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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Friday, 8 June 2007

B E F O R E:

LORD JUSTICE GAGE

MR JUSTICE CRESSWELL

MR JUSTICE HOLMAN

- - - - - - -
R E G I N A

-v-

KENNETH SAMUELS

- - - - - - -

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MR P WILCOCK appeared on behalf of the APPELLANT
MR S M MILLS appeared on behalf of the CROWN

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Judgment
As Approved by the Court
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1. LORD JUSTICE GAGE: On 25th and 26th January 2001 at the Mold Crown Court the appellant was convicted of four counts of indecent assault, counts 1 to 3 and 5 on the indictment; and four counts of rape, counts 4, 6, 7 and 8. He was sentenced on 9th February 2001 to ten years' imprisonment on each of the counts of rape and three years' imprisonment to run concurrently on each of the counts of indecent assault. He now appeals against his conviction by way of a reference from the Criminal Cases Review Commission.

2. In summary, the Crown's case was that the appellant, over an eight-year period, had sexually assaulted his daughter RLH, her first name being R. We shall refer to her throughout as R.

3. The Crown contended that R was aged between 8 and 14 when the appellant repeatedly indecently assaulted her. Those are counts 1 to 3. It further alleges that when she reached the age of 14 the appellant began to rape her. He continued to do so on numerous occasions until she was 16. At that age she left the home. There was one further indecent assault during that period which formed count 5.

4. At trial, the Crown's case was based in considerable part on the evidence of R. The Crown did call other witnesses whose evidence was generally circumstantial as to the individual counts on indictment. The Crown adduced the unchallenged medical evidence that R had experienced repeated blunt object penetration of her hymen consistent with intercourse.

5. The defence case was a denial that these offences had taken place. The appellant said that R had fabricated the allegations. At trial, among other things he contended that R was motivated to make allegations by a desire to leave the family home and a feeling of an antagonism towards him and her mother, MH; that there was an alternative explanation for the medical findings, ie that R had had sexual intercourse with boyfriends and not with the appellant; and that R had learned the vocabulary of abuse through her acquaintanceship with certain of her peers who had been victims of sexual abuse. As we have said, he was convicted of all counts.

6. There are two grounds of appeal. Each is based upon what is said to be fresh evidence. In February 2002 following the trial, R told police officers that she had been indecently assaulted by a man other than the appellant. She alleged that these assaults had occurred with the connivance of her mother, and concurrently at a time when the indecent assaults were being committed on her by the appellant. She had not mentioned these allegations before. Police officers investigated the allegations as far as they could but R indicated that she did not wish to proceed with them. No prosecution followed and the police files were closed.

7. It goes without saying that these allegations were not known to either the prosecution or the defence at the time of trial.

8. Secondly, shortly after the appellant's conviction, R made an application for compensation to the Criminal Injuries Compensation Authority in respect of the abuse

of her by the appellant. It is said that there were inconsistencies between her evidence at trial and her version of events given to the CICA.

9. In summary, the evidence was as follows. The appellant was born in June 1956. In 1984 he met and moved in with R's mother, MH. At that time R was only 12 months old. The family lived at a number of addresses in North Wales in Flintshire. The appellant and MH had three children, two boys and a girl. In addition, the appellant had a child by a previous relationship who lived with the family from time to time. The appellant worked for some time as a cockler on the North Wales beaches. In about 1999 he ceased that employment. He renovated a van and trailer and thereafter sold food at the roadside from the food trailer. Earlier in 1997 MH and R became friendly with a Mrs and Mrs Humphreys. They had a shared an interest in horses.

10. The offences came to light when, on 10th February 2000, R moved out of the family home and went to live with Mr and Mrs Humphreys. She told Mr and Mrs Humphreys that the appellant was harassing her because "he misses coming to my bedroom". The following day she was seen by a social worker but said that the appellant had never behaved inappropriately to her. However, on 7th March 2000 R told Mrs Humphreys that the appellant had sexually assaulted her and raped her. Mrs Humphreys contacted the authorities and the police investigation began.

11. R was interviewed in two video recordings. Each was played to the jury and treated as her evidence in chief. So far as the first interview is concerned, she said during the course of it that she had been repeatedly sexually assaulted by the appellant between the ages of 8 and 14 and raped between the ages of 14 and 16. She said that the first indecent assault took place when the appellant took her cockling in Talacre. The appellant would masturbate himself whilst touching her chest and genital area. A number of similar such assaults then took place when the cocklers who worked with the appellant went home after nightfall. R said that this happened on about 20 to 30 occasions. These allegations are covered by counts 1 to 3 on the indictment.

