

SAFARI

Supporting All Falsely Accused with Reference Information



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THE CCRC RESPONDS TO SAFARI READERS. In issue 77, we published an article from the Criminal Cases Review Commission about their work, and questions were invited from SAFARI readers. The CCRC have now answered those questions for us.

Please note that, as always, each case turns on its own specific facts and the CCRC have only been able to answer hypothetical questions (based on SAFARI readers' questions) with general hypothetical type answers. The key question was:

Q: "What type of new evidence or argument would be considered by the CCRC to be likely to result in a successful appeal against conviction?"

a) Defects in the investigation – Eg:

"The Police breached PACE by withholding evidence from me and not allowing me access to a solicitor"

"The police claim to have found evidence on a computer which they seized, but I am able to prove (from prosecution paperwork) that the computer was modified whilst in police custody. This clearly contaminated the evidence."

"The prosecution are obliged to pursue all reasonable lines of enquiry whether these point towards or away from the suspect, but in my case, they failed to investigate my claims that the alleged victim was lying, despite me guiding them to records that would back up my case."

These are all examples of issues where the real question boils down to: "Assuming that what you say is correct, what difference did it actually make?" Most investigations, like most things in general, are less than perfect. If the investigation had been perfect, what would the evidence in front of the jury have been? It's the different evidence that will win an appeal. Saying there has been a defective investigation is a way of explaining why the evidence has only just emerged.

The only way a defective investigation could be a free-standing ground of appeal is if it was so grossly bad that it amounted to an 'abuse of process'. More usually, it is the impact that the defect might have had, rather than the fact that there has been a defect that might make the difference.

That is why, in the questions raised above by your readers, the CCRC would want to ask:

"Did you say something in your interview that was untrue? Did it make a difference to your trial? Was it the result of oppression or a trick? Would anything different have happened if you'd had access to a solicitor?"

"In what way was the computer modified? What was the nature of the contamination? What would the evidence have been if the modification had not taken place?"

"What do the records say? Exactly what lies do they expose? Why did your defence not obtain the records?"

And, always: "How come you are only raising these things now? Surely they were obvious at your trial, or at your appeal? If they are so important how come you didn't raise them at the right time?"

b) Defects in the trial – Eg:

"I am a Foreign National who doesn't understand much English. Because there was no interpreter at the trial in which I was found guilty, I could not understand what was being said."

"My defence Counsel was incompetent; he failed to fully act on my instructions and didn't present the evidence that I believe would have meant I'd be found Not Guilty."

"In the opening speech, the prosecution council told the jury that they were going to show how I tricked my way into the alleged victim's home and then attacked them with a knife ... but then they failed to do so. However, the jury were left with the impression that as he was 'going to' show this, it must have been true. This is a case of the prosecution misrepresenting the evidence."

"Stories about me appeared in the local newspaper pre-trial and jurors could be seen reading the articles ... they are likely to have been influenced by the stories."

"The judge at trial refused to allow my evidence to be heard and I believe it would have helped me."

"A breach of Article 6 of the Human Rights Act (Right to a fair trial) occurred."

Once again, the question is going to be, "Assuming that what you say is correct, what difference did it actually make?"

If you'd had an interpreter, what would you have been able to say that would have changed the course of the trial?

If your defence team had been Perry Mason, Rumpole of the Bailey and Kavanagh QC what's the new evidence that they would have produced on your behalf?

If the prosecution failed to live up to the promises in their opening, didn't that make them look stupid in the eyes of the jury?

What did the press stories say over and above what the jury heard in evidence, and what did the judge say to the jury about deciding the case on the court evidence alone?

What defence evidence did the judge exclude, and why? What consequences would it have had if the jury had heard it?

If the Article 6 breach had not taken place, what would have happened differently? What impact would that have had on the conviction?

c) Witness credibility or reliability – Eg:

"The alleged victim said I took her upstairs to rape her but the house had no stairs". This obviously doesn't prove that a rape didn't take place but it does prove that her evidence is unreliable and therefore not strong enough to properly convict."

"One of my alleged victims now states that he is no longer sure whether the allegations he made some years earlier are true after all; he says he now has conflicting memories and knows that at least some of what he originally claimed could not be true. He now supports my appeal."

"The girl's school report proved she often made false allegations of a sexual nature but I wasn't permitted access to that evidence to produce at trial."

This is getting closer to the heart of an appeal, because if you can show that the court was misled about the weight that should be given to an important witness's account, then there may be some doubt about the safety of the conviction. It may be important to work out whether you are presenting new information about a witness's credibility (were they lying?) or their reliability (were they mistaken?).

How likely is it that the impression of stairs might be a genuine failure of recollection? Was the witness drunk or drugged? Was she in a familiar building? Were there steps up to the front door or down to a cellar? Was there other sexual activity on other occasions in other premises?

Retractions can be promising, but the Court always wants to know how the retraction came to light. Did the witness contact you, or did you contact the witness? Does he have motives for the retraction other than seeing justice done? Is the retraction recorded in writing or on tape? How important are the details that he has rethought? How could his original mistake have occurred?

What investigations were conducted into these other allegations? How were they proved to be false? Are the allegations similar to the ones against you? Was there any other evidence against you apart from the girl's account?

d) Defects in scientific evidence – Eg:

"The prosecution DNA expert told the jury that my DNA was present at the scene but failed to also let them know that other people's DNA was also present. This gave the false impression that the culprit could ONLY have been me."

"An expert witness misrepresented the evidence."

The Court of Appeal will generally expect an appeal of this kind to be supported by an expert analysis of what was said at trial compared with what could be said at an appeal. If the other DNA was that of the people who first discovered the scene, or of paramedics who attended, it may have no significance at all. On the other hand if it was the DNA of someone with a history of committing the same kind of offence, then it could be important.

e) General points – Eg:

"Evidence WAS available at trial but I was not aware of it's importance / existence at the time. Can I use it at appeal?"

