



Case study – Raymond Robinson

Overview

- Work through actual case together;
- Insight into case review at CCRC;
- Interactive;
- Lessons learnt;
- Opportunities for good representation to make a difference;

Application...

- I need your help;
- I have been convicted of rape;
- I was convicted because of my record;
- The police didn't investigate properly;
- My lawyers didn't do what I told them;
- The complainant lied in evidence;
- There was no time to prove she was lying;
- The Judge let the jury assume things about sleeping pills.

What are we looking for ?

- Some fresh evidence;
- Or new argument;
- Which gives rise to a real possibility that the Court of Appeal would quash the conviction.

Where to start ?

- Is anything we are told new ?
- What happened at trial?
- What was raised on appeal?

What happened?

Court of Appeal decision:

- Complainant MR – teacher – met Mr Robinson in October 2005 – unemployed at the time – on medication for depression - friends;
- March 2006 – homeless – stayed with Mr Robinson from 4th March, sleeping on the floor;
- Monday night – drinking lager and smoking cannabis;
- Tuesday morning – awoke naked, being raped by Mr Robinson;
- Found cigarette burns and fresh injuries to her body;
- Told Marina Erhart – persuaded to make a compliant;
- Denied in interview – consensual relationship – false allegation;

What happened:

- Cross examination – denied pre-existing sexual relationship;
- Denied making false allegation to obtain accommodation;
- Denied conspiracy with Marina Erhart;
- Admitted cautions for cannabis possession and theft;
- Pressed on details of her account:
 - She had first awoken at 6am on Tuesday;
 - Showered, took medication and fell into deep sleep;
 - Must have suffered injuries and rape during this deep sleep;
 - Had not said this before - as time had passed she had remembered more details.
- Defence relied heavily on this changing account.

Other evidence:

- Examined by Dr Moss – evidence said to be neutral – most bruising was too recent, did not support burns – relied on by both;
- Marina Erhart – recent complaint & evidence of distress – denied conspiracy, denied being alcoholic;
- Mr Robinson did not give evidence;
- Relied on interview – all consensual, false allegation;
- Living at a hostel for sex offenders at the time of the alleged offence.
- Previous convictions discussed during interview;
- Successful application to adduce at trial;
- Convicted of rape in mid 1980's and mid 1990's.

Court of Appeal:

- Ground of appeal - Unfair to admit previous convictions;
- Weak prosecution case – credibility and inconsistencies in account;

“Fairness is two-sided, and the attack on the complainant and recent complaint witness justified the Judge’s ruling to permit the admission of the applicant's previous convictions.”

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The police didn't investigate properly

- They should have talked to the housing officer - she told the complainant she needed a crime number to get her housing application reviewed;
- They should have traced the witness who saw the complainant leaving my home – I gave them a car registration number.

Things went wrong at trial:

- The complainant was overheard telling Ms Erhart that she had 'got involved' to sort out her accommodation – the witness worked for my barrister but was not called;
- The complainant changed her story at trial – took sleeping tablet in the morning – knocked her out – there was no time to get an expert report;
- The jury asked a question about sleeping pills the night before, they were told there was no evidence but they could assume she had taken them the night before;
- My lawyers did not call the witnesses I told them about;
- If I saw her statement, I could tell you more;

New evidence ?

- Housing / accommodation – council, conversation outside Court;
- Witness to complainant leaving;
- Sleeping pills / medication – changing accounts, jury question;
- New witnesses;
- Need more information...

Summing-up:

- Housing:
 - Notice to quit previous home;
 - Homeless & sleeping in car;
 - Benefits stopped – did not know why;
 - Mid-trial: notice to quit followed housing needs inquiry – undisclosed tenant – benefits stopped – MR disputes;
 - MR and Ms Erhart cross-examined about conspiracy motivated by accommodation;
 - Complaint first made at civic centre;
- Potential for new evidence?
 - Council – housing file – crime number;
 - Benefits – unresolved;
 - Conversation outside Court;

Summing-up:

- Medication:
 - Cross-examination – woke, took medication, ‘knocked out’, injured and raped;
 - No toxicological evidence;
 - Mentioned for the first time during cross-examination;
 - Counsel putting defence case – violent assault – impossibility - normal morning, woke, showered, made breakfast;
 - Defence case – inconsistency;
- Jury question:
 - Medication on Monday night and Tuesday morning ?
 - Monday - not asked – no evidence – may well be assumed she took some (consistent with previous evening);
 - Tuesday – took antidepressants after shower;

Summing-up:

- Potential new evidence?
 - Toxicologist;
 - GP records;
- No defence witnesses called.

Other actions:

- Information from Mr Robinson:
 - Witness in car;
 - Conversation outside Court;
 - Defence witnesses;
- Detailed review of evidence re: medication;
 - Statements – CPS & Court files;
 - MR's initial account – Police files;
 - Transcripts of MR's evidence.

Medication - fresh evidence ?

- GP records – s17:
 - MR was on medications she suggested;
 - But at the lowest possible therapeutic dose;
 - Toxicologist – would these drugs have had this effect – no reliable evidence as to actual dosage or as to when medicine taken;

But:

- Many letters from other organisations / institutions, relevant to MR's character;
- Led to the issue of 8 further section 17 notices, requiring information from other public bodies.
- Wait...

