

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY  
ON APPEAL FROM THE ROYAL COURT**

**CRIMINAL DIVISION APPEAL No. 520  
14 February 2024**

**Before:**

**Clare Montgomery KC, President  
James Wolffe KC JA  
Michael Furness KC JA**

**Between:**

**Freddie Trenchard**

**Appellant**

**-v-**

**Law Officers of the Crown**

**Respondents**

**Advocate Fattorini for the Appellant  
Advocate Cobb for the Respondents**

**Furness JA**

1. This is the judgment of the Court. On 28 July 2023 the Appellant was convicted of having unlawful sexual intercourse with a 14 year-old girl ('the complainant'). At the time of the offence the Appellant was aged 17. On 13 October 2023 the Appellant was served with a victim impact statement made by the complainant, which was for consideration by the Court at the hearing at which the Appellant was to be sentenced. On 23 October 2023 the Appellant served a notice of appeal and an application to extend the time for appealing. The Appellant was sentenced on 30 October 2023 to, amongst other things, a period of youth detention of three years.

2. The notice of appeal contains an application for the admission on the appeal of further evidence which had not been available at the trial. That evidence comprises the victim impact statement, which, according to the Appellant, is materially inconsistent with the evidence

given by the complainant at the trial. On 11 December 2023 the Bailiff, sitting as a single judge of the Court of Appeal, dismissed the application for an extension of time, and the application to admit further evidence. The Appellant has renewed those applications before the full Court. Also before this Court, in the event that the Court accedes to these two applications, is the substantive appeal.

3. Before considering the merits of the Appellant's applications we set out the factual basis for the Appellant's appeal.

4. The Appellant is a transgender woman, who at the time of the offence was living as a woman, but was biologically male. The rape for which the Appellant was convicted took place in the Appellant's bedroom at her home, where she lived with her mother. The Appellant and the complainant had known each previously, and the rape took place on the first and only occasion on which the complainant visited the Appellant's home. This visit occurred on a date between 1 May 2021 and 31 July 2021 – the witnesses were uncertain as to the precise date. There was a stark conflict of evidence over what occurred on this visit. The complainant alleged that after watching a programme on the Appellant's X-Box, the Appellant removed the complainant's clothes and forcibly had intercourse with her on the Appellant's bed, notwithstanding the complainant's struggles, and her saying "stop" several times. The Appellant says there was no sexual activity at all, and that after watching the programme, the complainant left, unharmed in any way. The Appellant's case was that the allegation of rape was invented by the complainant because she was transphobic. The complainant denied this.

5. We now turn to consider those aspects of the complainant's evidence at trial which the Appellant says are inconsistent with the victim impact statement.

6. After the rape, the complainant's evidence at trial was that she went to the female toilets at the bus terminus because she was in pain and needed the toilet. She said in her ABE:

"A ... I was in so much pain and I didn't know what was happening and I really needed the toilet anyway... so I went in and saw it and at first thought well maybe I had come on my period but then it was hurting for so long after.

Q And what was it you saw?

A Erm when I sat down to go to the toilet I was just bleeding a lot and I didn't know what had happened and it was like really light blood, and it was like a really light redder kind of colour and it wasn't like a normal period kind of colour.

Q Yeah.

A So it scared me a lot.

Q Mmm. And did you seek any medical care at all?

A No, cause I did not tell anyone 'cause I didn't like know how to tell anyone

Q And then once you've left the toilet, what happened after that?

A Erm I got a bus and went home and sat in my room all day and didn't just talk to my dad or anyone"

7. The complainant gave evidence in her ABE interview about whom she told about the rape. She said that she told her friend, "A" the day after the rape.

"Q: And you said that you then, you told [A] that day was it?

A Erm the next day I told her

Q The next day. So how did that come about?

A So [A] ... was a really good mate of mine so I thought I'd go to hers and I said to her, 'cause she could tell something wasn't right and she was like 'what happened', 'caus she knew I was in town and I said to her I went and met Freddie, she was like 'oh, okay, how did that go', and I told her that erm he raped me and we both started crying and she was saying that she was sorry she wasn't there for me... and then erm we agreed to take a test, erm a few like weeks later and erm my Mum had one at home, so I took that from the bathroom and I took that to [A's] and we went and done it at [A's]."

