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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Case No: 2024/00020/B1  
[2024] EWCA Crim 955



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 25<sup>th</sup> June 2024

**B e f o r e :**

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

**MR JUSTICE DOVE**

**MR JUSTICE BRIGHT**

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**R E X**

**- v -**

**FOWSI HAJI**

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**Mr M Lfteris** appeared on behalf of the Applicant

**Mr B Holt** appeared on behalf of the Crown

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**J U D G M E N T**  
**(Approved)**

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Tuesday 25<sup>th</sup> June 2024

**LORD JUSTICE HOLROYDE:**

1. This applicant was convicted of an offence of fraud. On grounds relating to matters which occurred after the verdict had been returned and after the jury had been discharged, he now applies for an extension of time and for leave to appeal against his conviction. His applications have been referred to the full court by the Registrar.

2. It is unnecessary to refer in any detail to the facts of the case. For present purposes it is sufficient to say that the applicant was alleged to have obtained accommodation and payments by falsely claiming to have been living at Grenfell Towers at the time of the dreadful fire in that building.

3. The defence case was that the applicant had to the best of his ability told the truth about his circumstances, and that any incorrect information which may have been recorded was a result of misunderstanding because of language difficulties or because of his mental health and alcohol abuse issues.

4. The trial, before His Honour Judge Curtis-Raleigh and a jury in the Crown Court at Isleworth, began on the afternoon of Tuesday 24<sup>th</sup> October 2023. The jury heard evidence from a number of prosecution witnesses and from the applicant. The evidence was completed on Thursday 26<sup>th</sup> October.

5. On the morning of Friday 27<sup>th</sup> October the judge gave his directions of law, counsel made their closing speeches, and the judge summed up the facts. The directions of law were given both orally and in writing. No complaint is or could be made about them. They included the following conventional instruction about unanimous verdicts:

"You must reach if you can a unanimous verdict, a verdict on which you are all agreed. You may have heard of majority verdicts, but, if so, please put them from your mind. When you retire the only verdict I can accept is one on which you all agree. If that position changes I will have you back into court and give you a further direction."

The judge also explained that when the jury reached their verdict, it would be delivered in court by the foreman or forewoman who would speak on behalf of them all.

6. The jury began their deliberations on the afternoon of Friday 27<sup>th</sup> October. After about two and a half hours, they were sent home for the weekend.

7. The jury resumed their deliberations at 10.11 am on Monday 30<sup>th</sup> October. Two hours later, at 12.14 pm they sent a note to the judge. At 12.29 pm the judge was able to re-assemble the court. He told the jury that he was going to give them a further direction, but that the clerk would first put a question to the foreperson. The judge explained "so that you are not taken by surprise" that the clerk would ask whether the jury had reached a verdict on which they were all agreed. That question was then asked by the clerk, and the foreman answered "Yes". When asked what the verdict was, he replied "Guilty". He was asked by the clerk and confirmed that it was the verdict of them all. The judge then said:

"I just want to double-check. That is the verdict of all 12 of you, is it?"

THE FOREMAN: Yes."

The jury were then discharged. Sentencing was adjourned and has subsequently been further adjourned.

8. At lunchtime on the following day a member of the court staff was approached by two of the persons who had served as jurors in this trial. They said that the verdict given by the foreman was inaccurate and that their decision was a majority one, not unanimous. When asked why they had not mentioned this in court, they replied that they had been unsure whether they were permitted to speak in court.

9. The member of court staff very properly reported this to the judge and later made a short statement recording what had happened. The judge rightly regarded himself as *functus officio* and therefore unable to conduct any inquiry himself. He duly brought the matter to the attention of the Registrar. The case is now listed for the full court to give directions, or, if appropriate, to consider the substantive applications.

10. On behalf of the applicant, Mr Lefteris (who did not appear below) advances three grounds of appeal: first, that the foreman had returned a unanimous guilty verdict when in fact there was no unanimity; secondly, that even if there was agreement as to a majority verdict, no majority direction had been given and the jury would not be entitled to return such a verdict without first receiving a majority direction; and thirdly, that in reality the verdict was a "non-verdict" returned in error by the foreman. As such, it is submitted, the verdict announced by the foreman is unsafe.

11. Mr Lefteris acknowledges that it is only in exceptional cases that inquiries will be made into the way in which a jury has reached a verdict. He submits, however, that there is here clear evidence that the jury were not unanimous at the time when the verdict was pronounced, and that the foreman made a mistake in saying that they were. He invites this court to exercise its power under section 23A of the Criminal Appeal Act 1968 to direct an investigation by the Criminal Cases Review Commission ("CCRC").

12. Mr Holt, who represents the respondent in this court as he did below, opposes the applications. He submits that no juror indicated dissent from the verdict either at the time it was pronounced, or very soon thereafter, and that it would not be appropriate to investigate matters which were not raised by any juror until nearly 24 hours later.

