to complain about that. It will be necessary to bear that fact in mind, but for the purposes of this appeal it will be possible to curtail a lot of the detail and concentrate on the following essential aspects of the evidence which came in the main from the Complainant, and from the Appellant.

[5] The Complainant, as did other witnesses, spoke of a long night of talking and drinking. On 29 May 2005 the Complainant, as we have said then 16, her friend, Rocky, a girl about the same age, Rocky's friend, a man called Robert Beach, and the Appellant, then, as we have said 42, met up at shortly before 1.00am. They drove to Padd Farm where the Appellant, who was working on the M25 motorway, was living in a caravan. They went first to a Portakabin and spent the time drinking and talking until about 6.00am. It appears, at any rate from Rocky's evidence, that so far as she and Robert Beach were concerned there was some coming and going in the meantime. At about 6.00am, at a time when Rocky and Robert Beach had gone outside the Portakabin, the Complainant went to the bathroom to be sick and the Appellant followed her in to see if she was all right. The Complainant said that the Appellant was sympathetic and spoke of assisting her financially in her college plans about which they had spoken. She refused his offer.

[6] The Complainant's evidence continued as follows. In the meantime Robert Beach had gone off to a nearby caravan (possibly the Appellant's) and fallen asleep. The girls were ready to go home and were in the car with the Appellant waiting for Robert Beach. He came out of the caravan and went back into the Portakabin. The Appellant asked Rocky to fetch him. When she got out of the car to do so, the Appellant drove off with the Complainant inside. He stopped by a row of lorries and caravans and said: "You can shag me once a month and I'll send you to university and you'll have everything you want." The Complainant began to feel scared and to cry. They got out of the car and she went to try to find Rocky. The Appellant followed her, backed her between two lorries, holding her by the arm and spitting into her face. He told her that she did not want to see his angry side. He asked her to pull her top up. She refused. He spoke of his "wrong side" and said he had committed murder. Then his manner changed again and he became apologetic. He then began to push her towards his caravan. She refused to go inside, crying. He opened the door, pushed her inside and locked the door. He grabbed a knife. He said: "You're my girl" and shouted at her to repeat that she was. He threatened to slice her face and to give her to one of the men in the nearby caravans and to make her a prostitute. He asked for sex. She refused. He pulled her bra down and he sucked her breasts. He stopped when she asked him to. Then he started to undress her and to put his fingers into her vagina. He ordered her to take all her clothes off, holding the knife in her face and she did. He threw her on the bed, turned her over and raped her anally. Afterwards he allowed her to put her clothes back on but he made her perform oral sex on him for about an hour. After another interlude he made her do it again, this time for a couple of minutes. She then stopped, refusing to do it any longer and asking him to kill her. He tried to force her, becoming angrier. He opened her mouth and forced his penis in. After another interlude he forced her again, this time saying he wanted to ejaculate in her mouth. At this point they were disturbed by Rocky's knock at the caravan door. He threw her a cigarette, which she accepted. He warned her not to go to say anything. He opened the door. Rocky asked if something was wrong. The Complainant said she had been sick. The Appellant drove the two girls home. On the way he stopped and asked the Complainant to get him some cigarettes, which she did. When she got to Rocky's home she told her friend what had happened, saying that she had been raped.

[7] In cross-examination she admitted to a cocaine habit and that she had lied to the police about being forced to take some that night. She had in fact taken a cannabis joint, a line of cocaine and a cocaine joint during the earlier hours of conversation - conversation which she had enjoyed. The Appellant was kind to her when she had been sick. She agreed to get into the Appellant's car but not to his caravan. The lock on the door involved pushing a catch down. She also agreed, in answer, to five carefully controlled and agreed questions permitted by the judge that on 16 September 2005, that is to say a few months after the events with which this appeal is concerned, she had made a false allegation of rape against another man, not the Appellant, but had withdrawn it three days later on 19 September 2005, telling the police that she could not remember the incident as she had been drunk. She accepted that she had given a detailed account never-

theless of being raped on that night of 16 September and she agreed that the person she accused had been arrested and interviewed. She also told the police at the time of withdrawing her allegation of rape that she had become distressed and angry because of memories of what had occurred in this case.

[8] Rocky also gave an account of the events of that evening. She was not of course present in the Appellant's caravan, until she had joined the other two there later. She gave a more detailed account of the comings and goings of her and Robert Beach, in between the Portakabin and caravan, in the hours up to 6.00am, when the disputed part of the evidence of the Complainant and the Appellant began. As for the period between leaving the Portakabin and the Appellant and Complainant going, under whatever circumstances they were, to the Appellant's caravan, she said that the two girls and the Appellant were waiting for Robert Beach in the Appellant's car. The Appellant asked her, Rocky, to get out and go and wait for Beach but she refused. He got out of the car and went to see Beach. He came back and told her to speak to Beach and then drove off with the Complainant when she got out of the car. She remained in the Portakabin with Beach for a while but then went to the caravan and knocked on the door. The Appellant opened it. The Complainant had red eyes and looked as if she had been crying. Rocky asked her what was wrong. The Appellant said she was very ill and asked Rocky not to make her talk. The Appellant gave the girls a lift home, telling the Complainant that she could have the car once she had passed her driving test and he would pay for the test and car insurance. When they got to Rocky's house the Complainant was crying and shaking. Once inside the house she said: "That dirty old man raped her". She felt dirty. Rocky ran her a bath.

[9] Robert Beach's witness statement was read because he was unfit to give evidence. He essentially had nothing to say about the events of the evening. He was unable to remember much in any event; but he did say that, two days after the allegation, he saw the Complainant and asked her if the Appellant had raped her and held a knife to her throat and was told "no".

[10] A number of witnesses gave evidence of recent complaint after the girls had returned to Rocky's house. Thus, Susan Neil gave evidence that Rocky called her early that morning and asked her to come round. The Complainant looked upset and said that she had been raped and began crying.

[11] The Complainant's mother was another witness. She also went round to Rocky's house where the Complainant was crying and sobbing and someone, not her daughter, told her that the Complainant had been raped.

[12] The statement of a friend of the Complainant, Colette Dawkins, was read because it was agreed. She accompanied the Complainant to the police station as her mother was unable to do so. She asked the Complainant what had happened and she told her that she had been anally raped, crying throughout the account. We will have reason to refer again to Colette Dawkins' statement evidence.

[13] A knife was found at the Appellant's caravan following his arrest, about which the police gave evidence, but there was a dispute as to whether that knife fitted the Complainant's description of the knife which she said was held to her throat.

[14] The Complainant was medically examined on the day of her complaint. There was no evidence of injury or anal intercourse.

[15] The Defendant gave evidence to the effect that all that had happened that evening had been consensual. The Complainant and he had kissed a couple of times while in the Portakabin. The Complainant had been sick but was fine afterwards. At about six o'clock he said he was going to bed, and the Complainant volunteered to go with him. They drove together to his caravan. He entered the caravan first and the Complainant followed. He did not pursue, threaten or grab her. He did not hold a knife to her throat. Inside the caravan they sat and talked. He kissed her, touched her breasts, over and under her clothing, without objec-

tion. He took off her bra and fingered her. She appeared aroused. He took off her trousers and she unzipped his. She took out his penis and masturbated him but he was unable to achieve an erection owing to the drink and drugs he had taken. She performed oral sex upon him for several minutes but this did not arouse him. She got on top of him but he was unable to penetrate her. He had lost interest and wanted to go to sleep. He said the Complainant was disappointed. They redressed and continued to talk and smoke. He did not pick up a knife. He did not own one with a blue handle, as the Complainant had described it. The Complainant was at no stage completely naked.

[16] Rocky returned after 30 to 45 minutes. The Complainant was neither upset nor crying. He agreed to give the girls a lift home. The girls were fine in the car and the mood was good. He spoke also of the cigarettes which were purchased by the Complainant.

