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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/00102/B3

[2021] EWCA Crim 1684



Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 10 November 2021

THE VICE PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(Lord Justice Fulford)

MR JUSTICE JAY

HIS HONOUR JUDGE KEARL QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

CHRISTOPHER GORDON

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Mr F McGrath appeared on behalf of the Applicant

Mr S Wilshire appeared on behalf of the Crown

JUDGMENT

Wednesday 10 November 2021

LORD JUSTICE FULFORD:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. No matter relating to the victim shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as the victim of these offences.
2. On 18 November 2020, following a trial in the Crown Court at Aylesbury before His Honour Judge Sheridan and a jury, the applicant (then aged 62) was convicted of two counts of rape of a girl under 13 (counts 1 and 2) and four counts of causing or inciting a child under 13 to engage in sexual activity (counts 3 to 6).
3. On 19 November 2021, at the same court, the applicant was sentenced on counts 1 and 2 to concurrent Special Custodial Sentences of 14 years, comprising a custodial term of 13 years and an extended licence period of one year. On counts 3 to 6 he was sentenced to terms of five years' imprisonment, concurrent *inter se* and concurrent with the sentences on counts 1 and 2. These sentences were ordered to be served consecutively to a sentence that he was already serving.
4. Before this court the applicant applies for an extension of time (21 days) in which to apply for leave to appeal against conviction. Both applications have been referred to the full court by the Registrar. For reasons that will become clear, it is entirely understandable that there was a delay in applying for leave to appeal and we grant the necessary extension of time.
5. The applicant seeks leave, pursuant to section 23 of the Criminal Appeal Act 1968, to introduce fresh evidence from Detective Constable Everitt (the officer in the case) as to a possible jury irregularity which occurred in circumstances which are discussed later in this judgment. This application is unopposed, and it is granted.
6. The facts may be shortly stated, given that the issue which arises on this application is not dependent on them. In essence, it is alleged that the applicant raped the complainant when she was approximately 4 years old. He gave her medicine before she went to bed, which made her feel sleepy. She slept in the applicant's bed. He got on top of her and she felt his penis in her "mini". He had made her put her foot and hand on his penis whilst they bathed together.
7. The complainant reported what occurred to DM (a teacher). She told DM that the applicant was not nice to her or to her brother, that she would wake up with no clothes on, had a sore "mini" and had been given medicine that would make her drowsy. She had also reported the incidents in the bath. These reports, certainly in part, were repeated to her mother.
8. The applicant, as already indicated, had an earlier conviction from 2019 for indecent assault of a female (a stepdaughter) under the age of 14 between June 1993 and June 1994.
9. When he was interviewed by the police on 26 November 2019, the applicant denied all the allegations.
10. The defence case was that he had not committed any of the offences alleged. He gave evidence during the trial.
11. About a month after the conviction, on 11 December 2020, the officer in the case, Ms Everitt, received a message via the Thames Valley Police Control Room from a man

purporting to have been on the jury that convicted the applicant. The message was as follows:

"Hello,

I apologise for interrupting there. Please find the following details. An officer, Mark Manners-Jones from Metropolitan Police, is trying to contact you in regard to a recent court case in Aylesbury. If you could please contact him when you have chance. His number is [number given]."

12. As Ms Everitt sets out in her witness statement, she called Mr Manners-Jones. He answered. He said that he had been on the jury. He described where he had been sitting. He said that he had been staring "quite a lot" at Ms Everitt. He asked if she wanted to go for a coffee "to discuss the case". He said that he wanted to talk about what had happened inside the jury room. He described where he lived in Aylesbury and that he would be able to travel to meet Ms Everitt. He said words to the effect of: "I just want you to know that in my eyes it was a done deal" and that "not everyone was so sure at the beginning".

13. Ms Everitt indicated that it was not appropriate for them to meet because sentencing had not taken place, although she had no intention of meeting him. Mr Manners-Jones gave Ms Everitt his email address. It is uncontested that Mr Manners-Jones was a serving police officer who was with the Metropolitan Police at the time.

14. Ms Everitt states: "I was not aware there was a police officer within the jury during the trial. Mark told me on the phone call he did disclose this at the start so he says the court would have been aware of this."

