

Recent developments in the U.K. affecting the legal profession.

1. On the 18th March, 2009, in the Lord Chief Justice's Court in the High Court in London, a man, Sean Hodgson, was released after spending 27 years in prison for a crime he did not commit. He had been sentenced to Life imprisonment in 1982, when he was 29, after being convicted of Murder in Southampton. He had not committed that murder, but that was not discovered until 2009, when DNA analysis proved conclusively that the killer was someone else. Hodgson was innocent. He is now 57.

2. This case was and is of particular concern to me as I had been the barrister who led his defence at his Trial and represented him on his first Appeal in 1983.

3. The case highlights the importance of a number of factors which affect the management of criminal justice systems, and I only have time to deal with this one case in my address to you, and that briefly.

4. In a perfect system no one should spend any time in prison for a crime he/she did not commit, let alone 27years. It is a fundamental miscarriage of justice. Indeed, as Hodgson's lawyer, I am very conscious of the fact that, if capital punishment had still been in force in the U.K., he would have been sentenced to death, and perhaps his innocence never proved. Supporters of capital punishment, take note!

5. So, how did this miscarriage occur in this case? Now that we know for sure that Hodgson was not the killer, we can examine the procedure with certain hindsight.

6. Hodgson was a young man with a personality disorder. He was a drifter who happened to be in Southampton at the time of the murder. He had a number of previous convictions mainly for petty theft and stealing motor cars. Nothing for violence.

7. On the morning after his arrival in Southampton, on 4th December,1979, a girl was found raped and murdered by strangulation in her own car at the back of a Public House (Tom Tackle) where she worked. Scientific examination revealed that the attacker was of blood group A or AB. Hodgson was of Group A and so could have been responsible (as could a third of the population). He was by chance arrested the next day for car theft, and offered information about the murder claiming that he had met a man that day who had bloodstained clothing which he deposited in a dustbin. This was in the vicinity of the Tom Tackle. The Police did not then suspect Hodgson of the murder.

8. However, what led to his prosecution and conviction were confessions made by him dating from the anniversary of the girl's murder, in December 1980. By this time he was in prison, having been sentenced to 3 years in July 1980 for other offences.

9. By this time the Police knew that he was a man prone to make false confessions, because he had done so in 1978 long before the murder. When he was arrested for the car theft the day after the murder, he admitted 25 burglaries, which had taken place, but most of which he could not have committed, being elsewhere, sometimes in prison, at the time. He was bailed later but then re-arrested for further crimes of dishonesty, to which he

pleaded guilty, also admitting 244 other offences, which admissions he later withdrew.

10. In December, 1980, he asked to see the Prison Chaplain and admitted that he had raped and killed the girl. Throughout December he made similar admissions to Prison and police officers both verbally and in writing, though the detail varied, sometimes significantly. The murder squad detectives were of course informed, he was interviewed at length and made a voluntary statement under caution. He said he did not want a Solicitor. He made further statements later elaborating on his story.

11. Accordingly he was prosecuted on the basis of those admissions. In view of the fact that he was known to be a compulsive liar and also almost a 'serial confessor', the Prosecution did not rely on the simple fact of confession alone, but on the elaborate detail which contained facts of which Hodgson, they claimed, could not have known unless he was the killer, those facts not being in the public domain, not having been released to the Media or relayed to Hodgson by word of mouth, on paper or through photographs. The Judge, who was clearly biased, ridiculed my attempts to explain to the jury how Hodgson may have known these 'secret' details, dismissing my attempts as speculation. They, of course, were speculation, but what else could I do when my client'd defence was that he was not the killer? Someone else was. We now know with hindsight that that is right. We now know the DNA of the killer, but at the moment can only speculate as to who he/she is.

12. Knowing what we know now, it is clear that the Police were unwittingly obtaining a false confession. How on earth did Hodgson know these 'secret' details? The answer can only be, as claimed by the defence at the Trial, that the confessions were the false confessions of a pathological liar, who regularly confessed to crimes he had not committed; that the confessions were composed out of (a) what he believed to be the truth from Newspapers and Television, (b) what he discovered at the Police Station or was told by the Police, Prison Officers or others and (c) photographs at the Police Station, and intelligent guesswork. In addition the Police may have asked leading questions or suggested things which, as a fantasiser and compulsive liar he jumped at when making up his story.