8. In the complainant's ABE evidence she was asked about the order in which she told other people about the rape. She said **[99]**:

So I told A first ...and then I didn't tell anyone for ages and then I told [B] and then I told my mum and then my mum told my sister and I told [C]."

"B" was a relative and "C" was her mother's friend. It was agreed that the complainant told her mother in February 2022, at which point her allegations were reported to the police.

9. Under cross-examination [156-7] the complainant was asked about the fact that she was bleeding after the rape, and then the following exchange occurred:

“Q But you did not call an ambulance did you?

A No

Q You did not call the police

A No

Q You did not tell your mother?

A No

Q You went to your Dad’s house that evening?

A No, he still lived at my house at the time and he ... I didn’t tell him. He wasn’t aware of anything either.

Q Did you tell a teacher?

A No

Q A school drop in nurse?

A No

...

Q You had no idea what was going on?

A Yes

Q And you asked no-one?

A No.

10. Turning to the victim impact statement, this took the form of a witness statement signed by the complainant. The Appellant’s notice of appeal relies on two alleged inconsistencies between the victim impact statement and the complainant’s evidence at trial, although by the time of the oral hearing before this Court she rested her case on the first of these alone.

11. The first of these alleged inconsistencies stems from the passage in the victim impact statement where the complainant says this:

“I hadn’t said anything to my Mum at first. I didn’t tell anyone. I have been criticised for that but I couldn’t bear thinking about what had happened, let alone say it out

loud. Being raped created a rift between me and my family because it was dirty, guilty secret that I had to keep. I felt an overwhelming sense of isolation. I didn't know who I could turn to, and so had to bear the weight of the ordeal alone."

This is said to be inconsistent with the complainant's evidence at trial that she confided in her school friend A on the day following the rape. The Appellant also relied on the fact that the complainant gave evidence at trial that she had spoken to B (which appears from the passage from the complainant's ABE interview quoted in paragraph 8 above). In a witness statement which was not used in evidence at the trial B says she had known the complainant for just over a year (the statement was made in September 2022, and the offence took place between May and July the previous year). B said that the complainant told her "little bits about an incident whereby she was raped by [the Appellant]" over the course of the period she and the complainant had been getting to know each other. B cannot recall the specific time the complainant spoke to her. The Appellant says it is significant that the complainant confided in B, whom she does not appear to have known very well. This is said to be inconsistent with the evidence in the victim impact statement that the complainant did not tell anyone, and "had to bear the weight of the ordeal alone."

12. The second alleged inconsistency, (on which the Appellant now places little reliance) stems from the following passage in the victim impact statement:

"I got out of Freddie's house as quickly as I could. I went to a public toilet in a car park where I washed myself – scraped myself – as thoroughly as I could to try and get clean. I was bleeding and sobbing. I can't remember how long I hid in that toilet, locked into a cubicle, but it was a safe place to cry. I felt as dirty as the place where I was hiding."

This is said to be inconsistent with the complainant's evidence at trial that she went to the terminus toilets – ie the toilets at the bus terminus. It is said by the Appellant that these toilets cannot be described as being "in a car park".

13. The Appellant also identifies other aspects of the victim impact statement which, while not inconsistent with the complainant's evidence at trial, are said to be misleading or incorrect or different to what she said at trial.

14. It is said that the passage quoted in paragraph 12 above makes the after effects of the rape and the impact it had in the complainant sound more serious than the passage from the complainant's ABE interview quoted in paragraph 6 above.

15. Comparison is also made between the following passage taken from the complainant's cross-examination:

"I didn't want people to know and everyone knew me and [the Appellant] as friends, so I stayed on good terms and... until I realised it was wrong and what he had done to me. I didn't cut off communication and stayed acting normal with him"

and the following passage from the victim impact statement:

"Seeing Freddie out in public scared me, and I didn't want his attention turning back on me."

This is said to give a different impression of the relationship between the Appellant and the complainant to that presented at the trial.

16. Finally, the Appellant identifies what she says is an incorrect statement in the victim impact statement, where the complainant states "after things became public I left the school that [the Appellant] and I went to, which disrupted a year of my schooling". The Appellant points out that it is accepted by the prosecution that the complainant and the Appellant went to different schools.

