

**Submission to the
Criminal Cases Review Commission
in support of the application of**

Keith John Elliot

**that the Commission should refer his case to the
Court of Appeal**

prepared by Andrew Green PhD
March 2002

Introduction

Keith Elliot first contacted **INNOCENT** shortly after he was convicted of wounding with intent at Borchester Crown Court on 3 September 1997. He claimed he had been wrongly convicted and asked for our help with his own appeal and with that of one of his two co-defendants, Mark Fox. We were not able to start investigating his case until January 1998, and were not able to make any contribution to it until after his appeal was heard by the full court and refused, on 5 December 1999.

Keith Elliot completed our standard questionnaire and I visited him in prison.

We were supplied with the names of three witnesses to the single incident which includes the crime of which Keith Elliot is convicted, and I interviewed the first of them, Richard Bear, on 28 July 2000. He was not particularly helpful, and on his own would not provide sufficient fresh evidence to warrant a referral of this case to the Court of Appeal. On 11 November 1998 I interviewed the second and third of these witnesses, who could provide the fresh evidence that could give this case a realistic chance of success at a second appeal. According to them, Mark Fox could also give evidence in support of Christopher Elliot's case. There are also further opportunities for tracing significant fresh evidence.

I am therefore supplying to the Criminal Cases Review Commission the information that I have obtained and that will enable the Commission to investigate this case and confirm what I have found.

IN CONFIDENCE

The information in this submission includes the names, addresses and telephone numbers of witnesses who do not want the means of contacting them or what they have told me passed on to anyone else, including the police. They know that if they ever do give evidence in court, then their identities and what they are saying will become known to the police and the public. If in the investigation of this case or its preparation for an appeal it becomes necessary to inform the police of who these witnesses are or what they are prepared to say, then the witnesses should be consulted about this first.

Although Keith Elliot knows who these witnesses are and what they have told me, their addresses and telephone numbers should not be divulged to him. He is aware of this condition, and accepts it as the condition under which I am making this submission. Because of this condition, I have not shown this submission to him, and it should not be shown to him (or to anyone else involved in the case) without the addresses and telephone numbers of witnesses first being deleted.

The reason for these precautions is that the witnesses fear that they might be contacted by friends of Keith Elliot and Mark Fox, who might irritate or even harass them; that the kind of work they do (such as supervising club doors) requires a good relationship with the police, which they fear would be destroyed if the police knew they were involved in challenging a conviction; and that the witnesses against the three defendants in their trial, if the contact information somehow reached them, might threaten them. As far as I can tell, these are all reasonable fears from their point of view, and should be taken seriously.

The prosecution case

There is a list of documents available in this case included in the appendix, and the Commission will have access to these. It is therefore not necessary to rehearse the details of the prosecution case here. Briefly, the case concerned a brutal and unprovoked assault on a youth by several people who he did not know and was unable to identify. The assault took place outside a nightclub, and was witnessed by the club doormen.

The owner of the club, John Season and his son, Carl Season, who was acting as a doorman, claimed to have witnessed the assault, and said that they recognised the three assailants as Keith Elliot, Mark Fox and Kevin Prime, all of whom they knew. They gave these names to the police on the night of the assault. There was no other evidence against them.

The defence case

All three defendants presented a defence of alibi. Fox and Prime, who were arrested four days after the assault, were able to call alibi witnesses; Elliot, who was not arrested until more than two months later, could not remember where he was at the time of the assault, and so could not call any witnesses to support his defence.

If Elliot was not present when the crime occurred, he was ignorant of what happened or who did in fact witness it. Fox and Prime also claimed to be ignorant of what happened. The defence therefore relied on proving the unreliability of John and Carl Season as witnesses and the likelihood that they bore a grudge against the defendants. Evidence was adduced which showed they had lied and perjured themselves previously. Nevertheless the jury chose to believe them.

There is no criticism of the presentation of the defence case in general, but Elliot is not satisfied with the cross examination of Ian Vole, the victim. He gave descriptions of his assailants which did not fit Elliot's appearance, and did not pick him out at an identity parade. Counsel for Elliot did not pursue this issue in cross examination because he did not want to cause distress to the victim, but Elliot considers that a few more questions could have significantly added to his case.

