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Justice not blind but blinkered

INNOCENT people have had to pay for police heavy-handedness on far too many occasions

Recent legal travesties have demonstrated that various police procedures need to be drastically overhauled, says **Neil Hodge**

ON MAY 25 this year, the Court of Appeal ruled that Paul Blackburn had been robbed of 25 years of his life because senior police officers had lied about his confession and had failed to follow basic interview procedures.

Three appeal judges heard that Blackburn – then just 15 years old – had not received a fair trial and had been interviewed by police for more than three hours without a solicitor present. The judges also heard new linguistic evidence indicating that police had been significantly involved in the wording of Blackburn's subsequent confession after his three-hour grilling.

Officers who had interviewed Blackburn at the time – Detective Chief Inspector White and Detective Inspector Marsh of Cheshire CID – testified on oath that he had written his own statement. But the judges said that the new evidence led them to believe that the officers had lied. We cannot escape the conclusion that they cannot have told the truth about the written confession, said Lord Justice Keane.

Neither of these officers – now elderly and retired – will face police disciplinary action, nor is it likely that they will be subject to criminal or civil proceedings for lying under oath or falsifying evidence.

Blackburn, now 41, was convicted at Chester Crown Court in December 1978 of the attempted murder and buggery of a 9-year old boy. Blackburn has always protested his innocence, but has been denied a chance to appeal his conviction for 27 years. He was refused leave to appeal in 1979 and again in 1981. In 1996, the then Home Secretary Michael Howard refused to refer the case on to the Court of Appeal again.

> **Neither of these officers will face disciplinary action for lying under oath**

In 2003, Blackburn was freed on licence after serving 25 years in 18 different prisons. His case was finally sent back to the Court of Appeal last August by the Criminal Cases Review Commission (CCRC), which investigates possible miscarriages of justice. At the Court of Appeal, Lord Justice Keene, Mr Justice Newman and Mr Justice Walker heard that his detention had been clearly prolonged by his persistent assertions that he was wrongly convicted.

The grounds for Blackburn's appeal rested on three important issues. First, that the way his confession was obtained amounted to oppression when judged by modern standards and could have affected the reliability of the evidence, particularly since the police failed to inform him of his right to legal advice.

Second, there was no effective appropriate adult in attendance. Blackburn's legal team argued that the decision to invite Blackburn's school housemaster at Red Bank Approved School, Fred McVitie, to attend the interview (which was held at the school instead of the police station) was seriously flawed on the grounds that Blackburn had no personal or close relationship with him, perceiving him to be an authority figure.

Crucially, McVitie also had little idea what his role was supposed to be during the interview. Giving evidence at the voir dire – when the judge considers the strength of witness statements in the absence of a jury – McVitie told Mr Justice Bristow that he saw his function as just to sit and see that it was a fair interview and that the boy was fairly treated.

DI Marsh also accepted in the voir dire that there was no reason why the police could not have contacted Blackburn's mother to attend the interview.

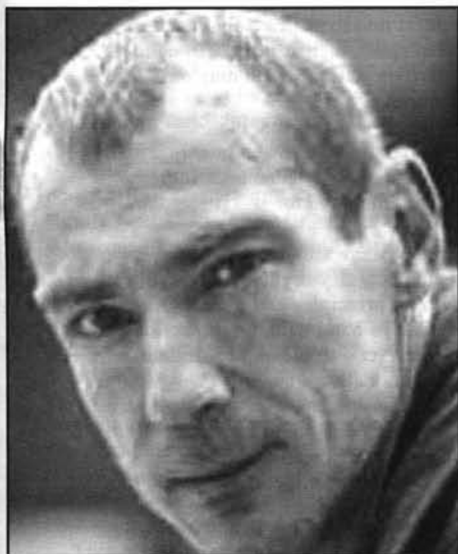
Third, and more worryingly, expert testimony found that the confession statement was unlikely to have been written by the appellant without prompting – a serious breach of the Judge's Rules – and that the police officers' interview records and notes were not written contemporaneously or even with the same pen. Terence Merston, a handwriting expert, found that the first page of DCI White's notes was written with a different pen from the following pages, but also that there was no indention from the handwriting on the following page, indicating that the first page of notes was written later. Even before the hearing the Crown admitted in its written response to the grounds of appeal that there is linguistic evidence of significant police involvement in the wording of the statement.

Without Blackburn's statement and his inability to accurately account for his whereabouts at specific times, the police had little other evidence to prosecute him. There was no forensic evidence linking him to the crime (the exhibits were accidentally destroyed before trial).

The description of the attacker did not match that of Blackburn either. The victim told police that his attacker had long, curly ginger hair, was aged between 17-21, was between 5'77" and 5'10" in height, wore a white speckled shirt, green parka, blue jeans, Doc Martens, had a deep Manchester accent and carried a white-handled pocket knife.

However, Blackburn had blond hair, was just 15 years old, wore a brown parka, and was wearing a blue sweatshirt with a logo of an American university on it (he did not actually own a white speckled shirt). As for the knife, Blackburn owned an ornamental Indian fixed-blade knife with a carved wooden handle kept in a brown sheath, which means that it was not a pocket knife. In short, Blackburn was the wrong age, wore the wrong clothes, had the wrong knife, and had different coloured hair.