12. Similar assaults were alleged to have taken place in one of her half-sister's bedroom at the family home at 69 Hawthorne Avenue. She said that sometimes MH and the other children would be in the house. She said that she was repeatedly raped by the appellant. On the first occasion it occurred in the master bedroom of 69 Hawthorn Avenue. MH would have been downstairs in the living room at the time. The other children were in the house. That allegation was covered by count 4 on the indictment.

13. In the food van she said that when she went to help him at work one of her half-sisters was sometimes sleeping in the front of the trailer during these rapes. They were represented by counts 7 to 8 on the indictment. R said that she used to scream, and that on one occasion she smashed the back window of the van. She said that a rape took place in a field near Telford when the appellant was looking for somewhere to park his trailer in the early hours of the morning so that it would not be vandalised and it had taken place in "the horses' field" at Hendrie. This allegation was covered by count 6 on the indictment.

14. R said that the last rape had taken place in the food van shortly before she moved out of the family home in February 2000. In all she complained that the appellant had raped her on 10 to 11 occasions.

15. Among other things she said that she had seen what she described as a blue/green coloured tattoo of a cross on the appellant's penis. In addition, in July 1999 she had gone to the health clinic in Mold for a pregnancy test which gave a negative result. She thought that she might be pregnant and that the appellant was the father because she had never "been" with another man.

16. In the second interview, which took place after the appellant had been arrested and interviewed, she made an additional allegation that the appellant had indecently assaulted her near enough every night for approximately two weeks in a caravan in Uxbridge some time between October 1998 and January 1999 whilst he worked at Wrights Machinery. She said that the indecent assaults were similar to those that she had previously alleged and during this period she and her brother stayed with the appellant in the absence of MH. This allegation was covered by count 5 on the indictment.

17. She asserted that the reason she had not mentioned the Uxbridge incident in the first interview even though she had spoken of other incidents was because she did not have much time. Accordingly, R was specifically asked in this interview by the officer whether there were any other incidents that she did not "get a chance to tell me about last time that you need to tell me about now?" In reply to that question she answered "No".

18. At interview the appellant strongly denied the allegations.

19. There was before the court a medical report from Dr Moore. The report was in the form of an agreed statement which was read to the jury. Dr Moore in that statement said that she had examined R on 10th March 2000. She concluded that her, "findings are consistent with recurrent penetration of the hymen by a blunt object, such as a penis, ie sexual intercourse having taken place."

20. In the trial the appellant gave evidence. He said, as he had said in interview, that the allegations were untrue. Among other things he said that he had been accused of treating his natural daughter more favourably than R. He asserted that R had had boyfriends and on one occasion he had seen a boy climbing out of his home via a bedroom window. However, he said he never had any evidence that she had been involved in sexual activity with other young men. He said that he had rows with R about boys between Christmas and her leaving home. He accepted that MH may have been over-protective towards R. He said that R had never accompanied him alone to Talacre when he went cockling; the van used at the time was a converted blue van; he had never been to the horses' field in Hendrie alone with R. He said whenever he went there he was accompanied by a friend. He also said that although he had a tattoo on his penis it spelt "KAZ" and was not a cross, as described by R.

21. R's mother gave evidence on the appellant's behalf. In addition a number of other witnesses were called on peripheral matters which supported the appellant's evidence. However, as the judge pointed out in summing-up, essentially the issue for the jury was whether R was telling the truth. As the judge put it in the summing-up:

> "The central issue will keep coming back to you. Are you sure that what R has told you is the truth? If you are not sure about her evidence, then you must find Mr Samuels not guilty. It is as simple as that because without R, obviously there is no other evidence before you which you could consider whereby Mr Samuels could be convicted of any of these offences. The offences depend upon R and what you make of her."

22. We turn to the grounds of appeal.

23. In ground 1, evidence is relied on of matters which were subsequently disclosed to the police by R. There is no dispute that, following the trial, she made allegations that she had been indecently assaulted by three other men - John Buxton, Frank Hobbs and John Simmons, the latter whom she alleged was the appellant's natural father. This latter allegation that Simmons' was the appellant's father was not correct.

