

Khan and Bashir

Kevin has never applied to the Court of Appeal to get his conviction overturned but he applied to the Criminal Cases Review Commission in April 1998 to have his case referred to the Court of Appeal. The CCRC refused Kevin's application and set out the reasons for its decision in its "Statement of Reasons" dated 2nd November 2002. The CCRC invited Kevin to make further representations in October 2003 after it emerged that Mr Spackman was sentenced to four years imprisonment for stealing £160,000 from his employees at Hertfordshire Police. Kevin's subsequent application was again refused; the CCRC reasons for that decision were set out in its Provisional Statement of Reasons and subsequent statement of Reasons in 2003.

Kevin now forwards further submissions that Mr Spackman fabricated evidence in his case. It is submitted here that the issues now raised by Kevin would not fail to meet the Court of Appeal test concerning allegations made by appellants concerning police officers that are themselves the subject of subsequent criminal investigations.

Kevin's allegations are indistinguishable from the issues concerned by the Court of Appeal in Woodruff and Hickson (1999) and Willis (2006).

This is what Lord Rose said at page 9F of the former case:

"...the explanation that he gave for not having raised the question of planting in the course of his trial, was that had he done so, that would inevitable have exposed him to cross – examination about his prior record, with, no doubt, highly damaging consequences...."

Lord Rose went on to add at page 11F- 12A:

"It is also noted that Hickson's allegations of planting although not made at trial, was in fact made before he could have had any reason to believe that Detective Constable Hooker was the subject of investigation. So this plainly was not a case of an appellant seeking to climb onto a band wagon which was already rolling in relation to Detective Constable Hooker"...."

This approach was subsequently applied in the case of Willis (2006) EWCA Crim 809.

Kevin raised a number of substantial issues in his representations that included police malpractice concerning DI Spackman. The CCRC informed Kevin that it was not minded at that stage to refer his case to the Court of Appeal in its Provisional Statement of Reasons. Kevin was invited to respond with further representations but declined to do so in the knowledge that unless he presented a fresh argument the CCRC position would

remain unmoved. The Commission informed Kevin in its PSOR that after a consideration of all the issues he had raised it was not minded to refer his case. It should be noted that the commission stated that it could not see how Mr Spackman's imprisonment affected the safety of Kevin's conviction.

Kevin identified that the Chief Constable of Hertfordshire Police at the time of the murder, Mr Baden Skitt; is now one of the 14 Commission members in the CCRC. The CCRC have said that it was inevitable that members of the CCRC knew the police in Mr Lanes case, or knew someone who knew them; however this has not caused bias.

Kevin has been invited to make further representations in light of the developments concerning the case of Khan and Bashir (2005) that was referred to the Court of Appeal because of concerns about Mr Spackman's role as investigation and disclosure officer in that case, which involved the alleged use of cloned credit cards. The appeal was allowed and the 1999 convictions of both appellants were quashed. The Court of Appeal expressed concerns throughout the judgement about Spackman's role in that case.

The Crown took the decision not to oppose the Khan and Bashir appeal and cited as a number of factors for that decision; these are set out at paragraph 14 and reproduced as follows:

"The reference and the material on which it is based have been properly examined by the Crown. We can hopefully do justice to the careful analysis made by Mr Stuart Trimmer, counsel for the Crown before us, by simply quoting the conclusion:

The Crown takes the view that the following factors taken together are decisive in concluding that the convictions must be regarded as unsafe".

- a) The very serious nature of the subsequent criminal conduct of Spackman. It is subsequently more serious than that dealt with in previous authorities and displays an ability to conduct complicated deceptions within a police environment.
- b) That the "informant in the case (Fletcher) was party to the criminal conduct with Spackman.
- c) The time between the conviction and the established misbehaviour is short in the time frame established by authorities and both events are connected.
- d) It is impossible to absolutely rule out, by reference to other evidence, the suggestion that Spackman behaved dishonestly in every aspect of the investigation leading to these convictions.
- e) It is impossible to assert with the degree of confidence necessary, that the judge was not misled in any respect in the considerations of PII material.

Should Kevin's case be referred to the Court of Appeal there is a strong possibility that the Crown would cite the above factors, with the exception of (b) and also include additional factors for any decision not to oppose the Appeal. This likelihood is further supported when the cumulative authorities of Woodruff and Hickson; Willis and of course Khan and Bashir are taken into account.