Speaking just after his conviction had been ruled unsafe, Blackburn said: "I can never move on. I can never lead a normal life. I've spent 25 years banged up and two years reporting to parole officers. I've been robbed of my freedom, of having a family, a job and all that while nothing is going to happen to the two coppers that put me away. No one has even said they're sorry."



PAUL BLACKBURN has been robbed of 25 years of his life

While there have been some erroneous convictions made on scant evidence, some prosecutions have relied on such absurd logic as to be deemed sheer fantasy, such as the contention that a man would aid and abet a multi-million pound robbery for just £1,000. But this has happened.

In 2002, a court found Graham Huckerby guilty for his alleged part in a raid on a security van in Salford, Greater Manchester, in 1995 which saw an armed gang get away with £6.6 million. Huckerby, who was driving the security van, let the robbers in after he was told that his colleague had been taken hostage and that they would blow his fucking head off if he did not comply. Huckerby was left tied up and blindfolded while the gang made their escape. Bizarrely, Huckerby was to become the police's chief suspect.

> ***Juries tend to accept the evidence of expert witnesses as sacrosanct***

During the trial, the prosecution said that Huckerby, a former police constable, had received a £1,000 bribe from the robbers' prior to the robbery. Police produced evidence that Huckerby had deposited £2,400 into his Barclays Bank account in the years 1995/1996 (although this figure includes £600 conceded by the Crown to have come from his mother).

Police also accused him of enjoying a jet set lifestyle, which included expensive gifts for his daughter and a number of foreign holidays after the 1995 robbery.

This amounted to a pair of Kickers shoes, two compact discs and some perfume. As for the jet set lifestyle, Huckerby had been on two foreign holidays since 1995: one in 1996 when he stayed with his cousin in Los Angeles and one week in Corfu in 1999.

Huckerby only walked free in December last year after evidence was produced that he had been suffering from post-traumatic stress at the time following his involvement in an earlier robbery where his colleague had been stabbed and hit with a sledgehammer. In January, the Crown announced that it would not seek a retrial.

Why do miscarriages of justice occur? One of the key factors is in how the police conduct investigations and pursue prosecutions. A common approach is to interview known offenders who have committed similar offences to eliminate them from further enquiries.

While such methodology is not without merit and logic, it also produces a serious risk of officers trying to fit the crime to a known offender instead of keeping an open mind. There is also the possibility of the police influencing witness statements regarding a suspect's identity to match that of the person the police regard as the offender.

Blackburn's conviction is a case in point. In his youth, Blackburn had been no angel. By the time he was fourteen he had a string of convictions for assault, burglary and arson. He had burned down part of his school, which prompted local magistrates to issue an interim secure care order to confine him at Red Bank Approved School.

Two years earlier, he had also admitted to assaulting four other lads with a friend, forcing them to strip and pricking their genitals with a pin.

When police re-interviewed the victims, the boys added new details to the episode – that Blackburn had been the instigator and had made the boys simulate buggery and oral sex. To the police, all the pieces seemed to fit – they were only hampered by an actual lack of evidence. If such prejudice had been found in a jury, the case would have automatically been thrown out of court.

Another problem that contributes to miscarriages of justice is the weight of police and prosecution evidence. Judges and juries tend to accept police testimony – as well as the opinions of expert prosecution witnesses – as sacrosanct and rarely question police procedures in gathering that evidence. Yet in many high profile miscarriage of justice cases wrongful convictions were caused as a direct result of questionable police procedures.

The arrest of nine South Wales' police officers at the end of April for their involvement in the investigation of the death of prostitute Lynette White and subsequent conviction of the Cardiff Three is a case in point. The nine were arrested for conspiracy to pervert the course of justice, false imprisonment and misconduct in a public office. In total, 22 witnesses who provided evidence have been arrested so far.

While the premise of English law remains that people are innocent until proven guilty, there is automatically a massive volume of evidence against the accused because it is the Crown that carries out the investigation, gathers forensics, carries out post mortems, autopsies, DNA testing and so on. The defence often has no independent means of verifying how the conclusions were reached, or how the tests were carried out.

Further, the prosecution has sometimes withheld witness statements and other evidence that could have cast doubt on the accused's guilt. For example, West Midlands police did not release some witness statements during the trial of the Bridgewater Four that cast doubt on the prosecution's case that the four men were guilty of killing the schoolboy.

However, perhaps the main barrier thwarting the credibility and reliability of police evidence is the calibre of the force itself. Despite its gargantuan responsibility of enforcing law and order, the police still do not have any formal educational requirements for people wishing to join the force. Instead, applicants must take two written tests to ensure they have a reasonable standard of English, as well as a numeracy test.

There is no automatic ban for those applicants who might have criminal records for common assault, drunkenness and disorderly conduct, or some drugs offences.

Given that police evidence constitutes such a large part of a prosecution case, it is worrying that people with absolutely no academic qualifications have the ability to help send people away for life. Surely, police recruitment – as well as disciplinary – procedures need a rethink.