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Issue 78 (February 2011)

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CHERYL FLEMING has been convicted after making a false allegation of rape against a man with whom she had had an on-off relationship for more than 10 years. She had, in fact, had consensual sex with him. Her false complaint was made after they'd had an argument. Fleming admitted making the false statement, which wasted police time, and rendering the man subject to suspicion. Sheriff Andrew Berry noted Fleming's list of previous convictions, which included misuse of the 999 phone system, police assault, breach of bail and disorderly conduct.

JEMMA KNIGHTS has been given a six-month community supervision order after she pled guilty to making a false rape allegation against a man to make friends with someone at her college by gaining sympathy from him. Police wasted 37 hours investigating the rape claim and she was eventually convicted of wasting Police time.

LOUISE CREIGHTON has been sentenced to 180 hours of community service after admitting making a false rape allegation against a man she had met at a music festival. She told officers that she made the false claim as she had a girlfriend and "did not feel comfortable" that she had slept with the man.

STEPHEN JONES has been jailed for 12 months after admitting falsely accusing another man of trying to rape him. Jones had claimed that he fought the man who then ran off.

SABRINA JOHNSON has been jailed for 18 months after admitting trying to pervert the course of justice by making a false rape claim. In fact, she had agreed to take part in a sex game with three men she met whilst out walking. One of the men, who was described by the judge as "very prudent", recorded Johnson on his mobile phone giving her consent to the game.

SERIAL LIAR, EMMA BLUNDEN, has been jailed for two years after making false rape claims against four men. She first accused one man on 26th July 2009, but police eventually arrested her as they felt the allegations were possibly false. She was then bailed. While on bail, she went to a party and let three men have sex with her in a communal bathroom, one after another. She then left the party and dialled 999 to say that her train fare money had been stolen before saying she had been gang raped by the three men.

A TEENAGE GIRL (whose name we are not allowed to publish) has escaped prosecution after admitting a false rape claim. The girl claimed that a man in a vehicle drove behind her, stopped and then he went on to get out of the vehicle and raped her in a nearby alleyway. She then made a full retraction, which confirmed that she was definitely not raped. The teenager, who will not be prosecuted, is now working with a youth offending team who will help her recognise and appreciate the consequences that false rape claims have on genuine victims and the effects that fear causes within community.

YOU WILL NOTICE most SAFARI news articles are about false rape and other sexual assault complaints. We would like to take this opportunity to remind readers that this is only because there are so many more false complaints of this nature as such cases are very difficult to prove innocence on. We actually support those wrongly accused of any crime.

COMPENSATION FOR THE WRONGLY CONVICTED. On 27th January 2011 in the House of Lords, Lord Laird asked the Government "whether they will issue a practice direction to criminal courts ensuring judges declare any defendant acquitted at trial, or appellant whose conviction has been quashed as unsafe on appeal, as innocent at the close of the court proceedings; and whether they will ensure that appropriate compensation and aftercare is provided to such persons." Lord McNally (Minister of State, Justice; Liberal Democrat) responded saying "It has long been an important feature of our criminal justice system that a person charged with an offence is presumed to be innocent until proved guilty. A person found not guilty is to be treated as innocent, as too is a person whose conviction has been quashed on appeal. A person whose conviction is quashed on appeal may apply for compensation under Section 133 of the Criminal Justice Act 1988. Entitlement to compensation under that provision will be considered shortly by the Supreme Court in the case of [Andrew] Adams. The Ministry of Justice funds the Miscarriage of Justice Support Service (MJSS) to help those who have had their convictions quashed by the Court of Appeal. The MJSS provides help with issues such as healthcare, accommodation, finance and relationships. The MJSS' funding has recently been extended for a further year to March 2012 and the Ministry of Justice is working with it to improve the support they provide."

PEOPLE AGAINST FALSE ACCUSATIONS OF ABUSE (PAFAA) have written to SAFARI. They said: "A recent appeal referred by the CCRC has succeeded basically on medical grounds. What used to be classed as positive physical signs of sexual abuse (measurements of hymeneal orifice; bumps and notches) often will now no longer do so. This 'evidence', in some circumstances, may now be disregarded. This may help in some appeal applications where the only convicting evidence in the case was the "signs of injury proving sexual abuse". If you (or someone you support) want more information about this subject, eMail sofap@pafaa.org.uk. Please note: PAFAA is an eMail-only service so doesn't supply a contact phone number or postal address. They also only assist those who are innocent of all charges against them. If you wish to write to them, send your letter c/o SAFARI and we'll pass it on for you; if you would like the possibility of a personal reply, please supply a landline phone number of someone they can ring.

