



THE COURT ORDERED that no one shall publish or reveal the name or address of the Complainers in these proceedings or publish or reveal any information which would be likely to lead to the identification of the Complainers or any member of their families in connection with these proceedings.

Press Summary

12 November 2025

Daly (Appellant) v His Majesty’s Advocate (Respondent) Keir (Appellant) v His Majesty’s Advocate (Respondent)

[2025] UKSC 38

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Hamblen, Lady Rose and Lady Simler

Background to the Appeal

The appellants, Mr Daly and Mr Keir, were convicted of rape and other sexual offences. In this appeal, they ask the Supreme Court to decide whether they received a fair trial, as required by article 6(1) read with article 6(3)(d) of the European Convention on Human Rights (“the **Convention**”). Article 6(1) guarantees a fair and public hearing by an independent and impartial tribunal, while article 6(3)(d) provides that anyone charged with a criminal offence is entitled to examine witnesses against them.

The appellants contend that their right to a fair trial was infringed because, at their trials, they were unable to lead evidence or to question the complainers or other witnesses about the complainers’ credibility or previous sexual behaviour. In Scotland, evidence of this kind can be led at trials for sexual offences only if it is relevant at common law and admissible under sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995. Section 274 prohibits the introduction of evidence or questioning which concern the character, behaviour or sexual history of the complainer. Section 275 provides an exception to this general rule, which is available if the defendant makes a written application before the trial and the court is satisfied that the criteria specified in the legislation are met. Sections 274 and 275 are sometimes called “rape shield” provisions. They exist to protect the complainer from unfair and intrusive questioning, and to prevent the jury from being improperly influenced by evidence that is irrelevant to the charge against the defendant.

The first appellant, Mr Daly, was convicted of charges including the rape of the first complainer when she was between five and seven years old, and the sexual abuse of the second complainer

when she was between six and 12 years old. Mr Daly appealed against his conviction. He argued that his trial was unfair because the Crown did not charge him with the first complainer's further allegation that Mr Daly had raped her when she was 13 years old, and that she had become pregnant as a result of the rape and had given birth at her grandmother's house. Mr Daly claimed that this allegation was false because the doctor who examined the first complainer had concluded that it was highly unlikely that she had given birth to a full term baby (though an earlier miscarriage was possible). Mr Daly said that, because he was unable to discuss this allegation at his trial, he was prevented from showing the jury that the first complainer was not credible or reliable.

The second appellant, Mr Keir, was convicted of sexually assaulting the complainer at his home address while she was intoxicated, asleep and incapable of consenting, and of raping her when she awoke. Initially, Mr Keir was also charged with raping the complainer vaginally and orally in a pub toilet earlier the same evening, and with sexually assaulting her during a taxi journey on the way to Mr Keir's house. However, the trial court granted the Crown's application to drop these additional charges after the complainer was questioned about CCTV footage of the evening in question. Before his trial, Mr Keir made a written application under section 275. Among other things, he sought to introduce evidence of consensual sexual activity between him and the complainer earlier in the evening, including the events shown in the CCTV footage. This part of Mr Keir's application was refused, and he went on to be convicted at trial. Mr Keir appealed against his conviction on the basis that his trial was unfair. He contended that the Crown should not have been allowed to drop the additional charges and that the trial court was wrong to refuse his section 275 application.

Judgment

The Supreme Court unanimously dismisses the appellants' appeals. It finds that the Scottish courts should modify their current approach to the admission of evidence in trials for sexual offences because it is liable to infringe defendants' rights under article 6 of the Convention. However, on the facts, both Mr Daly and Mr Keir received a fair trial. Lord Reed gives the judgment with which the other members of the Court agree.

Reasons for the Judgment

The Supreme Court begins holding that the Crown's decisions as to the charges against the appellants did not affect the fairness of either trial. In both cases, the defence was permitted to lead evidence on matters not covered by the charges, provided it was relevant at common law and admissible under sections 274 and 275. The law of evidence is therefore the proper target of the appeal [32]-[37].

