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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT SWINDON  
(HIS HONOUR JUDGE JASON TAYLOR KC) [54ED0460021]

Case No 2024/01431/B4  
[2024] EWCA Crim 1369

Thursday 10 October 2024

**B e f o r e:**

**THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION**  
**(Lord Justice Holroyde)**

**MR JUSTICE MARTIN SPENCER**

**MRS JUSTICE CUTTS DBE**

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**R E X**

**- v -**

**STEFON FRANCIS WINTER**

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**Mr O Pownall KC and Mr A Baker** appeared on behalf of the Applicant

**Miss A Bull** appeared on behalf of the Crown

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**J U D G M E N T**

**(Approved)**

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Thursday 10 October 2024

**LORD JUSTICE HOLROYDE:**

1. The applicant was convicted of sexual offences which he had committed many years ago against a girl then aged 5. She is entitled to the protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly, during her lifetime no matter may be included in any publication if it is likely to lead members of the public to identify her as the victim of these offences. We shall call her "C" and her mother "M".
2. The applicant now applies for leave to appeal against his convictions on a single ground based on matters occurring during the jury's retirement. The Registrar has referred the application to the full court.
3. The full court must consider first whether to exercise its power under section 23A of the Criminal Appeal Act 1968 to direct an investigation by the Criminal Cases Review Commission ("CCRC"). As both counsel recognise, that is a step which is rarely taken.
4. We can summarise the facts briefly. At the material time the applicant lived with C's aunt ("A"). For a short time, C went to stay in A's house. It was the prosecution case that, whilst there, she was indecently assaulted by the applicant on two occasions: first, while she was bathing; and secondly, when she went into A's bed in the early hours of the morning. In relation to that second incident, C initially stated that she had been indecently assaulted whilst lying between the applicant and A, but at a later stage she gave a different account.
5. C had made no complaint at the time, but told her mother some years later. She was then interviewed by the police, in 1995. An agreed fact before the jury stated that the interview of C was video recorded.

6. Also in 1995, the applicant was interviewed. His interview was tape recorded. There was no prosecution at that stage. An agreed fact before the jury stated that the cassette tapes of the applicant's interview were disposed of in 2005.

7. At the trial in 2024, before His Honour Judge Taylor KC and a jury, in the Crown Court at Swindon, C and M gave evidence for the prosecution. A was not a witness in the case. C was cross-examined about discrepancies in her accounts, and about differences between what she had said in her video interview and what M had said in a witness statement.

8. The defence case was that the alleged incidents had never happened, and that C's evidence was unreliable. The applicant gave evidence denying the allegations.

9. The applicant had previous convictions in 2021 for offences of indecent assault and gross indecency committed in 1980. No bad character application was made by the prosecution in respect of those convictions, and nothing was said in evidence about them.

10. The jury were aware from the evidence that in 2021 C had made an application to the Criminal Injuries Compensation Authority in respect of the alleged indecent assaults. The jury were aware that the application was refused because it had been made out of time.

11. The judge's written directions to the jury, which were also delivered orally, included the following:

"4. The prosecution and the defence have chosen the evidence to put before you in support of their respective cases and there will be no more; so please do not ask for any; the evidence is now closed. ...

...

11. As you consider the evidence, you are entitled to draw inferences from the evidence. That means you may come to common sense conclusions based on the evidence. But you must not guess or make up theories that are not based on the evidence. And you must not speculate. There is no place for speculation in a criminal trial."

12. The judge further directed the jury that there was no dispute that, if the assaults happened in the way described by C, the applicant committed the offences charged. Accordingly, in relation to each count they must ask themselves whether they were sure that the applicant had intentionally touched C's vagina. No criticism is or could be made of those directions.

13. The jury retired to consider their verdicts. After just over an hour, they gave a note to the jury bailiff in which they asked the following questions:

- "1. We would like to know why [A] has not been called as a witness by the prosecution.
2. Is it still the case that any previous convictions can be disclosed at this stage?
3. What was the reason for the 2021 compensation claim?
4. Do [A] and [the applicant] have children?
5. Has the video of the [applicant] in 1995 been lost or destroyed? Please confirm, and
6. What triggered the case to be reopened?"

