



**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT CRIMINAL DIVISION**

**Neutral Citation Number [2026] CICA (Crim) 3
Criminal Appeal 13 of 2024
IND 35/2023
SC# 00503/2023**

BEWEEN:

DWAYNE ROBIN THOMPSON

Applicant

-and-

THE KING

Respondent

Before: **The Hon Sir Richard Field, JA
The Rt Hon Sir Jack Beatson, JA
The Rt Hon Sir Anthony Smellie, JA**

Appearances: **Mr Oliver Grimwood (who did not appear below) for the Applicant
Ms Shauna-Kaye James, Crown Counsel, for the Respondent**

Date heard: **17 November 2025**

**Draft Circulated
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Judgment Delivered: **17 February 2026**

Judgment

Sir Richard Field, JA

Introduction

1. This is the judgment of the Court on the application of Dwayne Robin Thompson (“the applicant”) for leave to appeal his convictions on 15 August 2024 after a trial by jury in the Grand Court presided over by Acting Justice Tonner (“the Judge”) on one count of robbery (count 1), one count of being in possession of an unlicensed firearm (count 3) and one count of being in possession of ammunition for an unlicensed firearm (count 4). On 18 September 2024, the applicant was sentenced to 11 years and six months’ imprisonment on count 1 and 11 years’ imprisonment on count 3 (concurrent with count 1). No separate penalty was imposed in respect of count 4.

2. It was the Crown's case that the applicant was one of three men who carried out a robbery at the International Diamond Centre jewellery store in George Town on 28 March 2023. One of the men was armed with a firearm; one had a hammer and the other a bag. The man with the firearm stood guard at the door while the man with the hammer smashed the glass cases containing jewellery. The man with a bag took the items out of the cases and placed them in the bag. The man armed with the gun was seen to raise it and point it at one of the employees, telling him "Don't look away". The three men then left the jewellery store and drove away in a white Honda CRV with the plate number Q3309 (Vehicle 1) that they had parked in front of the store's doorway. Altogether, 195 pieces of jewellery valued at over US\$300,000 were stolen.
3. Using CCTV tracking, the police found Vehicle 1 abandoned in an open lot off Rock Hole Road in Georgetown. The vehicle was partially burnt. A hammer was observed on the floor of the left rear passenger seat.
4. CCTV footage showed that prior to the robbery Vehicle 1 car had come to the open lot off Rock Hole Road followed by another Honda CRV vehicle (Vehicle 2) that belonged to the applicant. Witnesses saw persons exiting Vehicle 2 at the open lot and entering Vehicle 1 that was then driven to the jewellery store. After the robbery, the police were able to track Vehicle 2 to an area in Georgetown known as Swamp. There, the police found the applicant's vehicle inside the yard at No. 3 Greenwood Drive. The applicant was there when the police arrived. At the side of the house at this location on the ground in the yard, the police found a paper bag containing jewellery that was later identified as items that had been stolen during the robbery. A firearm containing ammunition was found under the house, in proximity to where a further bag of jewellery was found. The applicant was searched and a pair of earrings was found on his person that were identified as belonging to the International Diamond Centre. The applicant's DNA could not be excluded from the DNA mixtures found on the swabs taken off the firearm.
5. At the trial, the applicant was represented by Mr Jonathon Hughes of Samson Law who drafted the applicant's Grounds of Appeal which included a reference to *R v Gorman* [1987] 1 WLR 545, amongst other authorities. The Crown was represented by Ms Shauna- Kaye James who also appeared for the respondent on this application.
6. In the course of the trial, the applicant named a number of individuals he claimed he knew to have been involved in the alleged offences who the police confirmed had been suspects with known violent backgrounds, but who had not been charged.

7. In support of his challenge to the safety of his convictions, it was argued on the applicant's behalf that his convictions were unsafe by reason of the way in which the Judge dealt with two notes he received from the jury in the course of the eighth day of the trial, during which the Judge was summing up the case to the jury.
8. The first note was received by the court during the lunch time adjournment. It read:

*"May we have a word in Chamber w/ the judge if possible please?
Members of the jury have shared concerns"*.
9. When the jury returned to the courtroom after lunch, the Judge said:

"Members of the jury, I've received a note expressing that the jury has some concerns. In a criminal trial it's not possible for me to speak with you in private but I am able to take another note from you, if you'd like to take a short while to articulate in greater detail any concerns you may have. Do you think that would be possible to achieve in a relatively short time and, if so, is it something that we should do now before we go any further? I'm looking primarily at the foreperson but please lean in and talk about it if necessary".
10. There were then the following exchanges between the Judge and the Jury Foreman. Jury Foreman: *"It seems we are ready to proceed"*. The Judge: *"Okay to proceed? Is there something that you would like to address later by way of a note"*? Jury Foreman: *"It's okay, all good"*.
11. The Judge then told both counsel that he would discuss the note with them later and, while the jury were having a break, he handed the note to counsel asking *"How to handle it"*? Ms James remarked that she had not before been faced with this situation. Mr Hughes said it was a relatively troubling note that could not be ignored: the court had to know what the subject of the concern was; if it was a major matter, the court did not know if the jury were paying attention to anything that the court was telling them, which was particularly troubling. The fact that the jury had said they were uncomfortable added to the potential seriousness of the matter. Further enquiries were going to have to be made relatively urgently.
12. The Judge then observed: *"Having made some tentative enquiries with them in your presence, I exercised some discretion not to put them under any undue pressure but I think I have a responsibility to make an inquiry into it. Quite how we go about that, I think we need to give some careful thought. Perhaps we can take five minutes and then come back in ahead of the jury"*.

13. The Judge proceeded to read into the record the note that had come from the jury and observed that the note was obviously ambiguous. He said that it was inconceivable simply to let it lie. The court needed to instruct the jury to provide some further detail in writing and perhaps he could give them an assurance he would treat it sensitively.

14. The jury then came back into Court and were addressed by the Judge as follows

“Welcome back ladies and gentlemen. Before I continue my summing up, I’d just like to come back to the note that I was handed just after lunch. I directed you very early in the trial that if you ever have any concerns of any kind then you can come to me and you can provide me with a note and you have done and I’ve read it. The way in which the note is phrased is somewhat ambiguous. I’m sure intentionally so. This is a scenario in which I’m going to require you, please, to give me more detail by way of a further note. The reason for that is that I have to make sure that this trial is a fair trial. And if there are any concerns from any members of the jury about anything in this trial, then I really do need to know about them so that I can do my job. What I will say to you is that I will try to handle any further details as sensitively as the law allows me to. I appreciate that in providing me with further detail, you are sharing more information than you have chosen to share so far. But we have reached the point where that needs to be done. So if you wouldn’t mind and I’m not asking you for an essay: but just a slightly longer written note, please”.

15. Following a brief adjournment, the Judge received another note from the jury that read:

“After further discussion, the jury has resolved the concerns amongst yourselves and as such we require no further assistance from the court. Thank you.”

16. The Judge was of the view that there were three options: press for more information; break early and reflect; or continue the summing up for twenty-five minutes with the bench and bar reflecting overnight. Mr Hughes submitted that the fact the jury had been uncomfortable speaking in the presence of the Judge, counsel and the applicant, was something that the court could not ignore: the applicant needed to be re-assured that whatever the concern was, it was not something that could be weighing on the jury’s mind but they were choosing not to disclose what the concern was.

17. The Judge then decided to adjourn the hearing over to the following morning. In the course of announcing this to the jury he thanked them for sending notes to him which was exactly what they should be doing.

18. Counsel were directed by the Judge to return to court at 9:30 the following morning to make their submissions on what was to be done concerning the jury’s failure to disclose what the

concern had been behind their first note to the court. Alternatively, counsel could send their views overnight by email.

19. Overnight, the Judge sent an email to both counsel stating that he had decided not to press any further into what the jurors meant by their concerns but instead he would give them an additional direction that was set out in the message.
20. At 9:30 the following morning, Ms James told the Judge that the prosecution would follow the course set out in his overnight email observing that the additional direction might help.
21. Mr Hughes took a different view. The applicant was fearful that one of the persons he had named as having committed the robbery may have exerted improper pressure on the jury. Understandably and quite properly, Mr Hughes did not disclose this to the Judge but he submitted that the concern arising from the fact that the jury had not wanted to reveal their concern in front of counsel and the applicant remained, and he urged the Judge to direct the jury to set out at least briefly or broadly what the nature of that concern was to ensure that there was nothing in the background preying on the jury's mind that could affect the fairness of the trial.
22. The Judge was unpersuaded by Mr Hughes' submission. He said that it was not necessary to trespass any further into what the jurors had discussed privately because he was satisfied that the direction he had shared with counsel over night was sufficiently clear and robust so that, if given in those terms, there would be no doubt whatsoever that if there were something which affected their ability to return a true and impartial verdict in this case, they would be obligated to tell him.
23. Once the jury had come into court, the judge directed them as follows:

“Members of the jury, we are on the final lap. I'm going to remind you of your jury duties similar to the way I've reminded you throughout the trial... First of all, a reminder of your duties, please. Some of this will sound familiar. As a juror you have taken an oath or an affirmation to faithfully try the defendant and give a true verdict according to the evidence. This means a true and impartial verdict based only the evidence you have heard and seen in court. It means a verdict free from any bias and free from any external pressures or influences. The fairness of this trial relies on each and every one of you upholding that oath and it means that I've asked you during the trial to follow certain rules. As I said before, you must not look for any information on the Internet or anywhere else. You mustn't conduct your own investigations. You mustn't try to find out information for yourselves about the witnesses, the defendant, the crime scene or anything like that. It also means that if you hear any stories about the case in the news, that you should not pay attention to them. You must decide the case only on the evidence you have

heard in court and the instructions on the law that I have given you. As I've reminded you throughout the trial, you must be careful about discussing the case. During the trial you can only discuss the case with the six other jurors on your jury and only when you are all together and there is no risk of you being overheard. This means that during trial you can't discuss the case with family, friends or anyone else; whether that's orally, in writing, in person, telephone, by email or on social media. What I haven't told you before is that the rule will be slightly different when the trial is over It's also unlawful for anyone who is not on your jury to approach you and try to get you into discussions about things, to try and influence you about the decision in the case. The decision is for you and you alone. **And if anything like that were ever to happen, then you would tell me straight away.** There is a concept called collective responsibility. What that means is that all seven members of the jury together and individually must make sure that all of your fellow jurors abide by the oath that you have sworn. **If you think that any of the rules that I've given you are not being followed, then you tell me. If you think for any other reason that you or any other juror is no longer able to faithfully try the defendant and give an impartial verdict according to the evidence and the directions have given you, then you must tell me. If you think you or any jury decision making is being influenced or may be influenced by a factor other than the evidence in this trial and my legal directions, then you must tell me.** Just as you have done throughout the trial, if you want to communicate to me, you can do that by the marshal. **Please note if you have any concerns that are sensitive or embarrassing you do not need to discuss those with your fellow jurors before bringing them to my attention. You can bring them directly to my attention through the marshal.** And it's extremely important that you don't sit on anything like that. Don't suffer in silence. Don't keep it to yourselves. Tell me straight away. And as we get to the very end of this trial, the best time to tell me would be before I send you out to deliberate later this morning. As I said these rules are necessary to make sure it's a fair trial for the accused." [Empasis supplied]

The cases advanced by the applicant and the respondent

24. Mr Grimwood for the applicant submitted that the applicant's convictions were unsafe as a consequence of two serious errors made by the Judge amounting to material irregularities. The first error was how the Judge addressed the jury's first note in open court in the presence of the jury and the applicant before having shared the note with counsel or sought their views. In making a direct reference in open court in front of the applicant to the jury's concern and their request to speak privately with the Judge, there was a risk that the Judge had "spooked" the jury into their subsequent silence as to what had been their concerns.
25. The second postulated error was the Judge's ultimate decision not to direct the jury to disclose what the concern was that had been referred to in the first note, in consequence of which there was a lurking doubt that the jury had been swayed by a concern prompted by something that was not part of the evidence they had heard in the course of the trial.