It should be noted that the concerns about the involvement of Spackman in the case of Khan and Bashir relate prior to a period to the theft of Money from the Hertfordshire Police

The presiding judge makes repeated references in the Khan and Bashir judgement that there was strong evidence against both appellants irrespective of Spackman's involvement. The additional representations on behalf of Kevin will be in relation to allegations concerning the fabrication and the withholding of evidence by DI Spackman. This approach should not be considered as indicative that there is strong evidence against Kevin, irrespective of Mr Spackman. The representations are intended as proof that on the basis of authorities Kevin's case should be referred back to the C.O.A.

Given the striking similarities between the case of Kevin's and that of Khan and Bashir, it is fair to say that with the exception of (sub-paragraph - b) of the factors set out in paragraph 14 of the former judgment, there is a strong possibility that the Crown would not oppose a referral of Kevin's case as the result of the remaining factors.

Kevin's case is similar to that of Khan and Bashir in that both the former and latter cases, the allegations that Spackman fabricated evidence were made prior to his arrest and subsequent imprisonment. The primary differences that exist between the former and the latter cases concerning allegations that were made concerning Spackman and the fabrication of evidence is that in the former these issues unlike in the latter case were not raised at trial. If this matter is a concern for the Commission the authority in the case of Regina v Woodruff and Hickson should be considered as guidance for as to how it may be viewed by the C.O.A were a referral of Kevin's case to be made.

It is now further submitted that Spackman may have deliberately misled the judge or omitted vital information concerning the evidence provided in the PII material. The Court of Appeals position is clear concerning the event of this situation developing as stated by Lord Rose at page 295, paragraph 10 in the case of R. V. Early (2003):

“Judges can only make decisions and counsel can only act and advice on the basis of the information with which they are provided. The integrity of our system of criminal trials depends on judges being able to rely on what they are told by Counsel and on Counsel being able to rely on what they are told by each other. This is particularly crucial in relation to disclosure and public Interest immunity hearings..... Furthermore, in our judgement, if in the course of a public interest immunity hearing or an abuse argument, whether on a voir dire or otherwise, prosecution witnesses lie to the judge, it is to be expected that, if the judge knows of this, or this Court subsequently learns of it, an

extremely serious view will be taken. It is likely that the prosecution case will be regarded as tainted beyond redemption, however strong the evidence may otherwise be”.

There has been mention made in the CCRC Statement of Reasons dated November 2002, at paragraph 7.17 and 7.18 that Kevin features as a suspect in a murder in 1994. It is highly likely that Kevin’s suspected involvement in the above case featured in the PII material in his case, particularly concerning the application for jury protection for armed officers to protect the jury in Kevin’s case. Spackman knew how this had a bearing on how the jury would view Kevin. They must have thought this is one dangerous man to warrant such activity irrespective of the warning given by the judge.

Kevin’s first trial solicitor, Mr Brownlow took a statement in June 2006 from a Russian national, Mr David Levin who also featured as a suspect in the 1994 investigation. Mr Levin stressed to Mr Brownlow that the investigating officers stated that the gunmen in the above case was described by witnesses as Eastern European origin. Kevin is not of Eastern European origin. If it was Spackman who had forwarded Kevin as a suspect in the 1994 investigation it is also highly likely that he would have been informed that the suspect was of Eastern European origin. If Spackman has omitted this information from the PII material it therefore means that he has misled the PII considerations.

Extracts from the House of Commons debates for the 16th May 1994 show Mr Hogg MP stated to Mr Worthington that the Chechen authorities denied any involvement in the 1994 murder and that Chechnya had suspended any links with the UK. Somebody somewhere must have raised questions about suspected Chechen involvement to elicit the Chechen denial in this murder.

The CCRC state at paragraph 74 of the statement of Reasons concerning the decision to refer the case of Khan and Bashir:

...”In the present case, it is the Commissions conclusion that whilst DS Spackman may not actually have misled the trial judge in the evidence provided in the PII hearings, he was on any basis economical with the truth.” Further details of this matter are included in the Confidential Appendix...”

“The CCRC choice of language “he was on any basis economical with the truth” may be interpreted in a number of ways, but the overall impression is that Spackman with held factual information that was relevant to the PII material placed before the judge. There have been developments in Kevin’s case that would suggest that it cannot be ruled out with the degree of confidence necessary that Spackman did not mislead the trial judge concerning the PII material. The developments concerning the 1994 Surrey Police investigation into the murder should also be considered in the context of Spackman’s economy with the truth concerning the Khan and Bashir PII material.

It was established during Spackman’s Court case for theft that he had been friends with known criminals for a number of years. His Co-defendants, Joanne Fletcher and Trevor

Powell both had previous convictions for criminal offences, at page 10, paragraph (N) of the Grounds of Advice for Appeal for Cameron Bashir, (Spackman according to Fletcher:

“The biggest name there is in Watford. Everybody knows him. Everybody’s frightened of him”.