24. The complaints that she made are summarised in the Reference by the Criminal Cases Review Commission at page 43. They read as follows:

> "When she was 9 years old, MH would take RLH to the Mold address of John Buxton. Whilst she was at Buxton's home, Buxton would touch RLH's vagina and breasts under her clothes; whilst he was touching her, Buxton would masturbate himself. RLH further alleged that Buxton had digitally penetrated her vagina.
>
> Between the ages of 9 and 13, MH took RLH to the home of Frank Hobbs. Whilst she was at Mr Hobbs' house, Mr Hobbs would touch RLH's vagina and breasts and would masturbate himself.
>
> Messrs Buxton and Hobbs both paid MH when she collected RLH."

Of these men, one, Frank Hobbs, was a convicted paedophile who has died. There is no trace of Simmons. The other one is still alive. The police were quite unable to substantiate any of these allegations and, as we have indicated, no prosecutions against them were pursued.

25. It is agreed that counsel for the appellant at trial could have cross-examined R about these allegations. It is conceded by Mr Mills, on behalf of the prosecution, that almost certainly the judge would have permitted such cross-examination to take place. Accordingly, it would have been argued, first, that if the allegations were true, the appellant could show another reason for Dr Moore's findings relating to R's vagina. Indecent assaults by digital penetration would produce the same signs as seen by Dr Moore.

26. The Criminal Cases Review Commission sought further evidence on this issue from Dr Peter Dean, a consultant paediatrician. His report is attached to the Commission's reference; it is at annex M. We need only read two paragraphs, the first of which is on the third page of the report and reads:

> "I would make the following observations. I would certainly agree that Dr Moore's findings are consistent with recurrent penetration of the hymen by a blunt object, such as a penis as stated, but they could not be said to be exclusively diagnostic of penetration by a penis, other blunt objects of comparable size also being possible causes of such injuries. This would include penetration by inanimate objects and also by fingers."

And in the final paragraph of his statement Dr Dean states:

> "From the medical evidence available here, therefore, one can not determine or differentiate whether the clinical findings were due entirely to peno-vaginal penetration as alleged against Mr Samuels, repeated episodes of digital penetration by the three other men as alleged after Mr Samuels' conviction, or from some combination of both. Earlier non-penetrative indecent assault would not have been expected to leave any physical findings and could neither be confirmed nor refuted from the medical evidence here."

We should perhaps add that the complaint by R was that only one of the men had digitally penetrated her vagina, one other had rubbed her vagina.

27. It is submitted by Mr Wilcock, on behalf of this appellant, that this would have given an alternative explanation for the findings in relation to R's vagina, and also an explanation for her knowledge of the vocabulary of abuse. Secondly, it is submitted that if the jury had considered that the allegations were not true it would have been very damaging to R's credibility generally.

28. In the second ground of appeal the Commission refer to the Criminal Injuries Compensation Authority application made by R. In the material parts it reads as follows:

> "At the age of eight and a half years old Kenneth Samuels had started to indecently assault me, the place was a Talacre Beach (the Dee estuary). The date of the assault was in 1992, at the age of nine years old we moved to Hawthorne Avenue in Mold, the indecent assaults carried on, at the age of nearly fourteen years of age Kenneth Samuels raped me. The first rape took place in my mother's bedroom in Hawthorne Avenue in 1997, for three years Kenneth Samuels raped me and indecently assaulted me, here some of the rapes took place: in Holleyhead on holiday, Betswycoed we went camping, Brymbo in his works factory, in my brothers bedroom and my bedroom in Hawthorne Avenue on a number of occasions, in Uxbridge (Oxfordshire) I stayed there for a fortnight alone with Samuels and my brother, at my Horses field in Hendrie, in 1999 we then moved to

> 8 Meas Glyndwr in Trueddyn and he raped me at the livery yard in Nercwys where I kept the horse. He raped me several times at the household in Trueddyn."

She went on to describe in the application rapes that took place in the food van.

29. As is pointed out in the Reference, and by counsel, in that application R referred to a number of different places where she alleged the rapes had taken place which were not made or reported to the police in her earlier interviews. They are Hollyhead whilst on holiday, Betswycoed whilst camping, Brymbo at the factory where the appellant worked and the caravan at Uxbridge. It is submitted that these inconsistencies would also have been the subject of cross-examination on the appellant's behalf.

30. So generally it is submitted, both in the Reference and by counsel for the appellant, that these matters are sufficient to render the convictions unsafe. Reliance is placed on the R v Pendleton [2002] 1 WLR 72.