A FATHER (whose name we are not able to publish), who served over five years in jail after being found guilty of raping his teenage daughter, has had his conviction quashed. Appeal Court judges ruled that vital forensic evidence at the heart of his trial, given by prosecution witness Dr Whiteside, was unreliable. At trial, the forensic scientist called by the prosecution claimed DNA evidence found on his daughter's shorts led to the inevitable conclusion that intercourse with her father had taken place, but new evidence supplied at appeal by new scientific experts for both the Crown and the defence agreed that the original forensic evidence (based on Low Copy DNA) was in fact "of no value" and, quite simply, did not prove what was claimed. Quashing the conviction and ordering no retrial, Lord Justice Hooper ordered the man's immediate release. It is unlikely that this is the only case in which the jury has been misled by unreliable DNA evidence being given undue significance by a prosecution 'expert'. PAFAA has also asked for anyone convicted on evidence given by Dr Whiteside to contact them, as there is a possibility they may be able to assist to some extent with an appeal.

WE ARE DELIGHTED that a number of SAFARI readers win appeals using information supplied by our newsletter; if this applies to you, can you please let us know what helped you, and how?

CCRC UPDATE. In issue 77 of our newsletter, the Criminal Cases Review Commission wrote an article for SAFARI outlining basic details of their work and inviting questions from our readers.

A number of readers sent us questions to pass on but, interestingly, virtually all the questions would be addressed by answering just these two:

- 1: What type of new evidence or argument would be considered by the CCRC to be likely to result in a successful appeal against conviction?
- 2: What type of evidence can the CCRC have access to that cannot be accessed by the defendant independently?

We've asked the CCRC to address these two points, and have also given them a run-down of the more specific questions asked. They are now considering their response and we hope to be able to publish the follow-up article in issue 79 (April 2011).

The CCRC is a mystery to many. It was set up in 1977 to review possible miscarriages of justice and decide if they should be referred to an appeal court.

The CCRC's job, in basic terms, is to review suspected miscarriages of justice and refer a conviction, verdict, finding or sentence to an appropriate court of appeal where it is felt that there is a "real possibility" that it would not be upheld. Contrary to popular belief, a 'miscarriage of justice' does not necessarily mean that an innocent person has been wronged but merely that the defendant – innocent or guilty – was not given a fair hearing.

For the majority of SAFARI readers, this causes a dilemma. They know they are innocent of charges brought against them, and they understandably want to shout their innocence from the rooftops, but the CCRC can't take their case to the Appeal Court on the grounds that they say they are innocent! So they need to concentrate on why the trial was wrong in law rather than just saying that the result was wrong.

This "real possibility" element is important. The CCRC have to "second guess" the Court of Appeal and decide whether the judges are likely to accept the arguments for overturning a previous decision.

R v PENDLETON (13 December 2001) required the court to apply what is known as the '*jury impact test*' to fresh evidence. The Lords said in their judgment (paragraph 19), '...it will usually be wise for the Court of Appeal, in a case of any difficulty, to test their own provisional view by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe.' It seems logical to us that the CCRC should be able to use the argument that the Appeal Court may well use the Pendleton precedent and refer the case on that basis. This would allow new evidence that was not considered very strong to be 'tested' *alongside all the other evidence* in case, collectively, it might have affected the decision of the trial jury to convict.

There have been some stinging criticisms of the CCRC in the recent past:

Michael Naughton (chairman of the Innocence Network UK) believes that the Innocence Project phenomenon is a "response to the failings of the CCRC to guarantee that it will refer cases of applicants found to be innocent back to the Court of Appeal".

Bob Woffinden (Investigative Journalist) said in the Guardian in November 2010: "When it was set up in 1997, the Criminal Cases Review Commission was an experiment. It was an idea unique in worldwide criminal justice: an extra-judicial body that could give another chance to cases that had reached the end of the legal road. The time has now come to acknowledge that it was an experiment that failed."