14. Having discussed these questions with counsel, the judge directed the jury as follows:

"So, members of the jury, I remind you of my earlier directions. The evidence is now closed. Okay? You must decide the case on the evidence that has been presented and nothing else. You must not guess, make up theories or, particularly importantly, speculate. As I said, there is no place for speculation in a

criminal trial. Doing my best to assist, however, the reason for the compensation claim, you may feel, is self-evident and [C] accepted she was seeking compensation but was time-barred. There was no video of the [applicant's] interview; that was not done back then and actually it is rarely done now. It was tape recorded but those tapes were destroyed after ten years, which was standard practice. Okay? It is for the Crown to prove the case and they have called the evidence that they chose to call, and as to why the case has now been brought, many years after the event, that is something you must not speculate upon or hold against either the [applicant] or the prosecution. You must not pursue impermissible lines of reasoning. Decide this case on the evidence you have heard, nothing else. All right? Thank you very much."

15. The jury then resumed their deliberations, which in total lasted more than six hours before they returned their verdicts.

16. The single ground of appeal is that the convictions are unsafe because "the court can have no confidence that [the verdicts were] reached upon a fair assessment of the evidence presented, as opposed to a reliance upon other extraneous, speculative considerations".

17. For the applicant, Mr Pownall KC and Mr Baker submit that it is appropriate for the CCRC to conduct an investigation and to interview all the jurors as to whether one or more of them had sought information from the internet. It is said that any such research would have revealed the applicant's previous convictions.

18. Miss Bull, for the respondent, opposes that application. Counsel have helpfully co-operated to suggest a list of questions which this court, if it accedes to the application, might invite the CCRC to ask of each of the jurors. The questions include:

1. As far as you are aware, did any juror research the case of the defendant directly or indirectly on the internet?

2. Did one or more of you believe that Mr Winter had previous convictions?

3. Why was it thought that [A] might or should have been called as a witness for the prosecution?

4. Did one or more jurors directly or indirectly research the possibility that previous convictions might be disclosed at any stage of the trial?

19. It is further suggested that each juror should be asked to provide access to "any computers, mobile phones or other smart devices" used during the period of the trial.

20. In support of his submission that those and other questions should be asked, Mr Pownall submits that the note sent by the jury raises substantial concerns and makes it necessary to investigate whether any juror sought to investigate the applicant on the internet or elsewhere; whether any juror sought or obtained any details of the applicant's previous convictions; or whether any juror speculated about the possibility that the applicant may have previous convictions. Mr Pownall places emphasis both on the individual questions and especially on the overall effect when they are considered collectively. He says that, taken together, they point to one or more jurors having a knowledge or belief of the applicant's previous convictions. It is further submitted that the timing of the note and the terms of the questions asked suggest that at least one juror had already ignored the directions given by the judge in the course of his summing up. It is suggested that in question 2 it is unclear whether the word "can" was intended to read "cannot". It is argued that question 2 indicates that either the jury were wondering if the applicant had previous convictions, or they were enquiring why no previous convictions had been disclosed and why no good character had been asserted.

21. As to the further directions given by the judge after the questions had been asked, Mr Pownall acknowledges that the judge said everything he could properly have said. But, he submits, the questions point to one or more jurors having ignored the judge's previous directions, and the court can therefore have no confidence that they would obey the further directions.

22. Miss Bull submits that there are no grounds for this court to direct an investigation by the CCRC. She argues that the fact that the jury asked particular questions does not mean that they then took the additional and prohibited step of speculating or guessing as to what the answers to those questions may be.