13. We are grateful to both counsel. They have helpfully invited our attention to relevant case law and have co-operated in drafting questions which may be appropriate if this court directs an investigation by the CCRC.

14. So far as is material for present purposes, section 23A of the 1968 Act provides:

**"23A Power to order investigations.**

(1) On an appeal against conviction or an application for leave to appeal against conviction, the Court of Appeal may direct the Criminal Cases Review Commission to investigate and report to the Court on any matter if it appears to the Court that —

...

- (aa) in the case of an application for leave to appeal, the matter is relevant to the determination of the application and ought, if possible, to be resolved before the application is determined;
- (b) an investigation of the matter by the Commission is likely to result in the Court being able to resolve it; and
- (c) the matter cannot be resolved by the Court without an investigation by the Commission.

..."

15. Mr Lefteris reminds us that the CCRC itself has only existed since the mid-1990s, and he asks us to bear that in mind when considering some of the older case law to which reference

has been made.

16. The case law which we have considered includes the following: *Nanan v The State* (1986) 83 Cr App R 292; *R v Austin* [2002] EWCA Crim 1796; *R v Mirza* [2004] 1 AC 1118; *R v Charnley* [2007] EWCA Crim 1354; *R v Lewis* [2013] EWCA Crim 776; *R v Baybasin* [2013] EWCA Crim 2357; *R v Ul Hamid and Khan* [2016] EWCA Crim 483; *RN v The Queen* [2020] EWCA Crim 937; *R v Essa, Nielson and Amin* [2023] EWCA 608; and *Yussuf v Governor of HMP Belmarsh* [2024] EWHC 692 (Admin).

17. Having reflected on the submissions, we think it appropriate to focus on ground 1 and the linked ground 3. Ground 2 is a distinct point going to whether the conviction might be safe even if a material irregularity occurred. For present purposes we are content to assume, without deciding, that the premise of Mr Lefteris' argument, namely that no majority verdict can be returned unless the jury have first been given an appropriate majority direction, is correct.

18. There is a long-established common law principle that a jury's deliberations must remain confidential, that no inquiry may be made into those deliberations, and that evidence about them is inadmissible. Two narrow exceptions to that principle have been recognised. They relate to cases where there has been a complete repudiation by jury of their oath to try the case according to the evidence; and where extraneous material, which was not the subject of evidence, has been introduced into the jury's deliberations. The principle and the narrow exceptions to it were confirmed by the House of Lords in *Mirza* and have been applied by this court in subsequent cases, including many which postdate the coming into being of the CCRC.

19. In the present case it is necessary to consider one aspect of that principle, namely the

situation which sometimes arises of a verdict being pronounced and said to be unanimous, but representations subsequently being made to the effect that it was not in fact unanimous.

20. In *Nanan*, at page 298, the Judicial Committee of the Privy Council said:

"If a juror disagrees with the verdict pronounced by the foreman of the jury on his behalf, he should express his dissent forthwith. If he does not do so, there is a presumption that he assented to it. It follows that where a verdict has been given in the sight and hearing of an entire jury, without any expression of dissent by any member of the jury, the court will not thereafter receive evidence from a member of the jury that he did not in fact agree with the verdict, or that his apparent agreement with the verdict resulted from a misapprehension on his part."

21. In *Austin* at [13] this court explained that the importance of any dissent from a verdict being expressed forthwith is that it gives an opportunity for the verdict to be reconsidered before it is recorded. As later case law shows, another important reason is that once the jury have been discharged and have separated, individual jurors may be influenced by comments made by others who were not members of the jury.

22. At [163] of his speech in *Mirza*, Lord Hobhouse referred to two features of a jury trial which safeguard the accused's right to a fair trial, namely the judge's directions of law and the foreman's announcement of the verdict in the presence of all the jurors. In relation to the latter, he continued:

"The law proceeds on the view that if a juror who can hear the foreman's words makes no objection when the verdict is announced, he or she must be taken to have assented to the verdict as accurately reflecting the proper conclusion of the jury's deliberations."



23. In *Charnley*, on which Mr Lefteris particularly relies, this court did not depart from that principle but held that, on the facts, a juror had expressed doubts about the verdict to the jury bailiff immediately after the jury left the courtroom and before they had dispersed. It would have been open to the trial judge to have investigated immediately, and there had been no opportunity for any jurors to be exposed to any outside influences. In those circumstances this court was satisfied that

"... the doubts were expressed at a sufficiently proximate time and place to the events in court that they fall within the permissible exceptions to the normal rule."

24. Jurors are now given a leaflet setting out their duties and are, as a matter of routine practice, given initial instructions by trial judges as to what they must and must not do. In both these ways jurors are clearly informed of their collective responsibility to ensure compliance with the rules and the need, if concerned about something said or done by a fellow juror, to bring the matter promptly to the attention of the judge. The Crown Court Compendium, at section 3-1, advises judges that the initial instructions should include telling the jury of the need to bring any concerns to the attention of the judge immediately, and not to wait until the case is concluded. The Compendium adds:

"The point should be made that, unless that is done while the case is continuing, it may not be possible to deal with the problem at all."

