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(PLEASE NOTE: We cannot assist readers with their own cases)



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**Convicting the innocent does nothing either to reduce crime
or to protect victims. It simply creates more victims.**

The Only Thing Necessary for the Triumph of Evil is that Good Men Do Nothing

AHMED MOHAMMED (37) has had his 2004 convictions for two indecent assaults quashed by the Court of Appeal. Ahmed had arrived in Britain on 2nd July 2001, and his father had given evidence that he had not gone out of the house until 9th July. Ahmed, a Somalian, spoke no languages other than Somali and some Arabic.

The first assault occurred on 5th July 2001. The second assault occurred on the night of 8th August 2001. Ahmed's father had given evidence that there had been a family get-together that ran from 6 pm on 8th August to 6 am on 9th August, and that Ahmed had been there the entire time. The jury at a finding-of-fact hearing in 2002 were read two statements giving evidence of, amongst other things, Ahmed's lack of English and inability to communicate.

Ahmed was ruled unfit for trial due to his mental illness. Despite the alibi evidence and clear evidence that Ahmed did not closely resemble the victims' initial descriptions, the jury at the finding-of-fact found Ahmed guilty.

Sadly, it is often human nature for people to dismiss alibi evidence given by family members, using the internal justification of "Well, they would say that, wouldn't they?" It slips people's minds that if the alibi evidence were true, they would also say that. Ahmed was sentenced to a Hospital Order with Restrictions under section 41 of the Mental Health Act 1983. In 2004, when Ahmed's mental health allowed, this was followed by a full criminal trial at which he was also found guilty.

The two victims of the indecent assaults, together with some others who had been victims of similar assaults, had all described their attacker as being in his twenties, olive-skinned, and speaking English with a foreign accent. Ahmed was only nearly 18, black-skinned, and spoke no English at all.

The convictions were based solely upon identification evidence; that is, the appellant was picked out by two complainants on an identification parade held on 31st October 2001, even though he did not fit the descriptions that both had given shortly after the assaults.

This identification parade took place many weeks after the offences, and the two victims may well not have retained a clear memory by then of what their attacker had looked like. Both incidents occurred at night.

Of the other complainants, the three who attended the identification parade made no positive identifications, and Ahmed was therefore not prosecuted in respect of their allegations. SAFARI is of the view that, when faced with an identification parade, many people will assume that the offender is in the line-up (no matter what instructions are given to them about this), and if they cannot immediately identify someone in the line-up may just opt for the "closest match" to their attacker. We do not know the ethnicity of the rest of the line-up. All the victims had said that their attacker approached them on a bicycle. Ahmed and his father both confirmed that Ahmed didn't own a bicycle, and Police found no bicycle at his address.

After the attack on 5th July, the victim's brother noticed a mobile phone in the bushes where the attack happened, and pointed it out to the Police, who took it. Police discovered that the mobile phone was both fully-functioning and fully-charged, (and therefore clearly not deliberately thrown away) and that the language on the phone was Turkish. At the time of the investigation, testing confirmed that DNA on the phone did not match Ahmed's; Ahmed and his father confirmed that Ahmed did not own a mobile phone. The victim gave evidence that her attacker had a mobile phone and that something "hard and flat" had been held against her throat during the assault, and although she could not absolutely confirm that this was the mobile phone found there, she considered that it was possible. The only evidence that could be given about the mobile phone, either at the finding-of-fact or the criminal trial, was that it did not belong to Ahmed. Therefore, it was considered insignificant.

Ahmed first came to the attention of Police in the early hours of 24th August 2001, when his family reported him missing from home. On 5th September 2001, he was arrested for an indecent assault on another woman, who had been attacked shortly before midnight on 23rd August 2001.

Ahmed was *only* suspected of being responsible for that assault because Police thought that his appearance was "similar" to the description that the victim had given, although details of her description are not now available, and he was out by himself that night. So would a large number of other people of similar descriptions; in Tooting, where the assaults took place, less than half the population is white. SAFARI cannot understand why the Police picked out this one man to target. On 12th September 2001, Ahmed was arrested for five further indecent assaults committed in similar circumstances and within a similar location and at similar times of night between 5th July 2001 and 30th August 2001. As the offences were all so similar, the Police's view was that they were all committed by the same man. The problem in this case was that they had got the wrong man. The defence position all the way through was that this was a case of mistaken identity.