31. For the prosecution, Mr Mills submits that, over the course of the trial, which occupied seven days, the jury had ample opportunity to consider the evidence of R and the appellant and the witnesses called on his behalf. It is submitted that R was subjected to rigorous cross-examination. It was suggested to her that she had lied about these allegations. Evidence was called by the defence which conflicted with a number of some comparatively small aspects of her evidence, but despite all this her evidence was accepted by the jury and the appellant's evidence rejected. So it is submitted that this court should be slow to interfere with the verdicts of this jury.

32. Secondly, there is an explanation for these allegations not being made at the time. None has actually been put forward by R, however she has not, as we understand it, been asked why she did not mention them earlier. However, Mr Mills submits that it may well be, as is not uncommon, that the trial was a cathartic experience which opened the floodgates and cleared R's mind thereby causing her to recollect these matters.

33. It is further submitted that, whether true or false, it is by no means certain that matters would have been put on the appellant's behalf to R even allowing for the explanation of the medical findings. It would, it is submitted, have meant that her mother might have been exposed to cross-examination which would have affected adversely the credibility of the appellant's case.

34. Finally, it is submitted that the application to the Criminal Injuries Compensation Authority, although displaying some inconsistencies, those inconsistencies are not serious, and certainly not sufficient to render the verdicts unsafe.

35. As far as this "fresh" evidence is concerned, it is in the form of documentary evidence which we heard de bene esse. However, in considering it, we agree with the Criminal Cases Review Commission that the information which they have obtained, but not necessarily the substance of the complaints, is believable. It gives rise to a ground of

appeal and there is a reasonable explanation for it not being used at the trial. It follows that the provisions of section 23 of the Criminal Appeals Act 1968 are satisfied.

36. The test for this court in deciding whether or not fresh evidence renders verdicts of the jury unsafe is one which is for this court to decide. That is clear from the decision of the House of Lords in Dial v Trinidad and Tobago [2005] 1 WLR 1160.

37. We have carefully considered the submissions on both these grounds. So far as ground 2 is concerned, we accept that there are inconsistencies demonstrated between the version of events set out in the application to the Criminal Injuries Compensation Authority and R's evidence at trial. There are four locations where rapes were alleged to have taken place which were not mentioned by R in her video interviews or in evidence. But the essential substance of the allegations remains the same. As for the differences in the additional allegations, it may be that these differences are simply innocent or exaggerations by R when making her application to the CICA, or indeed faulty recollection of events. We have to decide whether they are sufficient to render the verdicts unsafe. On their own we are quite satisfied that these inconsistencies do not sufficiently undermine R's evidence.

38. The evidence of the fresh allegations made by R against the three other men provide a more powerful ground of appeal. We accept that it is possible that the appellant's advisers would not have sought leave to cross-examine R about these matters because they might have reflected badly on the appellant's wife, the mother of R, who, as we have said, gave evidence in support of the appellant's case. However, we think it highly likely that R would have been cross-examined on them even if that had meant that the appellant did not call MH to give evidence.

39. In our view, the key to this ground of appeal lies in the medical evidence. At trial, the appellant could not challenge the medical evidence which demonstrated that R must have had sexual intercourse with someone. As the judge put it in the summing-up, she, that is Dr Moore, said:

> "... of course, my findings are consistent with recurrent penetration of the hymen by a blunt object such as a penis. That is sexual intercourse having taken place. That finding of fact was no reason to doubt at all and that is put before you as a piece of agreed evidence. So, sexual intercourse has certainly been taking place."

40. The appellant suggested in cross-examination that R had had boyfriends and must have had sex with one or more. But it was always R's evidence at trial and before trial that she had not "been" with any other man. The child protection medical records, which include the passage from Dr Moore's report, contains a paragraph (No 4), which reads:

> "Has there been other sexual contact before or since the allegation?"

The box for "No" is ticked. The memorandum of her first interview contained a statement from her that she had only ever "been" with Mr Samuels. In a passage in summing-up at page 32, the judge records her evidence in the following terms:

> "I have never had a boy friend. I said I had a boy friend to other members of the group because I was trying to be form normal but I have never had an older boy friend. I said I had had boy friends really to cover the fact that my step-father was abusing me. I didn't tell anyone in that compact group that I had been abused. I have never had an older boy friend. I was trying to go one better than the other girls."