## **The law**

17. Under section 30(1) of the Court of Appeal (Guernsey) Law 1961 the time for appealing against conviction is 28 days from the date of conviction. However under section 30(3) the

Court of Appeal has a discretion to extend that period. In *Fernandes v Law Officers of the Crown* (unrep) 53/2-14 the Court of Appeal said this:

“14 The time limit for the giving of notice of an intention to appeal which is provided by section 30(1) of the 1961 Law is a short one and that is no doubt in the interest of certainty. The final and certain conclusion of criminal proceedings is a matter which is in the public interest, in the interests of parties to the proceedings such as victims and the Crown, and in the interests of the courts. It would be against those interests to allow applicants who have not previously evinced an intention to appeal to be permitted to do so substantially after the time limit which is provided by statute except in the most compelling circumstances. We have not found such circumstances to exist in this case.

15 Further, even in a situation where the delay can be excused, the Court should consider whether the appeal has any prospects of success before giving leave out of time: see *Sherry v The Queen*, the guidance given in the judgment of the Board at paragraph 14. Were this Court to judge that an appeal was bound to succeed, then it might be that we could excuse even a most serious delay. In light of this guidance, we turn to consider the merits of the applicant’s grounds of appeal.”

18. In the present case, the only justification for not making this appeal within the 28 day period is that evidence of the victim impact statement was not available until after that period. Before giving further consideration to the application to extend time, it is therefore necessary to consider whether that evidence should be admitted on the appeal.

19. Guernsey has followed the guidelines laid down by the Court of Appeal of England and Wales for the admission of fresh evidence on an appeal (see *Law Officers of the Crown v Collins* (1989) 8 GLJ 16 applying *R v Parks* [1961] 3 All ER 633). Adopting the wording from the judgment in *Parks*, these guidelines are as follows:

- (1) the evidence must be evidence that was not available at the original trial;
- (2) it must be evidence that is relevant to the issues;
- (3) it must be capable of belief; and
- (4) the court must consider that, if that evidence had been called at trial, there might have been a reasonable doubt as to the defendant’s guilt

20. In the present case, requirement (1) is clearly satisfied. So is requirement (3) – the evidence in question is in a signed witness statement given by the witness whose evidence was relied on by the jurors to convict the Appellant. The issues for this Court are whether the evidence is relevant to an issue which was before the Royal Court, and, if it is relevant, whether it might, if available at trial, have cast reasonable doubt on the Appellant’s guilt.

21. We have been referred to one decision, by the Court of Appeal in England and Wales, which has considered specifically the issue of admitting a victim impact statement on an appeal against conviction. That is the case of *R v Hall* [2013] EWCA Crim 323. As the Court observed in paragraph 9 of its judgment, victim impact statements are evidence, and may be relied upon in a subsequent appeal in support of an argument that the credibility of the victim is open to question. The Court said this:

“... a truly inconsistent statement in such a document, whether made before or after a trial, may be introduced into evidence at the trial (or indeed considered as possible fresh evidence after conviction), if it has any relevance to the issues before the jury, or, if the jury has convicted the defendant, to the safety of the conviction. In these circumstances, it cannot be simply brushed aside.”

The Appellant relies on this passage, and emphasises the use of the phrase “any relevance”. The Crown points to the requirement that there must be a “truly inconsistent statement”.

22. Hall had been convicted of aggravated burglary, in the course of which he had committed a serious assault. The victim’s evidence at the trial was that he did not recognise his assailant while the assault was taking place. The defendant claimed that he was, in fact, known to the victim, and that if he had been the assailant the victim would have recognised him. Unlike the present case, the Crown was able to rely on what the Court of Appeal described as “powerful evidence” which was independent of the victim’s testimony, including the fact that the defendant’s blood was found at the scene.

23. The question of whether the victim was able to recognise his attacker was explored in some detail at the trial and the victim was cross-examined about it. Following his conviction, the Appellant relied on a sentence in the victim impact statement which he claimed showed

that the victim did, after all, know him. This, it was said, damaged the credibility of the victim, and the overall strength of the prosecution case.