The Supreme Court goes on to survey Scots common law and practice prior to recent developments. It explains that, generally speaking, relevant evidence – that is, evidence which has a reasonably direct bearing on the matter under investigation – is admissible at trial. The courts may exclude relevant evidence which concerns a collateral fact or issue to avoid a distracting and disproportionate inquiry into peripheral issues. Evidence bearing on the credibility or reliability of a witness is generally considered to be collateral and so inadmissible, but it may be admitted if it has a direct bearing on a fact in issue in the case [38]-[44], [115].

This distinction – between inadmissible evidence which is concerned only with the witness' credibility, on the one hand, and admissible evidence which is also relevant to a fact in issue, on the other – is particularly difficult to draw in trials for rape and other sexual offences. The offence generally takes place in private with no other witnesses present, so the credibility of the complainer's testimony often becomes the decisive issue at trial [45]-[49].

Next, the Supreme Court considers the modern development of the law in England and Wales and in Scotland, including the introduction and later amendment of "rape shield" legislation

such as sections 274 and 275 [55]-[90]. The Supreme Court explains that sections 274 and 275 should be read together as a unified statutory scheme [88]. The early domestic and European case law is clear that they should not be viewed as imposing an absolute prohibition on the introduction of evidence or questioning which concern the character, behaviour or sexual history of the complainant. Rather, the legislation recognises that the relevance and probative value of evidence of this kind will depend on the circumstances of each case. It therefore gives trial judges the discretion to allow such evidence and questioning to be introduced where it is required in the interests of justice [92]-[103], [165]-[168], [178].

More recently, the High Court of Justiciary in its capacity as an appeal court has developed the common law concepts of relevant and collateral evidence so that evidence concerning the complainant's credibility or previous or subsequent sexual behaviour is almost always excluded from trials for sexual offences [104]-[149]. The Supreme Court holds that this approach is liable to result in violations of defendants' rights to a fair trial under article 6 of the Convention [169], [179]-[180].

The purpose of a criminal trial is to determine whether the defendant is guilty of the crime with which he has been charged and, if so, to impose an appropriate sentence. It is fundamental to our conception of justice that innocent persons must not be convicted or punished. This principle underpins article 6 of the Convention, and protects both individuals who are accused of crimes and society as a whole. Article 6 guarantees a fair trial so that the defendant can present a full defence to the charge against him. To do this, the defendant needs to be able to call evidence to establish his defence and to challenge the evidence called by the prosecution. Excessive restrictions on the evidence or questioning which may be led at trial can therefore be incompatible with the right to a fair trial [170]-[171].

It may be inevitable that a fair trial for sexual offences will require the complainant to be asked some intrusive questions about her private life. In our adversarial criminal justice system, by pleading not guilty, the defendant is necessarily challenging the complainant's version of events. The defence should consequently be able to seek to undermine the credibility of the complainant's testimony, and to rely on evidence of her behaviour, sexual or non-sexual, before or after the events in question if it is relevant to the question of consent (or the defendant's reasonable belief in consent) [173]-[175]. At the same time, the interests of complainants are important and must be given proper weight. The law must therefore ensure that any intrusion into a complainant's privacy is no more than is necessary to ensure that the defendant receives a fair trial. The courts should not allow the jury's fact finding process to be distorted by the admission of evidence whose probative value to the defence is outweighed by the risk which its admission presents to the proper carrying out of that process [175]-[176].

It follows that the Scottish courts are under a duty to modify their current approach, since they are required by section 6(1) of the Human Rights Act 1998 to act in a way that is compatible with the rights guaranteed by the Convention [181]. However, there was no infringement of the appellants' article 6 rights on the facts, so their appeals are dismissed [192].

In Mr Daly's case, the first complainant's allegation that he had also raped her when she was 13 could only be relevant in so far as it might bear on her credibility. It was unclear whether this allegation was false on the material available to the trial court. Ascertaining the truth would therefore have required the court to investigate an allegation which did not form part of the charges, prolonging the trial and distracting the jury from the facts in issue [182]-[185]. In Mr Keir's case, evidence of the consensual sexual activity between him and the complainant earlier in the evening could potentially have been relevant to the jury's assessment of the complainant's state of mind at the relevant time. However, its probative value was limited because it could not help the jury decide which version of events was true. It was therefore outweighed by the risk that it might prejudice members of the jury against the complainant and so distort the fact-finding process [186]-[191].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)