[17] There was no lock or catch on the caravan door, although there was a bolt at the top on the inside which could be pulled shut or open. He called one witness, Heidi Cook, who had been staying in a nearby caravan. She had heard talking and knocking coming from the direction of the Appellant's caravan and seen the Appellant leave with two girls and get into a car. She said that there was nothing in their behaviour to cause concern. Her witness statement mentioned that they were laughing but she had no recollection of that when she gave her evidence.

[18] The jury retired on 18 December 2006 at just after 3.00pm. They were out for a total of some 14 hours consideration of their verdicts. The first trial, which it will be recalled had ended in an acquittal on the anal rape charge but otherwise in hung verdicts also extended to some 14 hours of jury consideration.

[19] Reverting to this retrial, we observe that on the day after their retirement, 19 December, the judge refused a request from the jury for copies of transcripts of the video interviews and witness statements but offered to remind them of any evidence they required. About a day later, at about two o'clock on 20 December, the jury sent a note with four questions. Their note read as follows:

> "Q1. According to Charlotte's testimony did she admit to kissing John in the Portakabin.
>
> Q2. Summary of sequence of events that led John and Charlotte from Portakabin to John's caravan (from Charlotte's testimony).
>
> Q3. Summary of events from girls arriving home to police being called.
>
> Q4. Remind us of Colette's testimony."

It will be observed that all four questions relate to parts of the evidence other than what happened within the caravan itself which, of course, is the kernel of the issue.

[20] The judge discussed these questions with counsel. The only question which at the time appeared to present any particular difficulties was the second question, which caused some concern as to how to summarise the sequence of events taken from Charlotte's testimony in between leaving the Portakabin and arriving at the caravan. In the event the judge explained to the jury that it was not possible to provide the summary requested but he could remind them of what appeared to be the central bits.

[21] To the first question the judge was able to answer effectively in a single word "no": Charlotte had not admitted to kissing John in the Portakabin. The second and third questions were dealt with in a lengthy part of the transcript, amounting to ten pages in all, which took the judge about 27 minutes, as we have been told,

to go through. The judge dealt with the fourth question by reading the whole of Colette's witness statement to the jury.

Although no objection was taken at the time by the Appellant's counsel, Mr Hallowes, who appears again for him on this appeal, and no objection was taken after the judge had answered the jury's questions, the essence of this appeal is that the judge had erred and in doing so had committed a material irregularity in the way in which he had dealt with the jury's questions. That brings us to the grounds of appeal.

The primary ground of appeal - and we think it is presented most clearly if all aspects of this primary ground of appeal are dealt with together - relates to the submission that the judge erred in providing to the jury a resume of large parts of the Complainant's evidence in-chief, plus a resume of all of the recent complaint evidence after the girl's arrival back at Rocky's home, over that period of 27 minutes and ten pages of the transcript, without any counter balancing reference to other material. The other material, which it is suggested that the judge could, however briefly, have touched upon, includes the cross-examination of the Complainant. The evidence enhanced in that submission included that she accepted such matters as making a false allegation of rape against another man, some five months later, promptly withdrawn; the Appellant's own evidence; the other difficulties in the prosecution case, such as the Complainant's acceptance that she had lied about a cocaine habit; and all this in the absence of any assistance or reminder as to how to regard the evidence of recent complaint. In sum the submission is that the judge had reminded the jury, albeit at their request, at some considerable length of various aspects of the prosecution case without any reference either to the Appellant's case by way of defence, or to various difficulties in the prosecution case itself.

In this connection Mr Hallowes has referred us to the case of *R v McQuiston* [1998] 1 Cr App Rep 139, [1998] Crim LR 69. That was also a case arising out of sexual complaint, where the Complainant there, a young boy, had given evidence by way of video. The jury retired to consider their verdict at three o'clock one afternoon; at 11 o'clock the next morning they returned to court asking to see the video again. The judge declined to do that but he was willing to remind them of the Complainant's evidence. He proceeded to read long passages from the transcript of the video, which lasted in all for some 24 minutes, and stopped only when the foreman indicated to the judge that the jury had heard enough.

