

Murder Convictions without Evidence

Text of a speech given at a meeting on Joint Enterprise at the House of Commons on 23 March 2010
by Dr Andrew Green of INNOCENT

I live in Sheffield near a street called Spital Hill, where in December 2002 Gerald Smith was murdered in a drive by shooting outside a nightclub called Donkeymans. A Car stopped across the road from the club, a shotgun was poked out of its window, and both barrels were discharged at Smith. Nine men, all from Nottingham, eight of them black, were charged with murder, but the police did not know who had pulled the trigger. At their trial, all nine pleaded not guilty and denied having any involvement in the offence, but all were convicted of murder. After the trial, one of those convicted, Leon Bryan, admitted that he was the gunman, and said that five of the others convicted with him were not present at the scene. The appeal court considered his evidence, but the judges didn't believe him, and the convictions were upheld.

There is very little evidence against any of these five people that they were involved, and I will mention the evidence against two of them.

Craig Brooks: about a month after the shooting, Craig Brooks was driving a car which also contained several friends. The car was stopped by the police, and Brooks was arrested on suspicion of having committed a driving offence. He was released on bail, but the police kept some things that had been seized from him. One of these objects was a mobile phone. Craig later said he had picked it up from the car, that it was not his phone and that he did not know who it belonged to. But when arrested he did not argue about whether or not it was his phone.

According to cell site analysis, which can indicate where a particular mobile phone has been used, this phone had been used at or near the scene of the crime, at the time when the crime was committed.

That was the evidence against Craig Brooks.

The car used by the gunman, a Renault Megane, was identified from CCTV footage from the scene of the crime, and was later found burnt out in the Derbyshire countryside. At that time, it was the only lead the police had to go on. The owner was a woman living in Nottingham. The police arrested her on suspicion of involvement in the murder. She told the police that on the day the crime was committed, she had lent the car to Leon Bryan (the man who actually committed the murder) and another man, Ezra Taylor. The police de-arrested her and took a witness statement from her.

At the trial, this witness did not turn up to court and the police said they could not find her. The

prosecution asked the judge to admit her statement in evidence. Written statements can be heard and seen by the jury if the judge decides that the witness who made them is afraid to come to court. Judge Richard Wakerley permitted this witness's statement to be put to the jury, and the evidence on which he based his finding that the witness was afraid, was what he called the 'demeanour' of Ezra Taylor in the dock. He said he was 'calling the shots' to his co-defendants, Wakerley declared.

Ezra Taylor's family and friends say that he is very articulate and outgoing, and much respected in his community, and so it was likely that the other defendants would consult with him in the dock. But neither Taylor nor anyone else had a chance to defend him against judge Wakerley's allegation. And so the car owner's statement, made by a witness under threat, who was not available for cross examination, and who only said that the defendant had borrowed her car on the day of the crime, was admitted as evidence: the *only* evidence against Ezra Taylor.

We are asking: how can anyone be convicted of any crime, let alone something as serious as murder, on such slight evidence? There are already a lot of similar cases we know about, such as that of Jordan Cunliffe (whose mother Janet will be speaking later), convicted of the murder of Gary Newlove, and a Birmingham case we're just hearing about in which Jamal Parchment, Michael Christie and Leonard Wilkins all appear to have been convicted of murder on frighteningly minimal evidence (their families are represented here). As it says on the website [Justice For Jordan Towers](#), set up to support a defendant in yet another case, 'the standard of proof is set frightfully low in joint enterprise law'.

So it was not London Against Injustice, or INNOCENT, or any other similar organisation which chose to expose this problem of people being wrongly convicted because of the way the joint enterprise is being applied. It's the scale of the problem that is forcing this issue forward – the sheer number of cases the distress and the strength of feeling from the families of people who have been convicted of murder when they have actually committed no crime at all. What we need to be doing – our aim as support organisations – is to have these convictions overturned, through successful appeals.

The law it is applied at present is an open invitation to the police to fit people up.

Two important points.

First, the joint enterprise law is common law, and it is developed by judges through decisions which set precedents, and so this law we are discussing has not been made by parliament: it is not the result of democratic decisions. This law is made by judges working with the police and prosecutors.

Second, this law is being developed now, over the last few years. Lawyers tell you it is an old law, but the old law is irrelevant. It is new developments in the use of the law which are causing all the problems we are here to discuss.

How does it happen? I checked out which judges were presiding over the cases we know of. I found that particular high court judges are sent to deal with these cases. They are not judges who regularly try cases in the area where the cases are tried. Judge John Mitting tried the Birmingham case I mentioned, but his usual subject is immigration law (he is Chairman of the Special Immigration Appeals Commission.) Judge Andrew Smith, who tried the Garry Newlove case, leading to the conviction of Jordan Cunliffe, normally specialises in cases to do with the financial services industry, and indeed it was because one such case urgently needed his attention that he rushed the Newlove case through (thus depriving the jury the evidence of the defence expert who would have explained that Jordan Cunliffe could not possibly have been involved in the murder of Garry Newlove because he, Jordan, is blind).