15. There was no further contact between the two. Ms Everitt, quite correctly in our view, immediately reported the matter to her supervisor, who advised her to relay what had occurred to the Police Professional Standards Department, which step she took. Thereafter, she informed the Crown Prosecution Services. She has made a witness statement.

16. Whilst dealing with the facts it is convenient at this stage to add that a statement has been provided by Police Inspector Helena Devlin, who is Mr Manners-Jones' supervisor. She has had two conversations with Mr Manners-Jones. The first was in December 2020, following a request from her Professional Standards Department in relation to his contact with Ms Everitt. Mr Manners-Jones told her "he had contacted the OIC purely for professional reasons, although understood that this was misguided under the circumstances. He stated that he did not want to divulge any conversations that had taken place in the jury room, only that there was possibly some organisational learning around future cases." She records that as the case was concluded and no confidential information had been disclosed, she took no further action.

17. The second conversation she had with Mr Manners-Jones was in June 2021, following a request by the Crown Prosecution Service. In relation to that discussion she indicates that "PS Manners-Jones stated that he completed the court forms in advance of his jury service and highlighted his occupation was a police officer. On the first day of jury service he also informed the court usher of his occupation, which they were aware of."

18. The Registrar was informed of the report provided by Ms Everitt, and at her direction the applicant's representatives were notified. Grounds of Appeal were filed. The grounds of appeal have in essence remained the same. It is submitted there is a material risk that Mr Manners-Jones failed faithfully to abide by the oath he took to try the [applicant] and to give a true verdict according to the evidence. It is asserted that it is likely he deliberately failed to reveal to the court that he was a police officer and that he attempted to discuss the jury's deliberations with an outsider. In all the circumstances it has consistently been submitted that the verdict was unsafe and unsatisfactory.

19. In accordance with the Criminal Practice Direction 26M.57, the Registrar initially referred this application for leave to appeal to the full court for directions. On 23 June 2021, the court, pursuant to section 23A of the Criminal Appeal Act 1968, directed the Criminal Cases Review Commission ("CCRC") to make a number of enquiries regarding the jury summons procedure in relation to serving police officers and to ascertain what happened administratively and procedurally in respect of Mr Manners-Jones; and the Crown was directed to make enquiries of the Metropolitan Police and the Professional Standards Department. Thereafter, the parties were directed to served amended grounds/skeleton arguments, along with any response.

20. By way of detail, the court directed the CCRC as follows:

"(i) To obtain from the Crown Court and the Central Jury Summoning Bureau a copy of the documentation sent to jurors attending Aylesbury Crown Court as regards their obligation to reveal to the court if they are a serving police officer (e.g., the guidance leaflet and any questionnaire).

(ii) To establish whether jurors are routinely reminded, either orally or in writing, of this obligation, including in any video that is routinely played to jury panel;

(iii) To establish whether the forms completed by any jurors in this trial (in this context) would have been retained;

(iv) If they would have been retained, to obtain a copy of any documentation provided by Mr Manners-Jones;

(v) To enquire of the court and of the Central Jury Summoning Bureau as to the circumstances in which a completed questionnaire may not have reached its appropriate destination (and to ascertain whether any completed form would have been sent by conventional post or electronically);

(vi) If no written response by Mr Manners-Jones is discovered, or any written response by him does not declare his status as a serving police officer:

(a) to enquire of the court officer and the Central Jury Summoning Bureau whether there is any other reliable means of determining or confirming whether the juror revealed he was a serving police officer, and to make any further reasonable enquiries as identified (with leave to seek directions from the court if this is considered

necessary); and

(b) to interview Mr Manners-Jones to establish whether he disclosed his status as a police officer to the court, including by completing the questionnaire and if he did not do so, the reason for his failure to disclose his status."

21. The Crown was asked to make enquiries as to the guidance that is issued by the Metropolitan Police to officers who are summonsed to undertake jury service. It was suggested that the most important documentation in this context would probably be that provided by the court. But given the possible failure by the officer to disclose his status before he was selected to serve as a juror, the court indicated that it was interested to investigate whether sensible steps ought to be taken to reduce the risk of an event of this kind recurring.