Medication:

- Analysis of statements and transcripts demonstrates changing accounts:
 - 1st account to police – took medication Monday night with lager etc, awoke next morning during rape;
 - ABE interview – took some, but not all medication Monday night – slept through the night – woke during rape;
 - Dr Moss – last took medication on Monday morning (i.e. not Monday night) – slept through Monday night etc – evidence read;
 - In-chief – unclear – slept through until morning and awoke during rape;
 - In cross-examination – had a shower, took medication, “knocked out”, awoke during rape.
- Observations?
- Prosecution case stronger during cross-examination;

Medication:

- Jury question – medication on Monday night and Tuesday?
 - Counsel and Judge overlooked Dr Moss' evidence – MR said no medication since Monday morning;
 - Overlooked account in ABE interview;
 - Undermines MR's evidence;
 - Were the jury misled?
 - Does it matter?
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- Cross-examination – shower before consensual sex - no medication - deep sleep improbable;
 - Counsel – interviewed by CCRC – would have used this if spotted, surprised Judge didn't identify this;
 - Effect - jury left with impression medication taken Monday night and Tuesday morning – evidence that none was taken.

What next ?

- Identified a new argument – jury misled about medication;
- Medication explained the otherwise improbable allegation;
- Clearly important to the jury;
- Could this be grounds for a referral?
- Decision now or further work?
- Might be something else out there;
- Mr Robinson is in prison.

Housing:

- Complaint made at local government civic centre – they called police;
- Police files show MR persistently asking for a crime number – dismissed as irrelevant;
- Obtain housing file – s17:
 - Several applications for temporary and emergency housing, a number based on allegations of domestic violence against former partners;
 - Further s17 requests revealed no evidence consistent with those allegations, some clearly fictitious;
 - Some allegations said to result in injuries similar to those allegedly caused by Mr Robinson (cigarette burns etc);
 - Other claims concerned housing for her children – demonstrably not living with her at the time.

Housing:

- Interviews with housing officers – CRM and IA:
 - They remembered MR very well (4 years had passed);
 - MR had been told many times why she had been evicted, she knew it was because taking in lodgers was a breach of her lease;
 - Benefits stopped whilst she paid back the rent – avoid prosecution;
 - An application for emergency accommodation had been turned down on the day MR made the rape complaint – she would have been told the result by telephone that day;
 - Being a victim of rape would make emergency housing more likely.

Housing – summary:

- Fresh evidence suggesting MR was experienced in making emergency housing applications;
- Information to suggest that she would have known that a rape victim was likely to be housed;
- It is likely she would have been told, on the day of her complaint, that her latest application had been refused;
- New context for persistent request for crime number;
- Material suggesting MR lied in cross-examination - eviction and benefits;

Enough to refer?

- No direct evidence that this was actually a false complaint;
- None of the new information is inconsistent with a true complaint;
- Some strictly inadmissible;
- Complaint to Marina Erhart immediately after the alleged incident;
- What next?

Other matters:

- Police material:
 - Undermined the suggestion that MR had been sleeping in her car;
 - Suggested an alternative cause for some of her injuries.
- Police material Marina Erhart:
 - Was an alcoholic;
 - Had herself made false sexual complaints.
- In all 15 s17 notices issued, revealed MR to have told a great many self-serving lies to various officials.

Mr Robinson's issues:

- Witness who saw MR leaving – registration number:
- MR said he had given her an 'unwanted cuddle' when she left;
- Further evidence of this could not assist.
- Other witnesses:
- Staff at a garage who could say MR acting 'normally' – not sufficiently probative;
- KW who would say saw consensual sex between MR and Robinson;
- Tried to locate – unable;
- Unlikely to have assisted – mentioned in early proof, likely to say only that stayed in same room;

Mr Robinson's issues:

- Overheard conversation:
 - Overheard by work placement student with counsel;
 - Police officer with witnesses at time;
 - Counsel discussed with Judge during trial;
 - Enquiries by CPS and Police;
 - Report deployed during cross-examination;
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- DNA:
 - All likely exhibits were tested;
 - No relevant DNA discovered;
 - NFA – defence was consent;

Decision time:

Is there any fresh evidence or new argument which gives rise to a real possibility that the Court of Appeal might quash the conviction?

- Fresh evidence about motive;
- Fresh evidence about credibility;
- Fresh evidence about recent complaint witness;
- New argument relevant to plausibility;
- Case committee;
- Referred;
- Much of the new evidence disclosed to Court and CPS only.

Court of Appeal decision:

- Listed for directions – disclosure of confidential material;
- Prosecution indicate appeal not opposed;
- Question of safety for the Court;
- Three grounds:
 - » Failure to explore implications of Dr Moss' evidence re medication;
 - » Fresh evidence in respect of housing;
 - » Fresh evidence in respect of credibility – MR and Marina Erhart;

Court of Appeal decision:

- Housing file casts doubt on reliability and truthfulness of the complainant and significantly supports the defence case that she had falsely made up these allegations to support her housing application;
- Fresh evidence casting doubt on the evidence of Marina Erhart reinforces the conclusion that the verdict was unsafe – ‘guilty lies’ in interview;
- The prosecution accept that the cumulative effect of the material concerning the credibility of MR and the failure to focus on the conflicting evidence about the medication renders the conviction unsafe.

Result:

- Conviction quashed;
- Prosecution did not oppose the appeal;
- Mr Robinson released immediately.

Observations:

- Mr Robinson knew that a false allegation had been made;
- He knew why a false allegation had been made;
- He knew where the evidence of that false allegation would be found;
- Why wasn't the evidence discovered earlier?
 - By the police or CPS;
 - By his trial representatives;
 - On appeal;
 - Until 12 months into CCRC review;
- Because no-one really listened to Mr Robinson ?
- Because of his previous convictions?
- Would the Court have quashed on the medication point alone?

How representatives can help:

- Talk to the client – find out the alternative theory, find out what went wrong, identify where the fresh evidence might be – changed CCRC approach;
- Tell us the story, why should we investigate;
- Deal with the hopeless grounds – help CCRC to focus – Mr Robinson's issues;
- Don't necessarily wait until after the appeal – s15 order – housing;
- An early decision might not be the best decision;

Any Questions?