24. The Court of Appeal disagreed. It concluded that properly understood the victim impact statement “was not inconsistent with the broad evidence [the victim] had given, or with the prosecution case”. The Court found that the statement could be interpreted consistently with the victim’s evidence at trial, and accepted the submission that, in reaching that conclusion, the victim impact statement had to be interpreted in the context in which it was made. The court concluded that there was ample evidence to sustain the conviction.

25. The Appellant’s submissions in our case focus on the fact that her conviction turned entirely on the credibility of the complainant. Therefore, it is said, any material which, if admitted in evidence would have caused the jurors to question the complainant’s reliability as a witness, is relevant. The Appellant relies on a passage from the judgment of the Lord Chief Justice in *R v Golder* [1960] 3 All ER 457 at 459H:

“... when a witness is shown to have made previous statements inconsistent with the evidence given by that witness at trial, the jury should... be directed that the evidence given at the trial should be regarded as unreliable”.

26. In our view, the words of the Lord Chief Justice need to be seen in context. In *Golder* the inconsistency related to evidence which went to the heart of the prosecution case. As the Court observed (at 460A), in all probability the jury relied on the material which they should have been directed to ignore when reaching their verdict. Clearly, it is not the case that a minor discrepancy in statements made by a witness, on an issue which is wholly peripheral to the issues which the jury were called on to decide, should lead to a direction that the totality of the witness’s evidence is unreliable. A good example of a potential peripheral inconsistency is the supposed inconsistency over the location of the public toilet which the complainant visited immediately after the rape, which we explain in paragraph 12 above. It is contended in the grounds of appeal that the evidence of the complainant at trial that she visited the public toilets at the bus terminus is contradicted by the statement in the victim impact statement that she went to “a public toilet in a car park”. Whether those statements are truly contradictory, or can be reconciled, is not an issue this Court can decide (notwithstanding the

Appellant's advocate's attempts to introduce photographic evidence into his submissions). Whether the toilet is in a carpark, or in a bus station but near a carpark, seems to us for present purposes to be a distinction without a difference. The general thrust of the complainant's evidence (that after the rape she went to a public toilet in pain, discovered she was bleeding and cleaned herself up) was the same at trial as in the victim impact statement. Even if there was an inconsistency it was not on an issue which the jurors were called on to determine, or which had any relevance to the question of the Appellant's guilt.

### **The merits of the Appellant's application to admit fresh evidence**

27. We now consider the other alleged inconsistency, which is relied on by the Appellant. That is the supposed inconsistency between the complainant's evidence at trial and her evidence in the victim impact statement that she told no-one about the rape, and was left to bear the burden of it alone. The Appellant accepts that the other passages from victim impact statement, which are said to be misleading, incorrect or different from the complainant's evidence at trial (see paragraphs 13 to 16 above) do not meet the threshold for being truly inconsistent statements. However, it is said that taken with the alleged inconsistency about who, if anyone, was told about the rape, they paint a picture of the complainant as someone who was prepared to say whatever was necessary at trial to secure a conviction (by saying she told people about the rape to lend credibility to her allegations against the Appellant) while being prepared to change her evidence in the victim impact statement so as to persuade the Court to impose a heavier sentence (by claiming she told no-one and had to suffer all alone).

28. Before considering the merits of these arguments, it is important, as the Court in *Hall* observed, to bear in mind the context of the victim impact statement. At trial the complainant's evidence was led with a view to establishing the commission of the offence. The complainant's actions and responses after the offence were of course relevant, because the Court could reasonably take into account, in assessing the credibility of her account and determining what happened, whether her subsequent conduct was consistent with her evidence that she had been raped. But the extent of the emotional and physical consequences for the complainant of the rape, and the effect it may have had on her life, was not, of itself, an issue. By contrast, the victim impact statement is wholly directed to those questions. It is

therefore only to be expected that evidence about the consequences of the offence for the victim may be expanded and elaborated in the victim impact statement when compared with the evidence at trial. Furthermore, the complainant's evidence at trial (given both in an ABE recording and in Court) was elicited by questions, which must inevitably have restricted the scope of the evidence which the complainant was able to give. In the victim impact statement the complainant had more freedom to express her own evidence. This again may lead to an expansion of the evidence compared with what was elicited at the trial.