So who was the learned Judge Wakerley who tried the Sheffield case with the nine defendants including Craig Brooks who had a mobile phone with him a month later, and Ezra Taylor who the judge perceived as threatening? Well, he judged a Leeds joint enterprise case, Rahman and others¹, in which four defendants were found guilty of murder after they had been present when Tyrone Clark had been murdered, amongst larger group of people. The four defendants' appeals were turned down by the appeal court, so they took their case to the House of Lords. Their lawyers argued that Wakerley had misdirected the trial jury about how they should decide on whether the defendants were responsible for the murder. Their lordships also turned down the appeal, and at the same time settled on a series of questions which should be decided by any jury trying such a case. In fact their lordships though so highly of Judge Wakerley's questions that they said they would adopt the questions he had asked the trial jury to decide, and rejected the suggestions of the senior judges sitting in the appeal court. These questions are very important, because they determine what sort of evidence the jury needs to

hear in order to answer the questions. Before I come on to the questions, the point I want to make here is that none of this law making is the result of any democratic process. A cabal of unelected judges is making *this* law. (Unfortunately Richard Wakerley has since died; a discussion with him might have been illuminating.)

These are the questions which juries in these sorts of cases must now answer when they retire to the jury room to consider their verdicts.

1. Are you sure that the death was a murder?
[This is straightforward.]
2. Are you sure that each Defendant took some part in the attack?
[What does 'took some part' mean in practice? Judge Wakerley, whose example the lords were so eager to adopt, said in this case '... if you find that a particular defendant was on the scene and intended and did **by his presence alone encourage** the others to attack Tyrone Clarke, that would amount to participation in it' (emphasis added). That's it: by no more than being present when such a crime is committed, you are participating in it.]
3. Are you sure that each defendant realised that whoever killed the victim might use violence which could result in serious injury or death?
[So jury members must somehow know that the defendant whose case they are considering knew at the time what was in the mind of the killer.]
4. Are you sure that each defendant realised that the killer might produce a weapon...?
[What constitutes a weapon? It can be a gun, a knife, fists, a boot – in the Garry Newlove case, it was a trainer.]

The list sounds thorough, because juries must be sure they can answer yes to all the questions before they can convict. But in practice it's remarkably easy to answer yes to all the questions, because they can do so by drawing inferences from the kind of evidence I've mentioned. From the evidence that Craig Brooks had mobile phone a month after the crime, a jury inferred that he was present at scene, participated in the attack, knew Leon Bryan had a gun, and encouraged him to use it.

Joint enterprise law, as it is now used, is an enabling law.

The police love it: it's a gift to them from judges. It transforms what might have been hard-to-clear-up crimes into easy-to-clear-up crimes. It's cheap. It requires no hard work or thought.

When the police have a murder to clear up, usually one that's taken place in a public place and appearing to involve a group of people, they first have to find some piece of information which is

enough to justify bringing someone in for questioning. For example, they found who owned the car used in the Sheffield case.

Next they put pressure on that person to give them further evidence. It's easy for them to put pressure on, because they know they can get a murder conviction on even the sort of evidence that gives them grounds for just suspicion. They threaten to charge the person they've brought in for questioning.

What they hope to get is either an admission of guilt, or names of other possible suspects, and a witness willing to give evidence against the other people named. So the woman who owned the car used in the Sheffield drive by shooting, under threat of being charged with murder herself, named other people and signed a witness statement. She had something to offer the police.

One of those she named, Ezra Taylor, was not so lucky. He had nothing to admit to, and he had no one else he could name. The police did not believe him, so they charged him with the murder.

Similarly, Jordan Cunliffe could not offer to be a witness against anyone else, because he was blind and could not see what they were doing. So he was charged and duly convicted of murder himself.

This minimal evidence, which in other types of case would be no more than a basis for suspicion, a reason for the police to question someone, but no more, is in joint enterprise cases enough to secure a conviction, we are getting convictions based on association, not on hard evidence. When the prosecution can present a case, and a jury is allowed to reach a decision based on their assessment of what a defendant knew about what someone else was thinking, or other such vague and inconclusive trivia – I hesitate to call it evidence – cases are open to decisions based on prejudice. The majority of those who say they were wrongly convicted in joint enterprise are black.

So the problem we are discussing is not just a legal one, but equally a policing problem, because it encourages lazy policing, the taking of short cuts instead of full investigation of crimes.

I said at the beginning that the Sheffield case happened close to where I live, and so I've heard what people locally say the shooting was about. Their accounts, from various unattributable sources, are more consistent and coherent than that presented by the police and prosecution.