25. With those conventional instructions in mind, the court in *Lewis* said at [25]:

"Given the clear instructions which are now given to juries, and obviously were given to this jury, a post verdict complaint by a member of the jury, whether it takes the form of a letter or a visit to the solicitors for the defendant or indeed a visit to the defendant himself, simply will not do. As Gage LJ remarked in

*R v Adams* [2007] 1 Cr App R 34, 'Silence as to any such irregularity will ... almost certainly mean that this court will assume that none occurred'. In view of the additional directions given since *Adams* was decided, the inference that complaints after verdicts simply represent a protest by a juror at a verdict with which he disagrees is likely to be overwhelming."

26. To similar effect, this court in *Ul Hamid and Khan* at [30] said that, speaking generally:

"... second thoughts after a verdict has been delivered are not relevant. What matters is whether the jury had been unanimous at the time when the verdicts were delivered. A subsequent change of heart, even if it occurs swiftly thereafter, simply will not do. ... What counts is the ostensible demonstration of assent in the jury room to the verdicts as actually thereafter delivered in open court. Overall, ostensibly regular jury verdicts as delivered are to be respected and most certainly are not lightly thereafter to be interfered with."

27. The principle applied in those cases and other cases was encapsulated with admirable brevity in [55] of the judgment in *Yussuf*, on which Mr Holt particularly relies. The President of the King's Bench Division said:

"The court will not investigate what happened prior to the giving of a verdict where the jury disperses and a mistake is not indicated until significantly later, for example, the following day ..."

28. We turn to the application of that principle to the facts and circumstances of the present case. Without needing to reveal the exact terms of the note sent by the jury on 30<sup>th</sup> October 2023, it is obvious from the transcript that the judge was intending to give a majority direction and was not expecting an affirmative answer to the question asked by the clerk. We commend the good sense of the judge in thereafter asking a question himself in order to give the foreman an opportunity to confirm whether the verdict he had just pronounced was indeed unanimous. We note, however, that the judge said nothing to suggest that he had noticed any

audible or visible dissent or concern on the part of any of the jurors, either before or after he asked that question. The fact that the jury had sent their note in terms which prompted the judge to prepare to give a majority direction does not of itself cast doubt on a unanimous verdict announced a short time later. Jurors who have for a time been inclined towards a different verdict are entitled to change their views and agree with the majority, and may do so quite suddenly.

29. The jury had been very clear instructions as to their responsibilities. They can have been in no doubt about the importance of raising any concerns promptly. The jury had also been given a very clear direction, of which they had a copy in writing, that they should try to achieve a unanimous verdict and that the judge would give a further direction if ever that position changed. When they came back into court on 30<sup>th</sup> October, the jury all knew that no further direction had been given. When they did return to court, the judge, very sensibly and helpfully, explained to them what was going to happen and told them the terms of the question which their foreman would be asked to answer on behalf of all of them. Each of the jurors knew what answer he or she expected the foreman to give. Each of the jurors knew what he or she wanted the foreman to say when the judge asked his clarificatory question, yet no juror said anything to indicate concern or disagreement.

30. We understand, of course, the point made by Mr Lefteris that a juror may be diffident about speaking up in a courtroom. But when they left the courtroom, the jurors would have been led by an usher who would probably have been someone with whom they had worked over the preceding days. There can have been no difficulty, even for a timid juror, in speaking privately to the usher, or for a less timid juror in protesting to the others that he or she had not agreed to the verdict just pronounced. Further opportunities to speak to one or more court officials must have arisen when the jurors (depending on whether or not they had then concluded their jury service) either awaited instructions as to whether they should return

the following day, or dealt with administrative matters such as the payment of their expenses. But at no point did any juror say anything to bring any concern to the attention of the court.

31. The jury thereafter dispersed, giving rise to the clear possibility that they might have permissibly discussed the case with family and friends, and might thereby have been influenced in their view as to the appropriate verdict.

32. In those circumstances, the events of the following day involving two jurors, who even then waited until lunchtime to speak to any court official, came too late to cast arguable doubt on the safety of the conviction. The facts are far removed from those in *Charnley*. The public pronouncement of the verdict must be accepted as correct.

33. We are grateful to both counsel for their assistance. If we had thought that the grounds of appeal were arguable, we would have been willing to grant the necessary extension of time and to direct an investigation by the CCRC. For the reasons we have given, however, we decline to order any investigation. Grounds 1 and 3 therefore cannot succeed; and ground 2, which is premised on the success of the other grounds, must also fail. Granting an extension of time would, therefore, serve no purpose. The applications are accordingly refused.

34. The respondent should forthwith notify the Crown Court of our decision so that the judge may proceed as appropriate to sentencing.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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