



appeal against conviction was dismissed for reasons given by the Bailiff on 10 February 2023. An appeal against sentence has yet to be determined by the Royal Court.

3. The Applicant now seeks leave to appeal his conviction to the Court of Appeal in relation to the first ground of appeal only, albeit with some elaboration raising the propriety of the Bailiff having viewed the CCTV of the assault and the Bailiff's conclusion that it was the complainant who was mistaken in her evidence that the dry humping had taken place face to face.
4. I have considered the application for leave to appeal on the papers in exercise of the power vested in a single judge by the Court of Appeal (Guernsey) Law, 1961.
5. At the heart of this application is the suggestion that, in the context of the sexual component of the admitted offence of assault, no reasonable judge (whether at first instance or on appeal) could be satisfied beyond reasonable doubt that the Applicant had been guilty of dry-humping the complainant unless the point of contact with the body of the complainant could be established with certainty. In addition it is now contended that if the witness Rebecca Baines was (as the Bailiff held) correct that the dry humping was from the complainant's rear, the case could not be proved.
6. There was a clear discrepancy between the evidence of the complainant and Rebecca Baines as to whether, once the Applicant had tackled the complainant to the ground, his pelvic thrusting was performed from behind or from the front of the complainant. Although it was clearly necessary to consider the discrepancy, in my judgment it was not necessary to reach any conclusion on the issue, nor would any conclusion on the issue, necessarily determine the reliability of either Rebecca Baines or the complainant on the central evidence on which they both agreed, namely that the complainant had been dry humped by the Applicant.
7. The magistrate was entitled in my view to reach the conclusion that dry humping had taken place, and to reject the defence case that the Applicant had merely lain passively having tackled the complainant to the ground.
8. The type of inconsistent account that emerged in this case is a common feature of criminal trials. Inconsistencies of this type do not mean that the witnesses are not truthful or cannot be reliable in relation to other parts of their accounts. Often witnesses have seen fast moving and distressing or shocking events which may not be accurately perceived or recalled over time. Memory works in different ways.
9. The reasoning of the Bailiff was equally permissible. He was entitled to conclude having viewed the CCTV footage that the complainant's evidence that the Applicant was on top of her and facing her was mistaken. This did not preclude the Bailiff from nevertheless being sure that the dry humping by the Applicant had taken place, whatever the relative position of the complainant and the Applicant.
10. A judge, whether it is the Bailiff, or a magistrate is entitled to have regard to the evidence as a whole and to decide those parts of the evidence they accept and those parts of the evidence they reject. This is not only in relation to each witness' evidence as a whole, but also in regards those witnesses whose evidence is accepted in part, rejected in others, whether or not it contradicts other witness' evidence which the court may or may not accept.

11. In the circumstances I do not consider that there is any arguable ground for any appeal against conviction and leave to appeal is refused.