The appeal

The appeal was based on fresh evidence provided by Kevin Prime, who testified that, despite his plea of not guilty and defence of alibi, he was in fact involved in the assault, and that Fox and Elliot were not. The appeal judges found his evidence to be 'wholly unbelievable and ... completely untrue' (9C), partly because his evidence for the appeal showed that he had presented a false defence at the trial.

Fresh evidence

1 Possible pattern of malicious prosecutions

Long in advance of the appeal, Keith Elliot asked us on several occasions to try to contact a number of individuals who, he said, had been falsely and maliciously accused of committing crimes by John and Carl Season. He hoped that we could further discredit the Seasons. Counsel for Elliot, Nigel York, was of the opinion that he had already done everything possible to discredit the Seasons, and I did not think I could add to what he had done.

However, what Elliot is alleging goes further than discrediting the Seasons. He is saying that they systematically intimidated individuals or groups of people by making allegations against them to the police, and that the police took them seriously and mounted prosecutions based on their evidence, despite its low success rate in securing convictions. He claims to be just one of a series of victims of the Seasons. Because the police valued the Seasons as informants, they gave preference to their evidence and ignored other sources of evidence which might be conflicting, in this case the evidence of Andrew George and Mike Stoat.

I have not been able to carry out the extensive research necessary to establish whether there was a pattern of prosecutions based on unsupported evidence from the Seasons, and supported by the local police. It is difficult to envisage how such research could produce admissible evidence in this case, since it would probably be necessary to prove a series of complaints and prosecutions that were malicious, or evidence given in a number of related cases that was demonstrably false. However the allegations made by Elliot are in some cases very specific, and could be confirmed. Should any opportunity arise to carry out this research, then Keith Elliot can supply a list of, and contacts for those who claim to be victims of the Seasons' malicious prosecutions.

2 Eyewitnesses

By contacting and interviewing witnesses to the crime, I hoped to establish whether Christopher Elliot's claim of non-involvement would be supported, to find out more about the background to the case, and to pass on information that would assist future investigators who might turn what these witnesses had to say into admissible evidence.

I was aware of the possibility that the credibility of these witnesses could be affected by my contacting them on behalf of Elliot. However it could not be said that I might have put pressure on them: they are all professional doormen, physically strong and used to working in a context where far greater pressures are put on people than I could ever exert. Further, I offered and agreed as a condition of meeting them I would not pass on their addresses to Elliot, Fox or Prime or to any of their associates, so that they would not suffer any harassment as a consequence of my visits.

2(i) Richard Bear

Following the assault, Richard Bear made a statement to the police in which he said he saw

the assault take place, and that he recognised all three of those convicted as the assailants. He did not turn up at court for the trial, and so did not testify.

I went to see Richard Bear on 28 July 2000. He told me he was inside the club when the assault started, and was called out of the club while it was taking place. He said he couldn't see who was involved, apart from Kevin Prime who was holding a big knife.

He said he put the names Keith Elliot and Mark Fox in his statement because the other bouncers were saying these two were involved.

He says the reason he didn't turn up in court to give evidence was because he did not receive notification of the hearing. This was because he had moved, and the police did not know his new address. He did not find out about the trial until it was over.

What he told me is unconvincing, motivated, I suspect, by a desire to distance himself from the whole affair. The other two doormen, Andrew George and Mike Stoa, firmly deny that they told him that Keith Elliot was involved in the crime. They say that he was with them throughout the incident, and witnessed all of it. It took place in a well-lit place, and Booth could see clearly who was involved. The people who told him to put Elliot's name in his witness statement were not the other doormen, but the Seasons. Booth admits that he still feels intimidated by them.

He says he would be unwilling to give evidence at a retrial, because he does not want to meet up with the Seasons. I told him that it could be arranged that his address could be kept secret, and he could be kept away from them within the court.

