

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
[2023] EWCA Crim 698



No. 202202534 B2

Royal Courts of Justice

Tuesday, 23 May 2023

Before:

LORD JUSTICE WARBY  
MR JUSTICE HILLIARD  
HIS HONOUR JUDGE FLEWITT KC

REX  
V  
RICHARD KWABENA ASUBONTENG

**REPORTING RESTRICTIONS APPLY:  
Sexual Offences (Amendment) Act 1992**

---

Computer-aided Transcript prepared from the Stenographic Notes of  
Opus 2 International Ltd.  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital

---

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

LORD JUSTICE WARBY:

- 1 This case is one to which the provisions of the Sexual Offences (Amendment) Act 1992 applies. Their effect is that no matter relating to the child we shall mention shall, during her lifetime, be included in any publication if it is likely to lead members of the public to identify her as the person against whom any of the offences was allegedly committed. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
- 2 Richard Asubonteng renews his application for an extension of time of 455 days in which to apply for leave to appeal against conviction following refusal by the single judge.
- 3 On 19 April 2021, in the Crown Court at Kingston upon Thames, the applicant was convicted by a jury on 10 counts of sexual offending against a child. There was one count of assault by penetration, contrary to section 2 of the Sexual Offences Act 2003; six counts of sexual assault, contrary to section 3; one of causing a person to engage in sexual activity without consent, contrary to section 4; and two of sexual activity with a child, contrary to section 9. The applicant was sentenced to a total of six years and six months' imprisonment.
- 4 The case concerned the sexual abuse of a girl whom we shall call C1. The applicant met C1's mother and became a friend. This included the mother inviting the applicant to the family home and introducing him to her partner and to C1. It was common ground that he was a family friend.
- 5 The prosecution case was that the applicant had breached the trust put in him by way of sexual activities with C1 which began with kissing and became progressively more serious over a period of four years, between 2016 and 2019, when C1 would have been between 13 and 17 years old.
- 6 The prosecution case relied on the ABE interview given by C1 in 2019 and supporting evidence from her mother, a cousin and a friend, together with a photograph and a recording of telephone conversations between C1 and the applicant. C1 was cross-examined before the trial and a video recording of the cross-examination was before the jury.
- 7 The defence case was that the alleged events never happened. The applicant denied the offending in interview and in his defence statement and gave evidence before the jury to the same effect.
- 8 The issue for the jury in relation to each count was whether they were sure that the alleged offence had occurred.
- 9 The delay in lodging the notice of appeal amounts to the best part of 18 months. We have considered the applicant's explanation for that delay which is, in essence, difficulties of the English language. Noting that the trial judge directed the jury to bear in mind that English is not the applicant's first language, we accept the broad proposition but we are unable to accept that it provides a sufficient ground for delay of this magnitude. We would, in any event, have refused leave to appeal on the merits, to which we now turn.
- 10 The applicant's grounds are not easy to disentangle, but we have been assisted by the helpful representations of the prosecution in a respondent's notice and the information provided by the applicant's counsel in response to some of the grounds, following waiver of privilege by the applicant.
- 11 Reviewing the notice of appeal and other later documents in the light of those observations,

we have identified six individual grounds of appeal with which we can deal in turn in chronological order.

12 First, the applicant complains that there was a procedural irregularity due to a "change of judge" between the recording of the cross-examination and trial. This, however, is a commonplace occurrence. As Criminal Practice Direction V, Rule 18E.63 makes clear, this procedure is proper, and nor is there any arguable case that this has any effect on the safety of the applicant's conviction.

13 Secondly, the applicant contends that the judge erred in refusing a bad character application. The applicant had wished to cross-examine C1 about stealing from Primark in Tooting and in Croydon on 29 June 2017. She had no convictions but there were some apparent admissions within her school record. The application was dealt with and refused before the trial. It is not entirely clear quite what the applicant's intended criticism is. But having read the judge's ruling and reviewed the prosecution's response, we find ourselves in agreement with the single judge's observations that:

"The judge was entitled to refuse your application to adduce evidence of 'bad character' of the complainant, namely evidence relating to two incidents of shoplifting in 2017, on the grounds that the conditions for its admissibility were not met."

14 The third written ground of appeal is that a picture from "the mother's phone" was allowed to be put before the jury. We believe this must relate to a photo which C1 emailed to the police, which was said to be one she had taken, showing the applicant in his boxer shorts while taking a Facetime call. That evidence was plainly admissible and properly admitted. It was introduced fairly, put to the applicant and dealt with by him, and the judge summed up the incident fairly to the jury.

15 Fourthly, the applicant complains that his barrister "blocked him" from calling witnesses. The complaint relates to the applicant's wife and another witness by the name of Joseph. We are satisfied there is nothing in this point. In short, there were extensive pre-trial discussions about defence evidence, and the applicant was given reasonable legal advice on which he relied. He has no ground of complaint in this court. In any case, far from anyone preventing the applicant's wife from giving evidence, it was never suggested by the applicant that she might have relevant evidence to give, nor has he, even now, identified any way that she could have materially assisted his case. We see no reason to suppose that she could have done so. It was common ground that she was present in the house on the occasion of one of the offences, but there was no suggestion or indication that she would have said anything or could have said anything to show that the offence did not take place.

16 As to Joseph, the suggestion is that he could have helped to show when the applicant arrived in the United Kingdom and met C1's mother. But the applicant did not produce any proof of evidence for this witness, nor has he done so now, or offered any explanation of how the witness could have helped. The applicant's own evidence that he arrived in 2015 is refuted by documentary evidence that definitively demonstrated his entrance to the United Kingdom in 2014, as he accepted when confronted by the document in the course of his evidence.

17 The fifth ground of appeal is that the judge's summing-up was "wrong". The applicant says here that he was convicted "at a time when he was not in the UK". As we understand the applicant's representations, he challenges some of the evidence about things he is said to have done in 2012 and 2013, maintaining that he was not in the country at the time and did

not go to the family home at that time. That, however, underlines the defence which he attempted to substantiate at trial but which was rejected by the jury. We see no arguable merit in the applicant's criticisms of the way the judge summed up on these aspects of the evidence.

- 18 Sixth, and finally, it is said that the trial was not fair and was in breach of the applicant's Article 6 rights. This, on analysis, is nothing more than another way of putting the effect of the points with which we have dealt already. There is nothing in addition to support this ground of challenge to the applicant's conviction.
- 19 For all these reasons we are satisfied that there are no arguable grounds for doubting the safety of this conviction, and hence no justification for extending the time. The renewed application is dismissed.

---

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge