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ANDREW FRANCE WINS APPEAL against convictions. (Neutral Citation Number: [2009] EWCA Crim 2909, No: 200903160/D4).

On 15th December 2009 Andrew France (SAFARI reader since 2004) won his appeal against conviction for four alleged offences of indecent assault and two for rape. He was originally convicted on 18th October 2004.

An appeal followed on 17th January 2006 on three grounds relating to details of the evidence - the grounds were rejected and the appeal failed.

Mr France then submitted an application to the Criminal Cases Review Commission (CCRC) on 9th January 2007 and they referred the case to the Court of Appeal in June 2009.

Mr France was released from prison on Parole in 2008, despite maintaining his innocence, while he awaited a full appeal hearing.

The new ground being considered was that Mr France had a genital abnormality which resulted in a substantial degree of curvature of his penis, and that this abnormality had not been properly the subject matter of challenge by way of cross-examination of the complainant. The complainant had stated that he had seen Mr France's genitalia, legs, and thighs during the alleged abuse, and counsel had asked whether he had seen anything unusual. The complainant said he had not.

The point was that if the complainant had failed to observe such an abnormality, and if the jury had become aware of that abnormality, that would be powerful evidence that the complaint that abuse had taken place was not true. This was especially the case as the complainant had claimed he had been forced to suck Mr France's penis on a number of occasions, and *could not have failed* to notice such an abnormality.

At trial, however, defence counsel inexplicably failed to follow the matter up, so the jury never heard evidence of this abnormality.

The evidence on Mr France's condition was available at the time of trial, although the medical report that the Appeal Court saw, which covered the condition in more detail, was not produced until some time after the trial, and obviously was not, therefore, available at time of trial.

As Mr France's counsel had not returned to the subject during the trial the Appeal Court considered why Mr France did not volunteer the information himself.

But he was being carefully questioned by his own counsel and could not, in their view, be blamed for not volunteering it, since his Counsel had failed to ask him the relevant question. It is so very often the case at trials that a defendant wishes to present evidence to the jury but is *unable to do* so as he is told only to answer questions put to him.

The CCRC appreciated that it would be prudent to find out from counsel then instructed, Mr Norris, what he did know at the time, and the reasoning behind his failure to cross-examine on the point or adduce the evidence from the appellant, or, for that matter, from anyone else.

Mr Norris failed to make contact to be interviewed, when he was asked to by the Commission. Several opportunities were given for him to explain his position and he failed to take them. The Appeal Court understood that Mr Norris is no longer a member of the Bar.

The Court did not hear from the complainant, so could merely conclude that in the light of the evidence now before them, this would have had a significant effect on the course of the trial, on the judgment of the jury, and thus upon the safety of the verdicts.

Mr France said, "I would personally like to see the justice system overhauled because of what happened to me. It is beyond belief that one person can make an allegation, with no evidence, and a jury believes that person by their word."

SAFARI would like to take this opportunity to congratulate Mr France on his successful appeal; we are grateful, too, for his co-operation and willingness for us to publish his story here and share it with others who are still fighting to clear their names.

MARGINS! After logging basic details of letters we receive from our readers (and we now have over 3,000 of them!) we hole-punch them and place them into binders. Please try to ensure you leave at least 2 cm gap on the left and right hand side of your letters so we don't end up cutting through some part of the writing! Thank you.

QUESTION FROM READER: "How can people contact the CICA (Criminal Injuries Compensation Authority) to find out what information is held about them (i.e. when compensation has been paid to alleged victims of theirs)." Answer: The CICA can be contacted at Tay House, 300 Bath Street, Glasgow, G2 4LN. You can try writing to them saying "I hereby make a Subject Access Request under the Data Protection Act for copies of all information you hold about me." but we suspect they will refuse on the basis that you were the alleged perpetrator and the information you seek cannot be provided for legal reasons; it would be interesting to hear from readers how they get on with this.

QUESTION FROM READER: "How can I stop court transcripts of my trial from being destroyed?" Answer: Just write to your transcribers asking them to retain them. If you're not sure who your transcribers were, you should be able to find out from your solicitor or ask them to contact them for you. Make sure you get written confirmation that this has been done or the file may end up being destroyed anyway!

IN A HOUSE OF COMMONS document called "Compensation for acquitted defendants" by Sally Broadbridge (Home Affairs Section), which was published on 9th March 2009, the subject of compensating the falsely accused for wrongful convictions was covered in detail.

The document included: "When a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice ... unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted." The problem is that Parliament does not appear to have defined the meaning of a 'miscarriage of justice'. The Court of Appeal can overturn a conviction that is 'unsafe' but in many cases it is argued that as the appellant did not actually *prove* their innocence (something virtually impossible in most cases) it couldn't be shown that a miscarriage of justice had actually taken place ... in which case compensation is refused; this is despite the document confirming: "I do not consider that Parliament intended proof of innocence to be a pre-requisite of entitlement to compensation". For compensation to be payable, the law requires the conviction to have been overturned on the ground of a new or newly discovered "fact" which shows beyond reasonable doubt that there has been a miscarriage of justice. There are challenges and judicial reviews in progress designed to clarify the law (or more accurately decide what it *ought* to mean) and SAFARI suspects the 'clarification' will depend on who has the loudest voice.