"The prosecution withheld some unused evidence from me claiming that they didn't feel it would be useful to me ... but if it had been available I believe it would have had a major impact on the jury's decision."

One of the things the Court of Appeal has to weigh up is whether there is a reasonable explanation for the evidence offered at appeal not having been offered previously. You need to explain exactly why you were not aware of its importance or existence. The more significant the evidence is, the less likely the Court of Appeal will be to reject it.

"The new evidence for appeal is weak but put alongside the original evidence given at trial could well have tipped the balance in favour of a Not Guilty verdict. Can ALL the evidence (new and old) be put to the appeal for consideration together?"

Evidence that could have tipped the balance is not weak at all, although its strength may not be immediately obvious. You will need to explain the logical route by which the new evidence changes the cumulative effect of all the rest of the evidence for both sides. The CCRC has to predict how likely it is that the judges in the Court of Appeal will feel that the conviction is unsafe because of the change. It's not enough just to say that some juries might have reached a different decision.

Can you persuade the Court of Appeal that there's a real danger the verdict is unsafe? That's what the CCRC has to try to foresee.

Section 17 of the Criminal Appeal Act equips the Commission with the power to require public bodies to provide any papers that might be relevant to a Commission case. This includes papers held by social services, schools, doctors and other bodies such as the Criminal Injuries Compensation Authority.

The CCRC and the SCCRC: Scotland has its own Scottish Criminal Cases Review Commission, which performs the same function for convictions arising in the criminal courts of Scotland.

It was established in 1999 and is funded by the Scottish Government Justice Directorate.

Where the CCRC applies the real possibility test, the SCCRC applies a different test and can refer a case dealt with on indictment (i.e. solemn cases) to the High Court where they believe: (a) that a miscarriage of justice may have occurred; and (b) that it is in the interests of justice that a reference should be made.

On the face of it, the tests seem quite different but both Commissions take the view that in practice there is actually little, if any, difference in how the two tests operate. The CCRC and the SCCRC generally refer a similar proportion of the applications they receive.

SAFARI would like to take this opportunity to extend our sincere thanks to the CCRC for taking the time and effort to explain their work and to answer questions put by our readers. Readers can contact the CCRC via: info@ccrc.gov.uk / <http://www.ccrc.gov.uk> / (0121) 633 1800 or the SCCRC via: info@sccrc.org.uk / <http://www.sccrc.org.uk> / 0141 270 7030.

For those who claim false allegations are rare, here's a small selection of the past two month's worth; fuller details can be found by searching the Internet for the names shown:

EMMA TEMPLETON has admitted making a false rape claim against a parish priest when he ended their affair.

EMMA CHASTON has admitted making a false claim of rape.

SAMANTHA MORLEY has been jailed for 12 months after admitting a false rape claim in an effort to conceal the fact that she had been unfaithful to her fiancé.

NICOLA OSBORNE has been jailed for 18 months after falsely claiming she had been abducted and raped because she was worried her husband would find out that she had had a one-night stand.

PAUL BETTS has been convicted of wasting police time by falsely claiming that his estranged wife had stabbed him.

BOBBIE MARTIN has been jailed for 18 months after falsely accusing two Army officers of raping her.

UNBREAKABLE BONDS 'They Know About You Dad' by Jim Fairlie (ISBN: 1849630348). This is a superbly well-written book, arising from a well-documented but tragic family history. For anyone new to the ideas of false memory, Social Services' abilities and propensities to indulge themselves with lies and cover-ups, and the negligence and self-interest of a small minority of the medical profession, you will find this book hard to believe. But for those who already know what can and does go on, the history outlined in this book will be all too familiar, and rouse any slumbering rage you may have.

It's a disturbing and yet hopeful book; disturbing because it exposes the deceit, corruption and outright denial which seems to be endemic in some areas of 'the system', yet hopeful because it shows that people who refuse to be cowed by those who put their own interests above the interests of children and families can win through, and recover to one extent or another. We sincerely hope that people in Government and at the head of the medical and social services professions learn some hard lessons from this book, and find themselves capable of the steely resolve necessary to make fundamental, far-reaching, and much-needed changes.

SOME TIME AGO, the Supreme Court declared that Human Rights legislation required that those convicted of sexual offences and subject to lifetime registration had to be given a chance to prove that they no longer posed enough of a risk and therefore should be removed from the sex offenders' register.

The Home Secretary, Theresa May, and the Prime Minister, David Cameron, were appalled and in February 2011 in a statement to the Commons, May made some scathing criticisms of the court ruling. This prompted a furious letter from the Justice Secretary, Ken Clarke, to May, reminding her that she was constitutionally obliged to accept the independence of the judiciary. The letter was copied to Downing Street as the Prime Minister himself had used very similar language to May.

We would like to take this opportunity to remind people that the European Ruling only states that those subject to *lifetime* registration on the register should be allowed the opportunity to *demonstrate that they are not a risk* and, only if this is achieved (meaning that the person is not a risk to society) can they be removed. This is perfectly reasonable, and not the abomination suggested by some newspapers determined to provoke hysteria. It is not a case of 'our worst offenders', it is a case of 'those who don't pose a risk', being allowed to come off the register.

SAFARI's view is that Government can't, on one hand, slam the judiciary when it makes decisions they don't like, while at the same time, forcefully arguing that they 'must respect the decisions of the courts' when falsely accused people are convicted. We were pleased to see Ken Clarke defending the sanctity of the courts. All we need to do now is ensure that when the courts get it wrong and miscarriages of justice occur, those wrongly convicted can be supported, by Government legislation, in being able to have their convictions overturned.