22. The court declined to order the CCRC to investigate the results of any enquiry by the Professional Standards Department of the Metropolitan Police, but instead the respondent was asked to make enquiries as to what occurred, to ensure that there is nothing that ought to be disclosed to the applicant and the court (for example, the officer's response to the suggestion that he had failed to inform the court as to his status).

23. The CCRC conducted an investigation. Rachel Ellis, a Commissioner, has signed the report, which is dated 15th September 2021. The enquiries reveal that, when he responded to the jury summons, Mr Manners-Jones informed the Central Jury Summonsing Bureau ("CJSB") that he was a serving police officer in the following terms:

"I am a Police Sergeant employed by the Metropolitan Police and manage the Driving Academy. Due to my unique skill set and limited numbers of instructors, conducting Jury Service will have a massive negative impact on our training / course delivery. Our courses run from 3 -12 weeks in duration and therefore any abstraction can have a critical impact on course delivery. I am also away on for a long weekend from Thursday 19th November. Many thanks."

In answer to one question concerning whether he had worked for the Police Force during the preceding 5 years, he entered: "Met Police – London". The following answer (a tick in a box) indicating he had not worked for police was undoubtedly an error given the details he had just provided in the preceding box.

24. The Expenses Claim Form submitted by Mr Manners-Jones, completed after the trial, records that he is a police officer. He wrote: "Police Sergeant". As we have already set out, Mr Manners-Jones has also asserted that he told an usher that he was a police officer.

25. A welcoming leaflet is given to all new members of the jury pool at Aylesbury Crown Court. Included in the form (an issue to which we will turn to in greater detail later) is a section entitled: "Do you work for any prosecuting agency, such as the Police, the Crown Prosecution Service (CPS), or the National Probation Service?" If the panel member answers "Yes", he or she is asked to provide further details. These forms, if completed, are destroyed

after the trial. This is indicated on the form.

26. The information provided by the CJSB to Aylesbury Crown Court in advance of the trial included this information, as submitted by Mr Manners-Jones to the CJSB, with the self-evident exception of the details on any Expenses Claim Form. Any separate records at Aylesbury Crown Court that would have recorded any additional disclosure made by Mr Manners-Jones as to his role as a police officer have not been retained, save that there is a "Pool Summary Report – Participant Details". This contains a reference to the application by Mr Manners-Jones to be excused from jury service when he was summonsed. It reveals his position in the Metropolitan Police.

27. Against that factual background there are three grounds of appeal advanced by Mr McGrath on behalf of the applicant. Ground 1 is formulated as follows:

"The trial judge had not been notified of the presence of a police officer on the jury panel. In such cases judges must assess whether a police officer may serve as a juror. The test is 'whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the juror was biased'. The absence of this key stage in safeguarding against bias or the appearance of bias causes the applicant's convictions to be unsafe."

28. It is accepted by the respondent that the judge had not been told that Mr Manners-Jones was a police officer. The CCRC has investigated the reasons for this. Although the entry on the computer system at the court revealed that Mr Manners-Jones was a police officer, the Crown Court staff do not always look at the individual jurors' electronic record which is available to all relevant members of staff. The process adopted at Aylesbury Crown Court is that on the day of trial, when jurors attend court, the computer system is required to select 15 of those in attendance by a random process in order to create the relevant jury panel list. This list contains only the name and juror number of those selected. It has a section next to each of the juror's names for notes to be made by the jury officer. It follows that this document does not include details from the system in relation to any relevant occupations. For the judge to be informed that a potential juror is a police officer, the juror would have needed to have provided this information on the Emergency Contact Form within the "Welcome to New Jurors" leaflet, which we have referred to above. Thereafter, it would have been necessary for that information to have been entered manually on to the jury panel list.

29. The Welcome leaflets have been destroyed. No one at Aylesbury Crown Court has any recollection of this case, save for the judge and the jury officer at Amersham Crown Court (the associated Crown Court); the jury officer does not recall telling her contact at Aylesbury that a police officer was on the jury panel. We will return to these detailed circumstances under ground 2.

30. As regards the present ground of appeal, there is, in our view, no substance to the submission that a key safeguard was removed because the judge was unaware of the presence of a police officer on the jury. The judge is required to apply Criminal Practice Direction 2015 ("CPD") Division VI 26C.6. This addresses the position of serving police officers, prison officers or employees of prosecuting agencies. It provides:

"A judge should always be made aware at the stage of jury

selection if any juror in waiting is in these categories. The juror summons warns jurors in these categories that they will need to alert court staff."