The Criminal Cases Review Commission (CCRC) obtained the file on the 5th July assault and a sample swabbed from the mobile phone. They arranged for further DNA testing of the sample. A profile was obtained using a more discriminating system. The reporting scientist said this sample "appeared to be a good match" for the partial profile obtained earlier, and also related to another man "S", whose DNA was obtained in 2003 when he was cautioned for an offence relating to committing an indecent (but consensual) act in a public place. Police records show that S had a mountain bike with him at the time of his arrest. There was also information that showed he had come to the attention of the Police in respect of other matters, although he was never questioned regarding the two offences that Ahmed was convicted of, or regarding the other indecent assaults. S was Turkish. A verbal description and a photograph taken not long after the 2001 assaults, showed S to be of white southern European "ethnic appearance"; he was two or three years older than Ahmed, matching the age estimates given by victims; the same height, same colour eyes and same colour hair, with an "other foreign" accent. By comparison, a photograph of Ahmed shows clearly that he is *not* of "white southern European ethnic appearance", but black.

Please note SAFARI are not solicitors and cannot give legal advice; that's the job of your solicitor.

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The Appeal judges said: "We do not consider that he could reasonably be described as having either 'dark olive skin' or a 'Mediterranean appearance' or as being 'Spanish/Italian/olive skinned' or 'olive skinned'. "It would have been impossible to match the DNA taken from the mobile phone to S in 2001, as S's DNA was not added to the database until 2003. The grounds for appeal were that the 'fresh' evidence relating to DNA comparisons and the background detail of the 'good match', S, had transformed the landscape. S's ethnic origin matches the language used on the mobile telephone and corroborates the DNA match. His physical characteristics match the initial descriptions given by all five of the complainants far better than do those of Ahmed. He is known to have had use of a mountain bike at the time of the incident on Tooting Common that led to his police caution in 2003. His use of English, albeit with a 'foreign' accent, was likely to be better than that of Ahmed. The Appeal judges said: "In 2002/2004 it is understandable why the jury could dismiss the presence and potential import of the mobile phone that had been found; the gender, age and ethnic origin of its owner were unknown. However, the DNA evidence matching it to S now provides that information and makes it a crucial part of the identification process. If the present information had been accessed by the Police in 2003, at a time when S's profile became available for comparison, we would be astonished if he had not been interviewed and relevant further inquiries made." They also said: "we have come to the certain conclusion that the details of the police caution which S received in 2003 would be admissible. [...] This evidence goes [...] to rebuttal of a coincidence. That is, the coincidence that another man matching the description of the assailant, who in 2003 was known to have ridden a bicycle late at night in the same area of the 2001 assaults and engaged in unlawful (in that it had the tendency to offend public morality), albeit consensual, sexual activity out of doors, just happened to drop his mobile phone, at the scene of, and proximate to the time of, the assault upon KF, who accepted that the mobile phone might have been used in the assault." R v AHMED MOHAMMED (Neutral Citation Number: [2021] EWCA Crim 201, Case No: 2020/02425/B4).

SAFARI is in touch with other support groups, and together we are looking to hold a "Falsely Accused Day" (FAD) on 9th September 2021. The idea is that all those interested in the cause of the falsely accused take part in their own events (anything from writing a letter to their MP to taking part in their own group's march on Downing Street). All events will be promoted by all the groups via a FAD website. Watch this space. Keep 9th September 2021 free!