29. Turning to the Appellant's submissions under this head, she submits that the passage from the victim impact statement quoted in paragraph 12 above shows the complainant exaggerating the impact which the rape had on her mental state when compared with her evidence at trial. In particular, it is said that the sentence: "I didn't know who I could turn to, and so had to bear the weight of the ordeal alone" was an attempt to make her ordeal seem worse than it was, because it ignored the complainant's evidence at trial that she had confided in her friend A the day after the rape, and had told B something about the rape at some point in the period before she told her mother in February 2022. This, it is said, not only shows that the complainant's evidence is unreliable, but also raises the possibility that the complainant's aim was to secure the maximum punishment for the Appellant.

30. We do not think that the statement in the victim impact statement and the complainant's evidence at trial are as starkly inconsistent as the Appellant submits. The passages from the complainant's evidence at trial quoted above show that at the same time as giving evidence that she had confided in A, she was prepared to say that she "did not tell anyone". The Appellant submits that this simply referred to not telling anyone who might give her medical assistance, but that is not what the complainant says. She says that she did not get medical assistance because she "did not tell anyone". Likewise, under cross-examination, the complainant accepted that she did not ask anyone about what had happened to her. It is clear that when making those statements she was not counting the fact that she had confided in her school friend. Indeed, the complainant only mentioned two exchanges with A – one the day after the rape and one a little later when she went to A to take her pregnancy test. So far as the evidence of B is concerned, it is unclear when during the course of the year she spent getting to know the complainant she was told of the rape by the complainant. It appears from the complainant's evidence that she was told before the complainant's mother, but the

complainant did not tell her mother for more than six months after the rape (and potentially more than nine months if the rape occurred in May 2021).

31. When one compares the evidence at trial with the passage from the victim impact statement quoted in paragraph 11 above, one sees that the victim impact statement is focusing on the effect on the complainant of not telling her family, and thereby being deprived of emotional support in the months following the rape. Clearly, just as in her trial evidence, the complainant does not regard telling her school friend as relevant for this purpose. We do not think the fact that the complainant spoke to A on a couple of occasions, or told B before she told her mother, in any way invalidates or contradicts her evidence in the victim impact statement that “Being raped created a rift between me and my family because it was dirty, guilty secret that I had to keep. I felt an overwhelming sense of isolation. I didn’t know who I could turn to, and so had to bear the weight of the ordeal alone.”

32. For the reasons given above we do not consider that the passage complained of in the victim impact statement is truly inconsistent with the complainant’s evidence at trial.

33. The passage of cross-examination quoted in paragraph 6 above reveals that the Appellant’s case at trial was that the complainant’s conduct after the event was inconsistent with her evidence that there had been a rape at all. In his closing submissions Advocate Fattorini, who represented the Appellant, made this very point. He also disparaged the complainant’s evidence that she told A about the rape, saying the Court only had the complainant’s word that this conversation took place (although he did not challenge her evidence on this point in cross-examination).

34. One therefore has to ask what difference the availability of the material in the victim impact statement would have made at the trial, and in what way it would have impacted on the issues before the Court. There was already material in the complainant’s evidence at trial which Advocate Fattorini could have used to challenge her evidence that she spoke about the rape to A. Advocate Fattorini chose not to take that course, no doubt because it would only have served to draw attention to the fact that the complainant’s evidence was that she had disclosed the fact that she had been raped the day after the offence occurred. We cannot see

that realistically he could, or would, have taken any different approach had he also had available the material in the victim impact statement.

35. Advocate Fattorini's response to this point is to say that by not having the victim impact statement at the trial he was deprived of the option of arguing that the complainant was dishonestly changing her evidence between the trial and the victim impact statement. But even if the victim impact statement could be said to be truly inconsistent with the evidence at trial it is not evidence of dishonesty. At most it reveals an inconsistency in the complainant's evidence, but one which is capable of explanation by reference to the fact that the victim impact statement is focusing on the isolation of the complainant from her family and not on giving a comprehensive account of who the complainant told about the rape and when.

36. In summary, and for the reasons just given, we do not think that the paragraph in the victim impact statement now under consideration is truly inconsistent with the claimant's evidence at trial. We think it is unlikely that its introduction into the trial would have impacted on the issues which were before the Court, and we do not consider that it amounts to evidence of dishonesty on the part of the complainant. We therefore conclude that if that evidence had been called at trial, it would not have caused the Court to entertain a reasonable doubt as to the defendant's guilt.