CPD 26C.7 directs that:

"In the case of police officers, an enquiry by the judge will have to be made to assess whether a police officer may serve as a juror. Regard should be had to:

- whether evidence from the police is in dispute in the case and the extent to which that dispute involves allegations made against the police;
- whether the potential juror knows or has worked with the officers involved in the case;
- whether the potential juror has served or continues to serve in the same police units within the Force as those dealing with the investigation of the case, or is likely to have a shared local service background with police witnesses in a trial."

31. As set out in the Crown Court Compendium (paragraph 2-2, page 2-10):

"The test to apply is well established: whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

32. We agree with Mr Wilshire, on behalf of the respondent, that none of these potential reasons for excluding Mr Manners-Jones applied in this case, and no other credible reasons have been advanced. The highest the applicant puts it is that there was a respectable argument to be made that a police officer should not have served on this jury.

33. We disagree. Such an application would inevitably have failed. The fact relied on by the applicant that he had a previous conviction following a police investigation and a trial, about which the jury heard details, was not a reason to exclude Mr Manners-Jones. There is no suggestion that the latter had in any way been involved in the earlier, or indeed the present case. Equally, it is not maintained that he had connections with the investigating units. Nor has it been advanced that the police evidence had been in dispute in either criminal trial. The fact that other officers had brought a successful prosecution against the applicant would not have provided a credible basis for applying to the judge to direct that Mr Manners-Jones should not serve on this jury. Furthermore, the suggestion advanced in oral submissions before us by Mr McGrath that the applicant is suspicious of the police would not, standing alone, have amounted to a tenable reason for Mr Manners-Jones to be excluded from this jury.

34. In the absence of any credible arguments for exclusion, it is, in our view, unarguable that a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased (see the classic formulation of the test in these circumstances derived from the speech of Lord Hope at [103] in *Porter v McGill* [2001] UKHL 67; [2002] AC 357).

35. Ground 2 is in the following terms:

"The available material supports the conclusion that, on the balance of probabilities, the judge had not been notified of the presence of the police officer on the jury panel as a result of a deliberate omission on the part of the police officer. In all of the circumstances of this case, this omission causes the applicant's convictions to be unsafe."

36. This submission is maintained, with respect to Mr McGrath, notwithstanding the weight of the evidence to the contrary. In stark terms, it is suggested that it is reasonable to conclude that Mr Manners-Jones deliberately withheld the fact of his profession. This is an untenable contention. On all of the records that are still in existence, from both before and after the trial, it is clear that Mr Manners-Jones faithfully revealed that he was a police officer. We consider it improbable in the extreme that on the introductory leaflet given to all members of the panel, entitled "Welcome to New Jurors" (which has now been destroyed), that he would have intentionally withheld the very information that he had freely revealed elsewhere. The relevant section of the leaflet seemingly concerned emergency contact details to enable the court to contact a member of the juror's family or a friend in the event of an emergency. It is not suggested on the form that this information had any other purpose or utility, and it was expressly indicated that it was to be shredded after the trial. Whilst the information as to occupation in answer to the question: "Do you work for any prosecuting agency such as the police, the Crown Prosecution Service (CPS) or the National Probation Service" may have been used by the court staff to inform the judge of the presence on the jury of somebody from one of these organisations, this would not have been apparent to the person filling in the form, given, as we have just indicated, that this part of the form was expressly stated to be for the purpose of providing emergency contact details. Mr Manners-Jones may have considered it unnecessary to repeat information that he had already freely given elsewhere. Similarly, the official at the court may have overlooked this information, with the consequence that it was not entered on the form or communicated to the judge.

37. In a similar vein, we reject the implied suggestion that Mr Manners-Jones lied when he told Ms Devlin that he had informed an usher that he was a police officer. It is impossible to determine at this stage what would have happened to that information if it had been provided, particularly since no one at Aylesbury Crown Court appears now to have any relevant memory as to what occurred in this case. The suggestion that this was a lie on Mr Manners-Jones' part is untenable, given, as we have already indicated, the full information that he provided elsewhere as regards his occupation.