Richard Bear 's address is:
XXXXXX Lane
Borchester BO 99
telephone 01XX XXX XXXX

2(ii) Andrew George and Mike Stoa

These were the other two doormen standing outside the club at the time of the assault. I visited Andrew George on 11 November 2000 and spent four hours with him, during which time he showed me the street outside the club, where the assault happened, and described to me where it took place, where the doormen were standing, what lighting was in place, and how clearly they could see the incident. Afterwards we were joined by Mike Stoa.

Andrew George told me that he was standing at the door of the club with Mike Stoa and Carl Seasons. John Seasons was inside the club, in the office, which was behind the admissions counter. The assault took place just a few yards from the door, where the lighting was good, so Alan saw everything very clearly. He recognised all three attackers, who were people he knew well, and Elliot was definitely not one of them. He had actually been to see Elliot earlier in the day, as he was doing repairs to his house, and had been hammering late at night. George wanted to complain on behalf of Elliot's neighbour, who was a friend of his. Elliot said he had not realised he was disturbing anyone, and he would not do it again.

George says that the attackers were Kevin Prime, Prime's cousin, and Mark Fox. He is absolutely certain that Fox was involved, and if he ever were to make a statement or give evidence, he would say who he knew was involved. George helped the victim and took him into the club.

Mike Stoa said he saw exactly what George saw, and can confirm all he says about where the incident took place, and what they could see of it. However he did not know the assailants and he did not know Elliot, so he could not say that Elliot was not present. Both Hainging and Stoa say that Richard Bear was probably inside the club at the start of the assault, but that he came out and saw what was happening, so he saw what they saw.

Carl Seasons, they say, went into the club as soon as the attack started to tell his father what was happening. The two of them then watched it on the closed circuit television. There was no video recording made. Immediately afterwards John Seasons said to Andrew George that Keith Elliot involved, and George told him he was wrong. When the police came, they only spoke to John and Carl Seasons and Richard Bear, although of course the main witnesses were Andrew George and Mike Stoa. The police ignored them, and never obtained their version of events.

George says that John Seasons kept pressuring him to make a statement saying Elliot was involved in the attack, but he refused, and eventually they fell out over this - it was the reason why George stopped working for Seasons. Then the police put pressure on him to make a statement naming Elliot as one of the assailants, but he refused to do what they wanted, although they said he would be rewarded (they did not say how much he would receive, or where the money would come from). The CPS has reported that George and Stoa 'refused to make written statements to the police'. George says this is correct, but does

not take into account what he was being asked to say.

Andrew George
XX XXXXX Xxx
Borchester BO 87
XXXX XXX XXXX
XXXXXXXXXX mobile

2(iii) Mark Fox

If what Andrew George says is true, then Mark Fox could also testify that Keith Elliot was not involved in the assault. Fox would not be a more credible witness than Prime, but he could at least provide confirmation. Apparently, however, he continues to deny that he was involved.

Mark Fox is currently in H. M. P. Garth. Prison number PG 9438.

2(iv) Vince Badger

Vince Badger is Kevin Prime's cousin, who is said to have been involved in the assault.

Granting leave to appeal, Mr Justice Cockle observed:

Although Prime's confession may be an attempt to row the others out (and incidentally shows that the Seasons were at least partially accurate) there is material suggesting that another (Prime's cousin) was involved. The Seasons were undoubtedly unsatisfactory witnesses and I think further inquiries should be made. I suggest the prosecution are notified so that the police can pursue any necessary inquiries.

Legal aid was offered by the Court of Appeal to the defence 'to trace and interview Vince Badger'. Neither the police nor Elliot's solicitors seem to have tried to contact Vince Badger. Presumably he could be charged with, and convicted of this crime on the evidence of Andrew George, effectively replacing Keith Elliot as one of the assailants.

3 Undisclosed materials

Undisclosed materials may exist, such as notes and pocketbook entries relating to what happened after the assault and before the initial witness statements were made. Alternatively the police who arrived at the scene could be interviewed to find out why there are no records relating to obvious questions (timings, who was where, what they could see, why the obvious eyewitnesses were never interviewed, etc.).