[22] There was no reference in *McQuiston* to the cross-examination of the Complainant or to other difficulties. The only references to the Defendant's evidence in that case were misleading. Subsequently the jury returned their guilty verdicts by a majority of ten to two. Counsel there submitted that this substantial direction so far into the jury retirement was unfair because it was out of all balance to the summing-up, and it was unbalanced by the total absence of any reference to cross-examination and with minimal reference to the Defendant's account.

[23] This court, in the judgment of Otton LJ, concluded that there was substance in that submission. Although the summing-up itself was clear, concise and balanced and there was no criticism of the judge for electing to refer to the transcript rather than replaying the video, nevertheless, certain requirements which had been laid down in a previous decision of this court in *R v Rawlings & Broadbent* [1995] 1 All ER 580, [1995] 1 WLR 178, [1995] 2 Cr App Rep 222 relating to the replaying of a video were equally apposite to a situation where a video was not to be replayed but a further account was given of the Complainant's evidence. Thus (at 141E):

> "2 The judge should warn the jury not to give the Complainant's evidence in-chief disproportionate weight simply because it is repeated well after all the other evidence and to bear in mind the other evidence in the case.
>
> 3 After the replay of the video the judge should remind the jury of the Complainant's cross-examination and re-examination from his notes."

Otton LJ stated that by parity of reasoning, where a judge reads or summarises substantially from the transcript he should:

> "still warn the jury not to give the Complainant's evidence in that form disproportionate weight simply because it is repeated well after all the other evidence and bear in mind the other evidence in the case. In particular it is still incumbent on the judge to remind the jury of the Complainant's cross-examination and re-examination from his notes and, where appropriate, any relevant part of the evidence, the Defendant's own evidence."

The court there were clearly of the view that the learned judge, at that stage of the proceedings, had disturbed the balance he had so carefully struck in his summing-up by failing to give an appropriate warning and to remind the jury of the other relevant evidence. He produced an unbalanced state of affairs when the jury finally retired which rendered the conviction there unsafe.

[24] On behalf of the Crown today Mr Forgan submits, first of all, that those parts of the evidence which the judge repeated in summary form to the jury did not cover the kernel of the Appellant's misconduct which, of course, was said to have taken place in the caravan itself, and secondly, that the jury knew perfectly well and did not need reminding of the Appellant's case which was in essence a denial of any improper conduct and an assertion that everything done was done consensually. It necessarily followed that the Appellant's evidence and summary of his evidence in the summing-up was relatively brief, and in large part consisted in a series of simple negatives. In these circumstances any reference to the Defendant's evidence in the case would not have assisted the jury at all. The conviction was entirely safe.

[25] In our judgment, however, we think that this ground of appeal is made good in part for the reasons given in *McQuiston* itself. We say "in part" because there were some special difficulties about this case which should have led the judge to take special care in dealing with the jury questions. In the first place, this was now the second jury which clearly were having considerable difficulty in judging the credibility of two essential witnesses that they had heard. Secondly, this jury, having retired to consider their verdicts for some considerable time, by the time of their questions had already been given a majority verdict direction and yet still remained deadlocked. Thirdly, although to some extent the length and diffuse nature of the Complainant's video evidence made a certain imbalance, at any rate in terms of length, of the respective prosecution and defence cases inevitable, and there was very little that the judge could do to avoid that, we think that so deep into the days of jury consideration the judge should have gone out of his way to ensure that when repeating large parts of the prosecution case, he should have said something, however brief, to remind the jury of the structure of the issue which they had to determine, an issue which, as we have said at the beginning of this judgment, essentially depended upon the credibility of the witnesses and in a context which gave rise to certain special difficulties. Amongst those difficulties, of course, were the acquittal on the count of anal rape at the first trial and the acceptance of false allegations of rape five months after the events about which we are concerned. We think the judge should, however briefly, have referred to these matters and to the Appellant's defence that, at the time on which the jury wanted assistance, between Portakabin and caravan, with which part of this summary was specifically concerned, the Complainant had come voluntarily to the caravan the judge should have referred to the essential conflict of evidence. We think he should also, in the context of summarising the whole of the recent complaint evidence, have said something to put that evidence in its context, such as referring, however briefly, to his original direction, given at the outset of his summing-up, so many days now before the time we are speaking, when he warned the jury that the evidence of those other witnesses was not independent evidence of what had happened in the caravan.