38. It follows that we reject the contention that it is reasonable or appropriate to conclude that there had been a deliberate attempt by the officer to conceal his occupation from the court. Indeed, in our view, such a conclusion would be entirely against the weight of the evidence.

39. Ground 3 is formulated as follows:

"Communication between the police officer who served on the jury and the officer in the case, following the conclusion of the trial, is such that a fair-minded observer could conclude that there was a real possibility that the juror was biased."

This is the ground on which Mr McGrath has indicated to the court he places greatest reliance. We have set out the details of the exchange, as recorded by Ms Everitt, above. The applicant suggests that Mr Manners-Jones was offering to reveal the contents of the discussion in the jury room and that he was using this as an inducement to Ms Everitt for "romantic" reasons. Furthermore, it is argued that Mr Manners-Jones' explanation to Ms Devlin that he had made contact to share "organisational learning around future cases" is lacking in credibility. This approach to Ms Everitt, we note immediately, occurred after the trial had concluded. Although Mr Manners-Jones foolishly indicated his apparent preparedness to commit an offence under section 8 of the Contempt of Court Act 1981, which prohibits the disclosure of "statements made, opinions expressed, arguments advanced, or votes cast" by members of the jury in the course of their deliberations, in the event none of these things happened. That inappropriate offer is an entirely separate issue from whether Mr Manners-Jones was biased, or whether it would lead to a reasonable perception of bias against the applicant. Put otherwise, his suggested willingness to reveal the jury's deliberations does not, in our view, mean that there is a risk that he approached his role as a juror inappropriately.

40. We agree with the applicant that, notwithstanding his assertion that the objective of the proposed meeting was for organisational learning, this has the appearance of an ill-advised, post-trial, personal approach to Ms Everitt. That error of judgment falls significantly short of behaviour that would have led a fair minded and informed observer, having considered the facts, to conclude that there was a real possibility that the tribunal was biased. Any attraction he felt, whether as a police officer or otherwise, as regards Ms Everitt does not in any sense mean that he ignored the oath he had taken as a juror.

41. Similarly, although it was ill-advised on his part to state to the officer in the case that "in my eyes it was a done deal", that does not, even prima facie, reveal that he approached his role as a juror inappropriately or that he was biased. Indeed, the expression does not appear to have any meaning, apart from to indicate that Mr Manners-Jones had formed certain views about the prosecution at some unknown stage during the proceedings.

42. It follows that this application for leave to appeal against conviction fails and it is refused.

Postscript

43. It was necessary to ask the CCRC to conduct an investigation into what occurred, along with the relevant arrangements in the context of a potential juror being summonsed for service at Aylesbury Crown Court. The results of the enquiries were extremely helpful to this court. Our various requests were faithfully undertaken and we wish to express our unreserved gratitude for the considerable assistance with which we have been provided.

44. This application does not provide an appropriate forum for giving general directions either as to the forms that potential jurors are asked to complete, or any advice which should be given to Metropolitan Police Officers who are called to undertake jury service. We simply observe, first, for the benefit of the resident judge at Aylesbury Crown Court, and possibly

for other resident judges, that at paragraph 37 of the CCRC's report the following is set out:

"The reliance of the jury staff on jurors making occupation disclosures on an emergency contact form, which is then used to endorse the jury panel list (in ignorance of what has been previously disclosed), fails to recognise the action taken by the CJSB and the respective juror in ensuring that correct disclosures are made, recorded and acted upon."

Although this is entirely a matter for individual courts, it may be that consideration should be given to ensuring that a system that has less opportunity for error is in place.

45. Secondly, although again it is a matter entirely for the Metropolitan Police, it would appear that no guidance is given to police officers within the Force who are summonsed for jury service. This might be thought to be in sharp contrast to the assistance provided, for instance, to employees of the Crown Prosecution Service and members of the Bar (the latter receive information from the General Council of the Bar). The Force may wish to consider whether written guidance would assist to ensure that errors such as occurred in this case are not repeated: for example, the offer by Mr Manners-Jones to disclose the jury deliberations following the trial.

46. Furthermore, it may be considered helpful to emphasise to officers who are summonsed for jury service the absolute need to reveal at appropriate stages in the process their occupation as a police officer.

47. We are grateful to both counsel for their assistance.

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

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