41. As against this, it is now known that R complained about at least one other man digitally penetrating her vagina which could have been consistent with Dr Moore's finding (see Dr Dean's statement). In other words it provided an alternative reason for Dr Moore's findings and turned something which at trial was a speculative explanation into explanation of much greater substance. In that event in our view the verdicts might well have been different.

42. We reach this conclusion on the basis that the jury would have treated the further complaints by R as true. If, on the other hand, the jury doubted whether she was telling the truth, or were satisfied she was not, this would have gravely affected her credibility and again the verdicts might have been different. In the result, our conclusion is that these verdicts are not safe and for that reason they must all be quashed.

43. Are there any further applications?

44. MR MILLS: My Lord, after this length of time, and with the defendant having served over six years in prison already, I stress I have no instructions on this point.

45. LORD JUSTICE GAGE: You have no instructions.

46. MR MILLS: No, I do not.

47. LORD JUSTICE GAGE: It is not wholly unimportant. Do you want to take instructions?

48. MR MILLS: My Lord, I feel I ought to, yes.

49. LORD JUSTICE GAGE: All right. You ought to, I agree. Are you thinking about a retrial?

50. MR MILLS: Only out of an abundance of caution I could well imagine there being strong arguments against there being a retrial in the circumstances of this case.

51. LORD JUSTICE GAGE: What do you say about it, Mr Wilcock?

52. MR WILCOCK: Your Lordship knows the release date for Mr Samuels is September of this year.

53. LORD JUSTICE GAGE: End of this year?

54. MR WILCOCK: September of this year.

55. LORD JUSTICE GAGE: And there was not an extended sentence or anything of that nature.

56. MR WILCOCK: No.

57. LORD JUSTICE GAGE: Yes, sorry.

58. MR JUSTICE HOLMAN: It is really a question to Mr Mills. I have to say I find it extraordinary that you are not supplied with instructions against the possibility of a retrial. You are instructed by the Crown Mr Wilcock Service. They know that the Criminal Cases Review Commission has made these reference, which they obviously do not do lightly, therefore there must have been always, I put it no higher, a realistic possibility that this appeal might be allowed. I have to say I find it extraordinary that you were not supplied with instructions against that possibility as to what position to take. It is a very grave matter whether there should be a retrial.

59. MR MILLS: Yes, I must say I had advised in writing at the outset of all of this. I confessed I have not specifically sought these instructions and it may be that perhaps a false sense of security must have broken ---

60. MR JUSTICE HOLMAN: I think you should consider this question. My inclination -- and I have not consulted my colleagues -- is that we sit again next Wednesday as a constitution, and you must tell us by then whether or not the Crown are seeking a retrial.

61. MR MILLS: Yes.

62. LORD JUSTICE GAGE: It may include your solicitors getting in touch with the complainant about this. It may be she will not want to come.

63. MR MILLS: It may be that this sort of thing is -- I would hope this sort of thing is already known but simply not communicated to me.

64. LORD JUSTICE GAGE: I think we should give you till Wednesday. We have a case starting then so we will hear you on Wednesday at 10.15.

65. MR MILLS: My Lord, if the Crown is not seeking a retrial, would the court require attendance by prosecution?

66. LORD JUSTICE GAGE: No, I do not think so. We would need to have a letter or something authoritative from those who instruct you and yourself that no retrial is sought. If you are then seeking a retrial we will hear counsel.

67. MR WILCOCK: Yes. My Lord, that leaves the appellant's position. He was on bail prior to trial. Plainly the sentence no longer stands. The prison will be bound to release him.

68. LORD JUSTICE GAGE: I think it would be better if we left all questions of bail and retrial until next Wednesday.

69. MR WILCOCK: I certainly have no instructions in relation to bail, but I think it would be ---

70. LORD JUSTICE GAGE: And you do not know where he would live or anything.

71. MR WILCOCK: I have no instructions at all, but we need a positive order from the court, I think, to remand him in custody for the prison to be able to hold him, would it not?

72. LORD JUSTICE GAGE: Mr Wilcock, I will consult my colleagues, but my present view is that we should defer these matters until Wednesday morning.