37. As we have now dealt with the only aspect of the victim impact statement which the Appellant alleges to be truly inconsistent with the evidence at trial, that strictly disposes of the application to admit fresh evidence. We will, however consider the remaining points made by Advocate Fattorini on the victim impact statement

38. The Appellant submits that the evidence in the victim impact statement about the immediate after effects of the rape (as set out in the passage quoted in paragraph 12 above) makes those after effects appear more serious than they appeared when the complainant gave evidence at trial. Again, it does not appear to the Court that there was any material discrepancy between the two versions of this event. The key aspects of the evidence at the trial were that the complainant was in pain after the rape, and that when she went to the toilet she discovered that she was bleeding as a consequence. Both of those elements are

present in the victim impact statement, which then goes on to say a little more than was said at trial about how the complainant was feeling in the aftermath of the rape. As we have pointed out above, it is only to be expected that the victim impact statement will focus more on this topic than the evidence adduced at trial. The Appellant relies on the fact that at trial the complainant said she went to the toilet for “the usual reason”, whereas this does not appear in the victim impact statement, but we cannot see any significance in that omission from the victim impact statement.

39. We do not consider that the introduction of this part of the victim impact statement would have been of any relevance to the issues in the trial, and we do not think it would reasonably have had any impact on the jurors’ assessment of the credibility of the complainant.

40. The Appellant also relies on the supposed discrepancy between the two statements set out in paragraph 15 above. It is said that at trial the complainant gave evidence that she maintained a normal relationship with the Appellant, at least until the complainant realised the extent of the wrong which had been done to her, while the victim impact statement says that the complainant felt scared seeing the Appellant in public and did not want the Appellant’s attention turning back on her. We do not find these statements inconsistent or contradictory. The complainant’s evidence at trial was that a normal relationship was maintained by her because she did not want people to know what had happened. It is perfectly possible to maintain a relationship with an individual for the sake of keeping up appearances, while at the same time being in fear of that person. In any case, it is clear from the complainant’s evidence at trial that her attitude to the Appellant changed over time. It should be borne in mind that the complainant was only 14 at the time of the rape, and her evidence was that she did not at first realise the enormity of what the Appellant had done to her. This appears from the passage in her cross-examination relied on by the Appellant, which in full reads as follows:

“I didn’t understand what he had done to me. I didn’t understand that what he’d done to me shouldn’t have been allowed and, at the time, I didn’t want to make a fuss. I didn’t want people to know and everyone knew me and him as friends, so I stayed on

good terms and... until I realised it was wrong and what he had done to me. I didn't cut off communication and stayed acting normal with him."

It appears from the above that the passage from the complainant's cross-examination relied on by the Appellant related to the time immediately after the rape and before that realisation dawned. It is quite possible that the complainant's fear of the Appellant came later.

41. We do not therefore consider that the statement that "seeing [the Appellant] out in public scared me", if introduced at the trial, would have been detrimental to the complainant's credibility. It is not relevant to any other issues in the trial. It would not, if introduced, been at all likely to have influenced the jurors to entertain a reasonable doubt as to the Appellant's guilt.

42. Finally, there is the fact that it appears that the complainant is in error in saying in her victim impact statement that she and the Appellant went to the same school, which she then had to leave, thus disrupting her education, although this discrepancy might be capable of explanation. This point is not, like those considered above, using the victim impact statement in an attempt to expose inconsistencies with the complainant's evidence at trial. Rather, the Appellant is here using extrinsic evidence to question the accuracy of the victim impact statement itself. The question whether the complainant had to leave school to avoid the Appellant was not raised at the trial. This is not therefore a "truly inconsistent statement" of the sort referred to in *R v Hall*. It is not inconsistent at all with the complainant's evidence at trial. It cannot be relevant to the issues the Jurats had to consider.

## **Conclusions**

43. For the reasons given above we consider that the Appellant's application to admit the victim impact statement as evidence in this appeal should be refused. As the entire appeal is predicated on the admission of the victim impact statement into evidence, it follows that the appeal is bound to fail without it, so the application to appeal out of time should also be dismissed.