The *prosecution case* was that there had been a theft of a mobile phone from the gunman's cousin near where the shooting took place, earlier on the day of the shooting. A gang from Nottingham (which did not include the gunman's cousin) drove to

Sheffield later to exact their revenge. They took their revenge at random on an innocent person in the street.ⁱⁱ

The story from local people is very different: both perpetrator and victim were drug dealers and known to each other. The victim, Smith, believed that Leon Bryan owed him money for drugs supplied, but Bryan refused to pay. They met in a Sheffield nightclub a few days before the shooting, and Smith tore a gold chain from the neck of Bryan. It was a personal matter. Bryan knew where to find Smith because Smith worked as a doorman at Donkeymans, the club outside which he was shot.

The police must have some, at least, of this story. The rest was never hard to find out. But the police had no incentive to do this, because the joint enterprise law gives them easier ways in which to get convictions.

Now, to understand the nature of this problem, that it's both a legal and a policing problem, we must listen to its victims: wrongly convicted prisoners and their families and friends. The most important people here today are family members and supporters, and they are important not because they provide examples for lawyers and politicians to use, but because they are the main sources of evidence about the problem. What happens in their cases tells us what the problem is, the whole problem, how and why it occurs.

When we have understood the problem properly, we may want to consider calling for reform of the system that has created the problem. But before we call for legal reforms, we must be very much aware of the dangers of calling for reform.

This law has been deliberately developed by judges actively working with prosecutors and police with encouragement of government. They are just part of a powerful coalition which includes government ministers and is backed by the media. At present, we are virtually powerless.

If we seek change in the law in the form of a new law which does away with joint enterprise, we must remember how new laws are made. The government will seek the views of police and the Crown Prosecution Service. They are big, well resourced state institutions which know how to lobby government and get their way. The government will ask the Law Commission to review the law and make recommendations. You only have to look at part 2 of the 2007 Serious Crime Act which created an offence of encouragement to commit crime, which is a clear indicator of how reform of joint enterprise law might go.

Law reform is always likely to backfire. What we say will be used against us. There will be a new moral

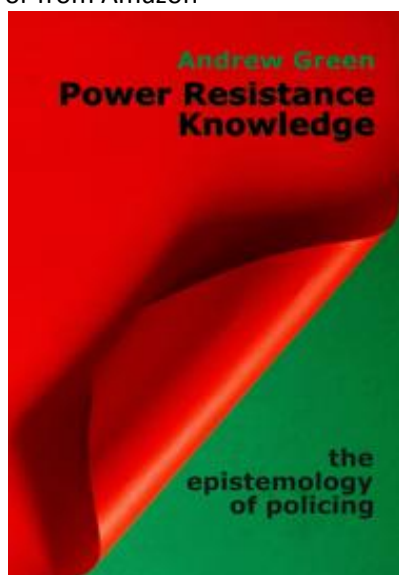
panic about mobs of drunken youths roaming the streets and terrorising honest citizens, and we will get a new law which embodies, preserves and reinforces – sets in concrete – everything we are complaining about. The challenge facing us is to prevent that happening.

Additional note: the last speaker was Professor Bob Sullivan, who argued that the abolition of joint enterprise was desirable, but very unlikely to happen. He recommended that we seek the creation of a new, lesser offence, so that people who were not directly involved in a crime but who had in some way enabled it to happen would not have to be convicted of the main crime itself (typically, not everyone present and thought to have been involved in encouraging an attack, would not be convicted of murder if the crime turned out to be murder, but of the new, lesser offence)ⁱⁱⁱ.

However those of us who are trying to help people we believe to have been wrongly convicted under the joint enterprise law are not concerned with people who may have been in any way involved with the crimes of which they are convicted. They were either not at the crime scene and not involved in any way, or if they were present, they were there as truly innocent bystanders. They are not responsible for any crime. They have done nothing wrong. We seek a change in legal and policing practice which results in a much higher standard of proof being required before a joint enterprise or similar case can be put to a jury.

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price £10.90, post and packing free
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ⁱ [2007] EWCA Crim 342; [2008] UKHL 45

ⁱⁱ From the Sun 31 July 2004:

Honour code gang get life

By Alastair Taylor

NINE men were jailed for life for murder yesterday because none would admit which one of them shot dead an innocent father of seven.

In a case that made legal history, all were convicted because they clung to a gangland code of silence over the killing of Gerald Smith, 42.

He was blasted in the face with a shotgun when the gang, all from Nottingham, launched an attack on a club to gain "respect" on the streets.

Four of the gang had been robbed of mobile phones and gold chains in Sheffield. So they went back to the city with pals looking for revenge.

Jamaican Mr Smith was shot in the doorway of the nightclub.

He had nothing to do with the robbery and was simply out for a late-night drink.

The nine, aged between 20 and 26, were given minimum terms of from 20 to 23 years.

Prosecutor Peter Kelson QC said after the hearing at Sheffield Crown Court: "I don't know of any case where nine men have been tried and found guilty of murder and it is unclear who committed the murder."

ⁱⁱⁱ In March 2010 the judgment in Mendez and Thompson [2010] EWCA Crim 516 was published. In this case convictions for murder were quashed, and convictions for violent disorder substituted, suggesting that there are already alternative charges available.