[26] Indeed, since we think that it is necessary to consider the problem that arose as a result of the jury questions in its own context, it is also necessary, at this later stage, to bear in mind that the recent complaint direction of which, as we have said, the judge did not remind the jury at this later stage, was itself not without its own problems. No separate ground of appeal arises upon this point and therefore it is only a matter which underlines the difficulties for the judge at this later stage in ensuring a balanced exposition to the jury. But it is not irrelevant to note that in his original direction to the jury the judge had told the jury that they were hearing the evidence of recent complaint "because it consisted of a complaint of the offences now being tried,

made shortly afterwards". In fact the recent complaint evidence was much more equivocal than that, as had been made the subject matter of an issue at the trial, but of which the judge had nowhere made reference in his summing-up. This was because none of the recent complaint evidence went into any detail. The nub of it was that Charlotte was distressed and crying and had made an allegation of being raped, and to Colette she said it had been an anal rape. But rape, whether anal or vaginal, is a questionable way to speak of the offences which were being tried on this occasion of the second trial, for all that modern statute speaks of oral penetration as a form of rape. It was for this very reason, namely the lack of detail about the recent complaint, and the emphasis of rape alone and anal rape in particular, that the prosecution and defence were, as it were, equally interested in the recent complaint evidence. It was for this reason that Colette's evidence, referring specifically to anal rape, had been agreed and was read to the jury. We think that there were special reasons why the judge should have said something, at least at this later stage, to warn the jury, who had expressed interest in hearing all this evidence about recent complaint summarised to them again, of its limited value.

[27] There was another difficulty, in relation to the acquittal at the first trial on the earlier count of anal rape. The judge rightly told the jury that they had been told about it because it was inevitable that they should learn of it (as was common ground before us), and that the jury acquittal meant that the jury were not sure he had committed anal rape and because of the burden of proof he remains an innocent man in the eyes of law, so far as that offence was concerned. But the waters became a bit muddier when he went on to direct the jury that Charlotte's evidence that he penetrated her anus was part of the evidence before them, that it was part of the picture they may take into account "and when doing so you should disregard what another jury may have decided and you form your own view about it". Again, there is no separate ground of appeal in relation to that direction but it illustrates the difficulties that the jury may well have been suffering from in their long retirement, which is that the judge had nowhere in his summing-up pulled together those factors relating to the essential issue of the credibility of the witnesses to assist them as to how they should deal with the various matters before them. As it was, the matter of the alleged anal rape was just left for them to form their own views about.

[28] There is this still further consideration, which was isolated and identified as the essential subject matter of Mr Hallowes' ground 3. There is some uncertainty as to whether the Single Judge intended to give leave to appeal in respect of this ground. We think he did, for it is part and parcel of the first ground on which he did give leave. But in any event, if there is any doubt about it, we would ourselves give leave to appeal in respect of it. This ground is that, in the light of the Complainant's lies about her cocaine habit and her false allegation of rape five months later, the judge should have said something by way of warning or caution to the jury about the way in which they entertained her evidence. In this respect we were referred to the judgment of this court given by Lord Taylor CJ in *R v Makanjuola* [1995] 3 All ER 730, 159 JP 701, [1995] 2 Cr App Rep 469. That was a case heard in this court after the statutory change which made it unnecessary to give old-fashioned corroboration directions (see s 32 of the Criminal Justice and Public Order Act 1995). There was an attempt to say there that despite that statutory change the judge should have given a warning of an old-fashioned kind. Nevertheless, this court rejected that submission, but Lord Taylor went on to say this (at 472D-E):