26. Ms James for the respondent referred us to the following propositions articulated by the Court of Appeal, Criminal Division in *R v Gorman* (op.cit.) as to what should be done by a judge who receives a communication from a jury after the jury has retired to consider its verdict:

“Where a judge receives a communication from a jury which has retired to consider its verdict, a communication which raises something unconnected with the trial can be dealt with without reference to counsel and without bringing the jury back to court. In almost every other case, the judge should state in court, the nature and content of the communication which he has received from the jury and, if he considers it helpful to do so, should seek the assistance of counsel. The assistance should normally be sought before the jury is asked to return to court, and then, when the jury returns, the judge should deal with their communication. In exceptional cases where the communication from the jury contains information which the jury need not and should not have imported, such as details of their voting figures, the communication should be dealt with within the normal way, save that the judge should not disclose the detailed information which the jury ought not to have revealed.

We may add, before parting with the case, that the object of these procedures, which should never be lost sight of, is this: first of all, to ensure that there is no suspicion of any private or secret communication between the court and jury, and second, to enable the judge to give proper and accurate assistance to the jury on any matter of law or fact which is troubling them. If those principles are borne in mind, the judge will, one imagines, be able to avoid the danger of committing any material irregularity.”

27. Ms James submitted that the Judge did not err in asking the jury in open court, before he had shared the note with counsel, to articulate in greater detail any concerns they might have. The note was ambiguous, and the Judge had a discretion whether to discuss the note with counsel before making his request of the jury for more information as to their concern which was a proper and sensible step. Further, after the note had been shown to counsel in open court as soon as the jury had returned to their room, both counsel had agreed that the jury needed to be asked for more information as to the concern referred to in the note.
28. Ms James further submitted that the Judge’s ultimate decision not to press the jury for more information but to address the jury as he did at the start of the following day of the trial, including, in particular, the highlighted passages in the transcript cited above, was within the ambit of the discretion accorded to him in *Gorman*, and very effectively dealt with the risk that the jury might otherwise be deflected from reaching a true and just verdict by reason of what lay behind the concerns they had referred to in their first note. In short, the way the Judge dealt with both of the jury’s notes did not constitute material irregularities and the convictions challenged by the applicant were entirely safe.

Discussion and decision

29. In *APJ v Regina* [2022] EWCA Crim 942, the Court of Appeal, Criminal Division held that the guidance in *Gorman* cited above remained valid in 2022 and in our view it undoubtedly remains valid today, as is evidenced by paragraph D19.18 of the 2024 edition of Blackstone's Criminal Practice where the *Gorman* propositions are set out in full.
30. In our judgment, the propositions articulated in *Gorman* unquestionably apply to this case notwithstanding that the notes we are concerned with were sent to and dealt with by the Judge before the jury had retired to consider its verdict.
31. In our view, the way the Judge dealt with the first note by addressing the jury as he did in open court, mentioning that they had referred to concerns and requiring them to send a further note articulating in greater detail any concerns they had, was far from amounting to a material irregularity. On the contrary, the Judge's handling of the first note was entirely consistent with the *Gorman* guidelines in that it was essential that the jury was told that the Judge could not meet with them in private and the interests of justice required that the jury be requested to provide more detail as to their concerns, which was the view that both counsel took as soon as they learned the note's contents.
32. We turn to the Judge's decision overnight not to press the jury to provide more information as to the concerns referred in their first note but instead to instruct the jury as he did the following morning. This decision was taken after receipt of the second note which meant that the Judge faced the risk of appearing to the jury to be disrespectfully brushing aside their second note if he were to insist in the face of that note that they particularise the concerns. In our judgment, the Judge's decision to give the direction he did rather than to insist that the jury set out their original concerns in a note to be read out in open court was within the discretion acknowledged in the *Gorman* propositions. We are also well satisfied that his direction to the jury given on the ninth day of the trial, including in particular the passages highlighted in the transcript set out above, amply dealt with the possibility that the jury might otherwise be influenced to reach a verdict that responded to concerns that were not the result of considering the evidence called during the trial but which derived from some occurrence designed to deflect the jury from reaching a true and just verdict

Conclusion

33. For the reasons given above we find that the applicant's convictions for robbery, possession of an unlicensed firearm and possession of ammunition for an unlicensed firearm are safe convictions and this application for leave to appeal is dismissed.