Reply 1

Thank you, Carly Sinclair, for your contribution to the discussion.

I concur with you that Gorgios could explore the exceptionality rule to introduce his witness. However, it is important to note that this depends on how he convinces the court that the previous relationship and interaction with Bella bears influence the alleged rape. It is his reasons that may compel the court to grant a leave that would allow him to bring in his witnesses[[1]](#footnote-1). R v A [2002] offers a glimpse into factors that may compel the court to grant or not grant leave. In the case, on the 13th June 2000, the complainant and the defendant’s friend and housemate had engaged in sexual activity. On the following day, the defendant is alleged to have raped the complainant while the latter tried to help the former up after he fell. In his defense, the defendant argued that the complainant had consented to the sexual activity in question and that it was just part of a continuing sexual relationship, the last instance of such sexual activity having taken place a week earlier before the alleged rape took place.

The court had previously blocked the use of s41 of the Youth Justice and Criminal Evidence Act 1999 to allow for cross-examination of the complainant by the defendant on her previous sexual activities. Nevertheless, the trial judge was persuaded that such a move would breach provisions of Art. 6, which guarantees the complainant the right to fair trial under the European Convention of Human Rights as implemented in the Human Rights Act 1998. As a consequence, the trial judge granted leave to the defendant to appeal[[2]](#footnote-2).

1. Section 41(1) [↑](#footnote-ref-1)
2. R v A (No.2) [2001] UKHL 25; [2002] 1 AC 45. [↑](#footnote-ref-2)