73. MR WILCOCK: I do understand your Lordship will discuss what I have said.

74. LORD JUSTICE GAGE: As my Lord has said, these are not minimal allegations.

75. MR WILCOCK: My Lord, I appreciate one would not be able to contact the complainant this afternoon, but I am just wondering whether a phone call to the CPS ---

76. LORD JUSTICE GAGE: We are going to be here for another 10 or 15 minutes.

(Short adjournment)

77. LORD JUSTICE GAGE: Mr Mills, what we are prepared to do is to allow you till 4.00 today to see whether or not any decision has been made, which presumably would mean somebody may or may not have found out the views of the complainant. If you are still without instructions -- and I echo Holman J's view that I am astonished there are no instructions, I mean you do not even have a representative from the CPS here. Is that the normal form nowadays?

78. MR MILLS: It is mixed in my area, sometimes you are instructed in the Court of Appeal, sometimes not.

79. LORD JUSTICE GAGE: Not very helpful, to say the least. You have till 4.00 to tell us what, if any, decision they may make. If you are unable to get a decision from them, then how long do you think -- you can tell us how long you think it will take you to get a decision, but in any event we will reconvene this case on Wednesday of 10.15 of the following week, which is the first day we sit together again. As a constitution we would make arrangements to sit earlier if you were able to supply us with the information, because in the meantime it seems to us that whilst this application is pending the appellant will have to remain in custody until it is dealt with. But one way or the other it will be dealt with on Wednesday.

80. MR MILLS: Yes. My Lords I, obviously apologise that I do not have these instructions.

81. LORD JUSTICE GAGE: You have till 4.00 to tell us a little more about it. The court will not be sitting at the time so you will have to come back into court.

(Adjourned till 4.00).

82. LORD JUSTICE GAGE: So what, if any, conclusions have been reached?

83. MR MILLS: My Lord, I am afraid I have no conclusions, although I would say in fairness to those instructing me -- I accept this is totally ---

84. LORD JUSTICE GAGE: Were you able to speak to them?

85. MR MILLS: I have spoken to some of those instructing me. In fairness, immediately in the run-up to this hearing they have been trying to make contact with the complainant themselves.

86. LORD JUSTICE GAGE: What troubles the court is, does the complainant know about this hearing?

87. MR MILLS: Yes.

88. LORD JUSTICE GAGE: She does? That is something.

89. MR MILLS: Yes, she does. I know that there is an awareness, at the very least.

90. LORD JUSTICE GAGE: What level of awareness?

91. MR MILLS: She is certainly aware of these proceedings.

92. MR JUSTICE CRESSWELL: When did she first hear about these proceedings?

93. MR MILLS: She has known about them for time, because it certainly appears that the Commission has been investigating this for some time. She does know that it has reached the Court of Appeal, and, as I said, there has been ---

94. LORD JUSTICE GAGE: What are you going to ask us to do?

95. MR MILLS: I am going to ask the court, with respect, again with apologies, to hear the Crown again on Wednesday, but seek the court's leave to -- if we are not going to seek a retrial and the reasons for not seeking a retrial are clear, that we would be permitted to put that to the court in writing, rather than ---

96. LORD JUSTICE GAGE: I do not mind about getting it in writing, but if you want to make any representations you must be here on Wednesday.

97. MR MILLS: Yes, I understand that.

98. LORD JUSTICE GAGE: What do you say about that, Mr Wilcock?

99. MR WILCOCK: My Lord, we could be here on Wednesday.

100. LORD JUSTICE GAGE: Wiser counsel than mine prevail, we will see that the order is not drawn up until Wednesday. On Wednesday the order will be drawn up one way or the other.

101. MR WILCOCK: My Lord.

102. LORD JUSTICE GAGE: When I say the order, we would adjourn this appeal until Wednesday and announce then that the appeal against conviction is allowed and the verdicts quashed, and we will then deal with any application for a retrial, assuming that none has been put before us before then.

103. MR WILCOCK: My Lord indeed. I tell the court out of an abundance of caution, the appellant already knows the result, he was told by solicitors.

104. LORD JUSTICE GAGE: He paid for costs himself?

105. MR WILCOCK: No, I have told the solicitors what the outcome was in the hour we have been waiting, so he was rung, he knows the appeal has been successful, but if the order is not drawn up that should achieve my concerns.

106. LORD JUSTICE GAGE: Sorry, I thought you mentioned costs.

107. MR WILCOCK: No, I am not in a position to ask for any costs.

108. LORD JUSTICE GAGE: I am so sorry, that is me. Thank you very much. We will see you at 10.15 on Wednesday we unless have some further information from you.