> "Whether, as a matter of discretion, a judge should give any warning and if so its strength and terms must depend upon the content and manner of the witness's evidence, the circumstances of the case and the issues raised. The judge will often consider that no special warning is required at all. Where, however the witness has been shown to be unreliable, he or she may consider it necessary to urge caution. In a more extreme case, if the witness is shown to have lied, to have made previous false complaints, or to bear the Defendant some grudge, a stronger warning may be thought appropriate and the judge may suggest it would be wise to look for some supporting material before acting on the impugned witnesses's evidence."

[29] In this case the judge can hardly be blamed for not giving some such warning or caution, despite the apposite nature of these remarks to the circumstances of this case, because defence counsel never had suggested to him that any such warning might be appropriate, neither before the summing-up nor at the time when the jury questions were being considered, nor indeed afterwards. Nevertheless, if one stands back and, against the background about which the judgment of this court in *McQuiston* teaches us, considers

whether there was a danger in this case in the lengthy repetition of substantial parts of the Crown's evidence to the jury, deep within their retirement, it does become a matter of concern that the jury had never been helped with how to approach the difficulties about the Complainant's evidence in this regard. For instance, the judge reports the evidence of the false allegation of rape in a few lines of his summing-up and says nothing further about that at all. In the absence of any concern at trial expressed by the defence, we doubt that if this ground of appeal had stood alone it would have sufficed. But it does add some further material force to the essential burden of this appeal, ground 1, that we are now considering. In sum, we conclude that for these reasons the judge did err in the manner in which he answered the jury's questions 2 and 3, relating to the Complainant's evidence and the evidence of recent complaint.

[30] Save for a bare submission that the conviction was safe, Mr Forgan did not seek to persuade us that if the ground of appeal were made good, these convictions could be upheld as being safe. He did submit that the evidence as to the false allegation of rape was equivocal in its effect because the Complainant had told the police at the time of the withdrawing of her complaint that it had something to do with flashbacks to this earlier occasion of rape. Mr Forgan suggests that, if the matter had been put before the judge for his decision, as a matter of discretion as to whether the jury should be given any form of warning at all, he would have concluded that this evidence of the false rape allegation assisted the Crown as much as the defence. As it was, he never considered the issue nor made this discretionary decision. But we think that if this was a bone of contention between Crown and defence at trial, then it was a matter for the jury to evaluate and the jury might need some help in doing so. Against the background of these two trials, and a total of 28 total hours of jury consideration, where the majority verdict direction had already been given at the time of the four questions and the jury were then deadlocked; where, for all that the evidence re-summarised did not go to the kernel of offending, it was nevertheless obviously evidence which the jury were deeply concerned about and hence their questions; in all these circumstances, we think that the judge's failure to deal with this difficult situation in the way which *McQuiston* indicates it should have been dealt with, means that these convictions cannot be sustained as safe.

[31] In these circumstances there is no need for us to refer in detail to the other two grounds of appeal. Briefly, one complains about the repetition of Colette's evidence of recent complaint, the other complains that the verdict on count 2 was given by the foreman of the jury in the eccentric form of ten for conviction and one against and one abstention. The judge recorded that verdict as a majority verdict of ten to two. It was an eccentric verdict. It is suggested that the absence of the judge warning the jury at the outset of the trial, or any rate during it, in accordance with the Practice Direction contained in 2004/665, that the jury were to make known to the judge any untoward event that they knew of, was a material irregularity. We think that there was no evidence of any untoward event affecting the jury's verdicts, despite the slight eccentricity of that verdict in relation to that one count. In any event, we have said these and further grounds are not critical to this appeal, which nevertheless for the reasons we have sought to give in relation in particular to ground 1 must lead to our allowing it.

RIX LJ:

(Submissions re: retrial)

(Short Adjournment)

[32] No, Mr Forgan, we do not think it is in the public interest to have a retrial.

Judgment accordingly.