23. As to question 2, she submits that there is no reason to think that the word "can" was a mistaken entry for what was intended to be a different word. There is, she submits, no evidence that any juror did conduct improper research. She reminds the court that both on the pink form given to all jurors when called for jury service, and in the judge's oral instructions at the start of the trial, the jury were told of their collective duty to report any concerns about the conduct of a fellow juror. They were warned that internet research might amount to a criminal offence. It follows, Miss Bull submits, that if there were any substance in the applicant's suggestion that a juror may have conducted improper research and discussed the fruits of that research with other jurors, then each of the other jurors concerned would have disobeyed their instructions to report that matter to the court.

24. We are very grateful to both counsel, who have made submissions of great clarity. Reflecting upon those submissions, our views are as follows.

25. Each of the questions asked by the jury was a request for information, not an assertion of fact or opinion. Most jurors have no prior experience of the practice and procedure of the

Crown Court. They may have inaccurate beliefs or expectations as to how a trial will proceed. They may feel that, had they been acting as one of the advocates, they would have wanted to ask further or other questions. It is therefore unsurprising that juries will sometimes ask questions about matters which have not been the subject of any evidence or about matters which have no legal relevance to the issues in the trial. That is why directions are conventionally given, as they were in this case, to the effect that the evidence is closed; that there will be no more evidence; that a request to see witness statements will be fruitless; and that the jury must not speculate about why a person was not called as a witness. It is why counsel will often, as Mr Pownall did in this case, expressly urge a jury not to speculate about a particular point or about the absence of a particular witness. But in itself, none of this means that jurors have defied, or will defy, the clear direction of the judge to try the case only on the evidence and not to speculate.

26. Is there then any particular feature of the present case to support the submission that the jury's questions make it necessary to direct a CCRC investigation? We are satisfied that there is not. We make the following brief observations about individual questions before considering them collectively.

27. As to question 1, it is unsurprising that one or more jurors might have thought that A, who was after all in bed with C and the applicant at the time of the second alleged assault, would be a witness in the case. But the judge gave an appropriate further direction, and this court is entitled to proceed on the basis that a judge's directions will be obeyed by a jury. Further, we see no basis for regarding question 1 as necessarily indicating a view in favour of the prosecution, rather than the defence.

28. As to question 2, we do not accept that this can be regarded as relating only to possible previous convictions of the applicant, as opposed to anyone else in the case; still less as

indicating that some research had already been conducted. Again, the judge repeated his appropriate direction against speculation

29. As to questions 3, 4 and 6, whatever prompted these questions, there is, in our view, again no basis for inferring an underlying view favourable to the prosecution and adverse to the defence.

30. Question 5 reflects a simple misunderstanding as to whether the interview of the applicant had been video recorded. This is unsurprising, given that the agreed facts referred to a video interview of C, but did not say whether the applicant's interview had been recorded on video, as well as being audio recorded.

31. In our view, none of the questions provides any basis for thinking that any juror had already engaged in improper speculation as to what the answers may be, or had already carried out any improper research. There was, therefore, no basis for any application to be made to discharge the jury when the questions were asked. After the questions had been asked, the judge gave appropriate further directions. None of the questions provides any basis for suggesting that the jury would listen to those further directions given by the judge in answering their questions, but would promptly disobey them. The court proceeds on the basis that, absent evidence pointing to the contrary, jurors can be expected to obey judicial directions.

32. Further, as this court has made clear in a number of cases, including most recently, *R v Frizell and Bowden* [2024] EWCA Crim 1108 at [50]:

"The presumption on which the court operates is that if a juror falls below the standards expected, other jurors will report that to the judge during the trial and before the verdict. Inquiries

should not be ordered in such cases and the finality of the verdict must be accepted, unless there is 'other strong and compelling evidence'. To act otherwise would be neither fair nor just (see *R v Baybasin* [2014] 1 Cr App R 19 at [63])."

33. For those reasons, persuasively though they were argued, we are unable to accept the submissions advanced on behalf of the applicant. Nothing that has been put before us begins to cast arguable doubt of the safety of the convictions, and nothing has been put before us which would justify this court in taking the exceptional step of directing the CCRC investigation. The application for such a direction is accordingly refused.

34. That refusal is fatal to the sole ground of appeal. It follows that the application for leave to appeal against conviction fails and is refused.

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