Conclusion

I found Andrew George's account credible. His statement that the police never showed any interest in him or Stoa as witnesses is supported by the lack of any notes or statements in the case records concerning them or what they had to say. George has no personal interest in supporting Elliot's case – he does not even like Elliot. His account is supported by Stoa, who also has no interest in supporting Elliot. Neither of them have any liking for the Seasons, but they have no involvement with them. They are, in fact, independent witnesses.

Their only concern is that they fear the local police would take offence if they were to assist Elliot in his challenge to his conviction. The police authorise the issue of what they call a 'badge' – effectively a license to work as a doorman. If their 'badges' were withdrawn, they would be deprived of their work. They feel that they would be much more secure if Richard Bear were to testify along with them, because then it would not appear that George was supporting Elliot, and effectively defying the police on his own, but that the evidence in support of Elliot's case was coming from more than source.

If this conviction were overturned on appeal, the court might well order a retrial. That might present the defence with problems concerning the possible unwillingness of key witnesses to testify. Those problems would be for the defence to solve when they arose. The point at issue here is whether this a safe conviction or not. I think that Andrew George's evidence, on its own, would suffice to make this conviction unsafe, given the highly dubious nature of the evidence of the Seasons, which was the only prosecution evidence. This could be further supported by the evidence of Mike Stoa, Richard Bear, and Mark Fox .

My conclusion, based upon my own investigations, is that Keith Elliot was wrongly convicted of the assault on Ian Vole, and this conclusion is supported primarily by the account given me by Andrew George, who can provide genuine and credible fresh evidence.

Recommendations

I recommend that the Criminal Cases Review Commission interview Andrew George, Mike Stoa and Richard Bear , and possibly Mark Fox .

I ask that these witnesses be contacted and interviewed as soon as possible. It was

difficult for me to obtain and follow up contacts for them, and I fear that they may become untraceable if there is a long delay in investigating this case.¹

The Commission could also ask the police to trace and interview Vince Badger, as suggested by Mr Justice Collins.

The Commission could inspect police records for materials that have not been disclosed, particularly relating to the initial investigation of the crime.

I fully support Christopher Elliot's application that his case be referred to the Court of Appeal.

The author

Andrew Green has investigated cases of alleged wrongful conviction during the past nine years. All cases investigated are serious ones, involving prison sentences of six years or longer. They include many murder cases. He holds a Doctorate in Criminology, awarded for his thesis, *Fitting up: an analysis of the construction of wrongful convictions*. He is currently completing a book on the subject.

He brought together and helped to set up *Innocent*, the organisation of the friends and families of wrongly convicted prisoners from Manchester. He continues to work closely with *Innocent*.

He has published articles on miscarriage of justice cases and other matters concerned with wrongful conviction.

Appendix

Documents consulted

Copies or originals of all the following documents are held by the author, and can be supplied if necessary to the Criminal Cases Review Commission.

- 1] Set of witness statements, map, photographs etc. served on the defence
- 2] Unused materials disclosed to the defence
- 3] Lists of previous convictions of witnesses and of Keith Elliot
- 4] Christopher Elliot, statement to defence solicitors and comments on prosecution evidence
- 5] Nick Flower, statement to defence solicitors
- 6] Brief to counsel and some correspondence from solicitors
- 7] Indictment no. T840821
- 8] HH Judge Peabody, Ruling on submission of no case to answer
- 9] HH Judge Peabody, Summing up, 19 September 1997
- 10] Nigel York, Advice on and Grounds of Appeal, 8 October 1997
- 11] Letter from Criminal Appeal Office, quoting the decision of the single judge, Mr Justice Cockle, 29 February 1999
- 12] Judgement of the court of Appeal, 5 December 1999
- 13] Letters from Keith Elliot to Andrew Green, including lists of names (and some contact addresses and telephone numbers) of individuals said to be victims of failed prosecutions which depended on evidence given by John and Carl Season.

¹ I am aware of the problems faced by the Commission in dealing with its workload and the limitations imposed on it by under-funding, as well as its system of assigning priority to cases. My responsibility here is only to argue why *this* case should be investigated as soon as possible.