

**Neutral Citation Number: [2018] EWCA Crim 756**

No: 201704020/C2

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 23 March 2018

**B e f o r e:**

**LORD JUSTICE BEAN**

**MR JUSTICE SWEENEY**

**HIS HONOUR JUDGE LEONARD QC**  
**(Sitting as a Judge of the CACD)**

**R E G I N A**

v

**MARK RICHARD MORGAN**

Computer Aided Transcript of the Stenograph Notes of WordWave International Ltd trading as DTI, 165 Street London EC4A 2DY, Tel No: 020 7404 1400 Fax No: 020 7831 8838 (Official Shorthand Writers to the Court)

**Mr A Bailey** appeared on behalf of the **Applicant**

**Mr S Foster** appeared on behalf of the **Crown**

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

If this transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

1. MR JUSTICE SWEENEY: This application for an extension of time of 8 days for leave to appeal against conviction has been referred to the Full Court by the Registrar.
2. In July 2017 in the Crown Court at Portsmouth the applicant, who is now aged 45 and was on bail at the time, was tried before Mr Recorder Haggan QC and a jury for an offence of attempting to meet a child following sexual grooming. The venue arranged for the meeting was alleged to be Petersfield railway station.
3. At the outset of the trial, on Monday 24 July 2017, the Recorder directed the jury as to their duties, including directing them that if anything arose during the trial that caused concern they should immediately notify a court official so that the Recorder and counsel could try to resolve the concern.
4. The jury retired to consider their verdict on Thursday 27 July 2017. They were looked after in retirement by three jury bailiffs, Ms Smith, Ms De Luca and Ms Martin. There is some variation in recollection as to what happened. We proceed upon the version most favourable to the applicant.
5. Shortly before the jury were to deliver their verdicts they informed Ms Smith that they were concerned about the applicant and how he would react when they returned their verdict as he had been on the same train as them on a previous day, had followed a female juror on the platform, and had sat opposite her. When asked by Ms Smith why

they had not said anything before, the jury said that they had mentioned it to a female (we presume a member of the court staff) but that nothing had been done. The jury then went into court and returned a unanimous guilty verdict. By that stage the Recorder had received a short note (which was not kept) from Ms Smith, saying that the jury were concerned as to how the applicant would react when the verdict was given. In the result, the Recorder understood that the jury had concerns about how the applicant might react to the verdict, but did not believe that anything untoward had happened. Therefore, he said nothing to the parties but adjourned sentence for a pre-sentence report and simply ordered the applicant to stay in the building until 4.00 pm - clearly so that the jury would be able to get away before him. Nevertheless, at least three female jurors waited for a male juror to accompany them to the railway station.

6. Later the Recorder returned to the courtroom to collect his laptop, at which point he spoke with Ms Smith, who gave him a more detailed account. The Recorder was concerned as to why what had happened at the station had not been brought to his attention, given that the jury had said that they had previously informed a female about it. However, neither Ms Smith nor Ms De Luca, who was also present by that stage, could help. The Recorder concluded that it was now too late for him to do anything about it, taking the view that he was functus officio.
7. However, on Monday 31 July 2017, by chance, the Recorder encountered the applicant's counsel and informed him of what had happened. In early August 2017 the Recorder telephoned the court manager at the Crown Court and asked her to make enquires of the jury bailiffs. Ms Smith provided her recollections in an e-mail dated 4 August 2017. In an e-mail dated the previous day Ms Martin explained that she was unable to provide any

further information.

8. The sentencing hearing duly took place on 8 September 2017, by which time the applicant had lodged his application for leave to appeal. Nevertheless, and rightly, the Recorder proceeded to sentence, imposing a sentence of 18 months' imprisonment suspended for 24 months with a 40-day rehabilitation activity requirement.
9. We have been provided with transcripts of the Recorder's directions to the jury at the outset of the trial, and of the summing-up and verdict. In addition we have a copy of the court log for the whole of the trial, Ms Martin's e-mail dated 3 August 2017, Miss Smith's e-mail dated 4 August 2017, a letter from the Recorder dated 19 September 2017, setting out his recollections and witness statements from Ms De Luca dated 19 February 2018 and 5 March 2018 and a witness statement from Ms Smith dated 6 March 2017, in which she recollected, in contrast to her e-mail much closer to the time, that the jury had only mentioned the incident at the station after returning their verdict.
10. No complaint is or could be made as to any other aspect of the trial. In particular, the evidence (which largely consisted of e-mails, over a period of 2 days, between the applicant and a person who he believed was a female but was in fact a male who had created a fake profile and the fact that the applicant travelled twice to the station to meet a female) was strong, and the summing-up was clear and fair. Equally what happened in relation to the jury is, in our view, now sufficiently clear and no further evidence is required.
11. We must therefore decide whether to grant leave to appeal, which involves consideration of whether it is arguable that what happened made the applicant's conviction unsafe.

12. On behalf the applicant Mr Bailey points out that, on occasion during the trial, the applicant made comment from the dock in response to the evidence, albeit not directed to the jury, Against that background, Mr Bailey argues that what should have happened was that the matter should have been brought to the attention of the Recorder, that he should then have investigated it, and that he should have put any jurors who were concerned at ease by taking any appropriate steps.
13. Mr Bailey indicated that he had taken instructions from the applicant on the issue, that the applicant is short sighted, and that his instructions were that the applicant was wholly unaware, if he did, of having either followed or sat close to a juror. Nevertheless, and although accepting that if the applicant did not appreciate that he was sitting near to a juror, he had made no sort of approach to the juror, Mr Bailey submits that an irregularity occurred which makes the conviction arguably unsafe.
14. We disagree. It seems to us that it was entirely understandable and natural for the jury, who had realised that they (or some of them) were using the same public transport as the defendant, to be concerned about the possible reaction by him (given his conduct in court during the trial) to their guilty verdict. Accordingly, it was, in our judgment, equally understandable that they should have raised the concern. Thus, although it was unfortunate that their original concern was not communicated to the Recorder, what happened causes no arguable doubt whatsoever to be cast upon the safety of the conviction which, we repeat, was returned against the background of a strong case on essentially indisputable evidence.
15. In those circumstances this application is refused.

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