The CCRC is *technically* independent, although as they still have to second guess the Appeal Court, and only refer cases if there is a real possibility that the conviction will be quashed or sentence reduced, this is generally seen as only having 'limited' independence because they are still effectively controlled by the rules of the Appeal Court and the Government, and can't refer a case just because they have a 'feeling' it should be referred. They have also agreed wider objectives with the Government's Home Office, which include "Enhancing public confidence in the criminal justice system". (This is possibly unfortunate wording, as it encompasses both the notions of 'mistakes will be corrected', and the alternative notion of 'really embarrassing mistakes which would undermine confidence will be brushed under the carpet!' We hope the former applies...).

Since 1997 when the CCRC was created, up until the end of 2010, 13,225 applications for conviction or sentence to be considered for appeal have been made to them. Of that, only 438 (3.3%) were referred to the Court of Appeal. Of those 438 cases, 309 (70.5% of those referred, or 2.3% of all applications) were quashed, 128 were upheld and 1 was reserved.

These figures look bad at first, but is that the fault of the CCRC or is it just that most cases did not have the necessary 'real possibility' of being overturned at appeal?

We do not know the figures for 2010 alone but we do know that 260 decisions were quashed up until 31st August 2008 and by 1st December 2010 this had risen to 309. That's an average of about one successful case every 17 days. Suddenly the statistics are looking a little better.

The main fault appears to lie with the (in)justice system itself. If defendants are *always* allowed their basic Human Rights, if the Police are *forced* to abide by the Police & Criminal Evidence Act, if defendants really *are* treated as innocent unless proved guilty, if 'proved' meant 'independent proof supplied' instead of 'jury chooses whether to believe the accuser or the accused', if solicitors were obliged to present the evidence that their clients demand, if the jury's decision-making process can be recorded and challenged if it is flawed ... in short, if the rules in place to protect the innocent are actually *enforced* and more 'openness and accountability' are applied, then the CCRC would have far less work to do as the number of wrongful convictions would be much lower.

Many members of the justice system would argue that much of this is already in place and applied but, sadly, they are wrong:

If people really *were* considered innocent until proved guilty, the innocent would *never* be convicted, because you cannot 'prove' that an innocent person is in fact guilty. You can only *suggest* that they are.

If PACE was always complied with, there would never be any question of police malpractice, evidence withheld from the Defence and so on. Yet it still continues to happen, and people are wrongly convicted because of it, causing immense trauma both to them and to their families, from which they never fully recover even if acquitted on appeal. Being 'held hostage and psychologically tortured' by the State itself is one of the worst injuries that can be inflicted on a person.

Here's a couple of CCRC cases from 2010 just to give you a taste of their work:

In [2010] EWCA Crim 1709 (R v Mohammed Sharif), following a CCRC referral, Mohammed won his appeal. On 23rd March 1999, Mohammed was accused of conspiracy to defraud. His defence team claimed (unsuccessfully) that he was not fit to plead because of a mental disorder but the trial went ahead, he didn't give evidence himself, and he was found guilty. On 17th May 2001, Mohammed's wife lodged an application with the CCRC. The main ground of the application was that there was fresh medical evidence to show that the appellant had not been fit to stand trial. The CCRC then went on to seek advice from a large number of medical experts. So many, in fact, that it took many years before the case got to the appeal court. In short, the newly discovered evidence showed that Mohammed most likely *did* have a mental disorder and was therefore not fit for the original trial. As a result, his trial was unfair and the conviction unsafe. His convictions were quashed on 1st July 2010.

In [2010] EWCA Crim 1732 (R v Lawrence Wilcox), following a CCRC referral, Lawrence won his appeal. On 3rd May 1978 Lawrence was convicted of robbery alongside Patrick O'Toole and David Murphy. Patrick and David's convictions were quashed (again, after a CCRC referral) on 24th Feb 2006 after it had emerged that since their convictions there had emerged a catalogue of corruption and misconduct in and by the West Midlands Serious Crime Squad some of whose officers were involved in the conduct of this case too. Many defendants had said that the police falsely claimed that they had 'admitted' crimes they did not commit. Although Patrick and David's convictions were quashed, Lawrence was overseas at the time and could not be traced, so he was not included in the original appeal.

WHILE OUR NEWSLETTERS may occasionally be a few days' late, we have not missed a single edition since 2003; so if you haven't received your two-monthly newsletter by 15th of the month (15th February, 15th April, 15th June, etc.), please do get in touch to confirm your full address and we'll ensure we have your details recorded correctly. And please do ensure that you always inform us of any change of address.