13. One thing we can learn from this case is how careful the police have to be when interviewing a suspect. In this case they knew he was a serial confessor, they knew he had a personality disorder, and although he refused a solicitor (according to them) they should have insured that there was some appropriate independent adult present. One solution may be that, when Police interrogate, their aim should be to elicit the truth...rather than to secure a confession. (i.e. "you say you did it, now prove it"). It seems that the criminal justice system has not yet developed adequate safeguards to prevent, (1) voluntary false confessions, (2) coerced compliant false confessions, and (3) police-induced false confessions, from leading to unjust deprivations of liberty and miscarriages of justice.

14. This case was particularly difficult, because no one suggested that the Police pressurised the defendant, who was more than eager to confess. It is perhaps today easier to produce admissible psychiatric evidence to a court that some voluntary confessors have a pathological need for fame or recognition, are attention seekers, may be anxious to please and impress, and psychiatrists have also said that there may be an unconscious need to expiate guilt over previous transgressions through self-punishment. There are also

individuals who have an inability to distinguish fact from fantasy and also develop strong false memories of having committed the offence.

15. In Hodgson's case I believe that the police honestly tried to take all these sorts of matters into account, and yet we now know they got it wrong, in the sense that the innocent Hodgson must somehow have acquired knowledge of facts which on the face of them only the killer could have known.

16. There is no doubt in my mind that what led the jury to convict were these confessions. The fact that the defendant did not go into the witness box (Heaven only knows what he might have said under cross-examination, though he always denied his guilt to us) may well have put the jury against him, although he made a statement from the dock saying that he had not killed the girl.

17. Judges, whether sitting alone or directing a jury, could well learn from this case, if they are tempted to be biased in favour of the prosecution. The Judge was partly responsible for this miscarriage of justice because of the hostile strength of his closing address, which can have left the jury in no doubt, not only as to what his view was but how "bizarre" was the speculation in the defence argument. Judges should leave the decision to the jury, or, if no jury, should direct themselves fairly and without bias.

18. After Hodgson's conviction, we appealed. Our general grounds of appeal were:

(i) The Judge was wrong in refusing to correct the error he unwittingly made in leading the jury to believe that there had been no confessions to crimes he had not committed prior to the Tom Tackle murder, and

(ii) The summing-up was more in the nature of a prosecutor's closing speech, than a proper summing-up. He made very many references to prosecution argument without reminding the jury of the defence's answer to these arguments, and failed to put the defence case adequately if at all.

The Court of Appeal ruled that he erred on ground (i) and had some sympathy with our ground (ii), but dismissed the appeal, there being at that time no further evidence to reverse the jury's obvious acceptance of the truth of the confessions, DNA not yet having arrived on the scene.

19. Two other matters - Firstly, though Hodgson, after some years in custody, applied for Parol. It was refused. The basis, as I understand it, was that he would not admit his crime and so had not repented. Of course he would not admit it! he was innocent! This is not the first time that a wrongly convicted person has spent many years in prison, because he would not admit a crime which he had not committed. A Guilty man would get parol, because he would admit. I have always felt that this stance by the Parol Board is unjust, and at least there are signs that their attitude may change. I hope this case helps.

20. Secondly, although it can be said that the release of Hodgson demonstrates a considerable improvement over the years in our system, and results from the advances in science and the existence of our Criminal Cases Review Commission being able to refer cases to the Court of Appeal, it must be said that the case demonstrates another regard in which the system was not working with disastrous results to Hodgson.

21. He should have been released 11 years ago in any event. In 1998, DNA evidence now being admissible, his lawyers applied to the Forensic Science Service for the case exhibits. They were told that they had been destroyed,

when in fact they were held in a forgotten forensic science archive on an industrial estate in the Midlands. This came to light only last year and the specimens revealed DNA which proved Hodgson's innocence. The 11 year delay was inexcusable.

22. In 1999, The Government established the Council for the Registration of Forensic Practices (CRFP), heralding a new era of regulation, designed to improve the quality and accountability of forensic advice and analysis to the Courts. This was an improvement to our system which would hopefully last. Ironically, however, within a few days of Hodgson's release, the CRFP has ceased trading, the Government having decided to stop all further funding, leaving an industry devoid of regulation. So the prospect of any miscarriage of justice occurring in the absence of regulation has been resurrected. Let us hope the Government sees sense and avoids this hiatus in regulation.

23. This case may at least help us Defence lawyers to answer the question "How can you defend someone who is obviously guilty?"
The Answer is: "He/she may be innocent".

8th April, 2009
Robin Grey, Q.C.,

Member of ECBA

Advisory Board.

Robin Grey, Q.C.

10th April, 2009.