So your task this month, therefore, is to write to your own Member of Parliament asking them to ensure that compensation be payable to anyone who successfully overturns their conviction, whether or not they can prove their innocence. If enough people do this, we may well be able to help mould the 'clarification'. Do please remember to let SAFARI know what responses you get.

Even if the Government claim the miscarriage of justice has not been proved and refuse to pay compensation, it may well still be possible to recover damages in civil proceedings for malicious prosecution, false imprisonment or misfeasance (wrongful use of legal authority) in public office.

IT IS WITH SADNESS that we announce the death of Lady Jill Parker, a GP for 35 years who went on to become trustee and chair of the British False Memory Society (false memory being the phenomenon whereby people "discover", often through therapy, that they were sexually abused as children and confront their parents or others with terrible accusations, allegedly dredged from the recesses of memory, when the events never actually occurred.) The BFMS can be contacted on (01225) 868 682 or at BFMS, Bradford on Avon, Wiltshire, BA15 1NF. <http://www.bfms.org.uk>.

ON 9TH FEBRUARY 2010, John Hemming MP asked Clair Ward (Parliamentary Under-Secretary, Ministry of Justice) in Parliament "What recent estimate she has made of the number of people in prison who maintain their innocence." Her reply was that the information is not collected. David Howarth MP then responded saying, "When prisoners maintain their innocence, it can often lead to their being held in prison for longer, perhaps because they are held not to have completed various courses. Do the Government not see that there would be a purpose in making a study of cases such as those." Ms Ward's response was "When someone is convicted, it is only right that the system accepts that the court's decision is right and, if they are sent to prison, the prison system should accept the decision on that basis" thus demonstrating the current Government's unwillingness to address the issue.

IN ISSUE 60 of the SAFARI newsletter we referred to the Taplin ruling in which it was ruled unlawful to recall a released prisoner for failing to attend a Sex Offenders' Treatment Programme (SOTP) (which required him to admit guilt) as part of his release licence as he maintained his innocence and therefore could not do so. If you need to locate the ruling, ask your solicitor to locate the judgement for Neutral Citation Number [2004] EWHC 515 (Admin), No: CO/6988/2003.

MARK & ELAINE NOBLE have been jailed for nine months for perverting the course of justice after pleading guilty to making a false rape allegation. The couple had offered a stranger £20 to have sex behind a church. Mrs Noble pulled down the man's trousers and boxer shorts and performed a sex act on him but then she then started reaching inside his pocket to find money and the man, who was feeling uncomfortable, decided to run away. Mr & Mrs Noble then made a false claim of rape after which the police became involved.

IN R V FELLOWS, July 13, 1985 (unreported) (Lord Chief Justice, Mr Justice Skinner & Mr Justice McPherson) it was held that "It is not the task of the police to decide which documents or statements should be made available to the defence. In future the Court of Appeal will not even look at the quality of the evidence withheld from the defence, but, alone, the withholding of evidence from the defence will give grounds for appeal."

While this is a very useful precedent, it dates back 25 years and we have, so far, been unable to obtain actual proof of its existence or information as to whether it's been superseded!

If you, your solicitor, or anyone else you know can provide us with information on how to locate this judgement, please let us know as it could assist many readers.

SOLICITOR RECOMMENDATIONS. Thanks to those of you writing in recommending that your solicitors appear on SAFARI's list. Keep the recommendations coming and please remember to tell us *why* you feel they are deserving of being recommended. We hope to have an updated list available in the coming months and will let readers know through the newsletter when it is ready.

SAFARI REGULARLY PETITIONS the Government to make changes in the law to protect the falsely accused. Earlier ePetitions (electronic petitions online) and the current Government's replies (which you can read at our website <http://safari-uk.org>) show their total unwillingness to take any of the suggested measures to reduce injustice.

Let us know what *you* would like us to petition the Government to do. Remember that your petition needs to *ask* for something to be done which will make a difference, not just complain about the problems! We'll consider putting the best suggestions to the *new* Government after the General Election.

DONATIONS – PLEASE HELP! Thanks to those of you who have set up standing orders to make donations to SAFARI of £1 per month or higher. These are greatly appreciated. If you haven't set one up yet and would like to support SAFARI like this, please write to us to let us know – we'll then forward a Standing Order form for completion and your bank can take it from there. Alternatively you can approach your bank and set one up yourself. (Our account name is SAFARI, bank sort code is 30-92-02 and account number is 02702360.) Thank you.