THE CRIMINAL CASES REVIEW COMMISSION (CCRC), which was set up to look into miscarriages of justice, rarely, SAFARI feels, does the job effectively. They mostly fail to investigate anything more than paperwork presented to them – they don't look 'outside the bundle'. It's shocking that the task of actual investigation should have to be done by volunteers, such as the Innocence Project London (IPL). Funding for legal support and representation has been cut back to the extent that fewer than 20% of the population qualify for legal aid, which means that many individuals are being excluded from accessing justice for life-changing legal issues. The IPL was established in 2010 with the aim of undertaking thorough and objective investigations into alleged wrongful convictions of individuals who have maintained their innocence and exhausted the criminal appeals process. (This is what the CCRC are supposed – and funded – to do.) The pro bono (work undertaken without charge) clinic is based at the University of Greenwich, School of Law and Centre for Criminology. In January 2016, the IPL became a member of the Innocence Network, based in the United States of America; it is currently the only one in England that is a member of this Network. They are also a member of the European Innocence Network. The IPL sits at the end of the criminal justice process, where students work to understand the evidence that convicted the individual. Students from law and criminology work in small groups on a case, alongside a practising lawyer and academics. In nearly all cases an applicant will have already appealed their conviction or sentence, therefore the work of the project centres on submitting an application to the CCRC, having done all the investigation for them. The CCRC then can refer a conviction back to the Court of Appeal on the basis that there is a real possibility the Court will find the conviction unsafe, in the context that it would have changed the jury's decision had they been aware of it. The CCRC's requirements to do this are fresh evidence or a new legal argument, neither of which were adduced at trial or appeal. Students who work on the Project review all of the evidence and available case files in an attempt to satisfy these requirements. The cases they work on should have the prospect of fresh evidence or new legal argument to have the best possible chance for them to make an application to the CCRC.

If you have maintained your innocence, and have had leave to appeal denied or a full appeal dismissed, you can apply to the IPL. Application forms and guidance can be obtained from <https://www.iplondon.org> or you can write to:

Dr Louise Hewitt, Innocence Project London, Queen Mary Building 219, University of Greenwich, Park Row, London, SE10 9LS.

JOHN PORCH (34) has had his convictions for blackmail and assault in 2016 overturned on appeal after fresh mobile phone evidence was uncovered. The Court heard how, during the investigation, a police officer considered the phones to be "all very old and appeared broken, or had SIM cards or batteries missing" and decided they would contain no "relevant material".

The officer appeared to have sustained this view even though Crown Prosecution Service (CPS) staff said the phones should be "interrogated". The Judges concluded that evidence contained in mobile phone messages would have "severely undermined" the credibility of the accuser. In the written ruling, Lady Justice Andrews said "The assumption should not have been made that the seized phones contained nothing of relevance. The officer in the case should not have taken that decision without discussing the matter with the CPS, especially after she knew that the CPS had advised that the seized phones should be interrogated."

She added: "It is hoped that lessons will be learnt." The Appeal Judges considered the mobile phone evidence to be so undermining that they said: "Indeed, faced with those messages it is questionable whether, on reflection, the CPS would have decided to continue with the prosecution." The Prosecution is not seeking a retrial. R v John Porch (Neutral Citation Number: [2020] EWCA Crim 1633, Case No: 201901854 C2.)

SAFARI understands that in R v Fellows, 13 July 1985 (unreported) - Chief Justice, Mr Justice Skinner & Mr Justice McPherson, it was stated: "It is not the task of the police to decide which documents or statements should be made available to the defence. In future the Court of Appeal will not even look at the quality of the evidence withheld from the defence, but alone the withholding of evidence from the defence will give grounds for appeal." Presumably because it is 'unreported', SAFARI has not been able to locate this appeal so that this ruling can be cited. There are only a few references to it on the internet. While the disclosure of evidence (or failure to disclose it) is such an issue, SAFARI feels that the Fellows ruling should be reinstated.

FREE VITAMIN D SUPPLEMENTS should now be available to all prisoners to make up for the loss of sunlight they are suffering in the coronavirus lockdown. So if you are not receiving yours, apply for them today; stay healthy.

THE NEXT QUARTERLY SAFARI NEWSLETTER is due online on 1st Jun 2021. Postal copies are expected to arrive by 15th Jun 2021. The deadline for submissions for consideration is 6th May 2021.