

Subject: R.v. Sean Hodgson

Follow up to my address at the ECBA Conference in Madrid On 24 & 25 April 2009. on the subject of Recent Developments in the U.K. affection the legal profession.

1. At the Madrid Conference I addressed those present on the subject of a man, Sean Hodgson, who had been convicted of rape and murder (committed in 1979) on 5th February, 1982. I defended Hodgson at his trial. He was sentenced to Life imprisonment. 27 years later, on 18th March, 2009, he was released by the Lord Chief Justice's Court, it having been accepted by the Prosecution that he was in fact innocent, and the case having been referred to the Court of Appeal by the Criminal Cases Review Commission. His innocence had been established by the fact that his DNA did not match that found on the victim and exhibits, evidence which was not available at the original trial.

2. Since his release, the Police re-opened the case and, as a result on 17th September 2009 named another man, David Lace, as having been the killer, having exhumed his body (he having committed suicide in December 1988) and obtained DNA which exactly matched the DNA found on the victim and the exhibits. That man had apparently confessed to the murder in 1983, a year after Hodgson's conviction, but the police effectively ignored this, apparently because they were satisfied that "they had their man". Hodgson and his Legal Team were not, therefore, informed of this confession at the time. Now that they are satisfied that Lace was the killer, the Police have said that "There is no indication, forensically or evidentially, of any third party additional to David Lace being connected to the rape and murder". "Additionally, his confession, which now must be considered reliable, made no reference to anyone other than himself being present and responsible. The evidence overwhelmingly bears out his involvement in the rape and murder and we are not seeking anyone else in relation to this matter."

3. Lace's confession was made in September 1983, only 4 months or less after the Court of Appeal (on 19th May 1983) had dismissed Hodgson's application for leave to appeal against conviction, an appeal which I conducted, at a time when the Police and Director of Public Prosecutions knew perfectly well that the main grounds of appeal were that someone else had committed the murder and his (Hodgson's) confession was a false confession of a man well known to make false confessions. It is outrageous that nobody apparently thought to let me, or Hodgson or any other member of his Legal Team know of the fact of Lace's confession when it was made.

4. Added to the other factors mentioned in my address in Madrid, this sorry saga reveals a series of serious failures of the Criminal Justice System, from which lessons can certainly be learned.

5. I will summarise these briefly.

Trial Judge at the Trial of Hodgson in February 1982

From the start of the trial, no doubt because of the overwhelming nature of Hodgson's confessions, the Judge clearly failed to approach the evidence with an open mind and his prejudice against Hodgson was made clear in his summing-up to the Jury.

This was one of the main grounds of appeal.

He even refused to correct an error he made to the jury in telling them that Hodgson had never made false confessions to crime prior to the murder, when in fact he had done so in 1978. The Court of Appeal criticized him for that error.

Lessons learnt

It is essential that Judges harden themselves against their own prejudices. When the Judge sentenced Hodgson, he said "I have no doubt at all about your guilt". We now know that the man was innocent. The confessions were certainly overwhelming, but a fair approach is still essential, rather than directions to the jury being effectively that there is no sensible verdict other than guilty. When a lawyer is asked "How can you defend someone whom you know is guilty?" the proper answer is "I don't".

September 1983 - Lace's confession

The Police now admit that the proper procedure, which they did not follow, was to inform the Defence and the D.P.P. About 5 others also confessed at one time or another, about which the Defence was informed and blood taken from the confessors, which was not done in Lace's case, apparently because they were sure that they "had their man".

Lessons learned

Like the Judge, the Police should always keep open minds and not allow their desire for a conviction to prejudice them. If Hodgson's lawyers had been shown Lace's conviction, while Lace was still alive, they could have taken the appropriate action and in view of the fact, as we now know, that Lace was guilty, an investigation may well have led to a further speedy appeal in 1983 or 1984 and the release of Hodgson.

December 1988 - Lace committed suicide.

He apparently did so not being able any longer to live with his guilt in relation to the murder and possibly also with allowing someone else to take the blame.

Lessons learned

Even then the Police should have at once informed the lawyers on both sides of this fact, particularly the apparent motive for the suicide. It should have occurred to someone that perhaps they had the wrong man in prison.

1998 Hodgson's lawyers applied to the Forensic Science Service for the Exhibits. now that DNA evidence was admissible. They were wrongly told that the Exhibits were lost or destroyed.

Lessons learned

This, of course was unforgivable. Had the Exhibits been produced, Hodgson would have been released 11 years ago.

During his 27 years in custody. he was never eligible for Parole.

This was because he would not admit his guilt. Of course he wouldn't, he was innocent. The System allows for a guilty man to admit guilt and be eligible for parole, whereas the innocent man cannot, unless he admits something he did not do! Clearly the Parole system needs reforming in this regard to allow for more discretion.

Treatment of Hodgson since his release.

He has received nothing like the guilty man who has served his sentence receives. He was given £46 on release, and lives in hope of compensation from the Government, the Police or the Forensic Science Service. If he lives long enough no doubt he will receive substantial compensation, but that may well take months or years. No official body at the moment seems to be anxious to help as far as I am aware.

Robin Grey, Q.C.

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