

IN THE MATTER OF AN APPLICATION TO THE:
CRIMINAL CASES REVIEW COMMISSION

CASE NO: 00817/2001

REGINA

-v-

LINDA CALVEY

CRIMINAL APPEAL ACT 1995

SUBMISSIONS FOR REVIEW OF CONVICTION AND SENTENCE

Avv.Giovanni DI STEFANO
STUDIO LEGALE INTERNAZIONALE
Large G. Tartini 3/4
00198 ROMA-ITALIA
TEL: 39 06 85203516
FAX: 39 06 80692652
pnazionale@tiscalinet.it
www.studiolegaleinternazionale.com

- 1 **The Application is founded upon the Provisional decision taken by the CCRC not to refer the case to the Court of Appeal Criminal Division.**
- 2 **A previous application on 4th March 1998 was refused by the CCRC.**
- 3 **The powers of the CCRC are set out under Sections 9 to 12 of the Criminal Appeal Act 1995 and that Section 13 limits a referral only under circumstances where the CCRC considers “*that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made.*”**
- 4 **By Section 13 also, “*this consideration must be reached because of argument, evidence or in the case of a sentence, argument on a point of law or information, not raised in the proceedings which led to the conviction or on any appeal or application for leave to appeal.*”**
- 5 **It is based upon the above that the Applicant seeks referral to the Court of Appeal, Criminal Division for an Appeal against conviction and sentence.**

APPEAL AGAINST CONVICTION

- 1 Preliminary submissions have already been made to the CCRC on 6th June 2002 in the written form and by a telephone conversation between those representing the Applicant and the CCRC on 17th May 2002.**
- 2 These representations are attached in the annex in their entirety.**
- 3 Whilst the Applicant had originally requested the CCRC to consider a referral on the basis of a “confession” made by the co-defendant it is submitted that whilst the CCRC is entitled to either accept/decline referral on this ground alone, coupled with the preliminary submissions made on 6th June 2002 they constitute fulfilment and satisfaction of Sections 9-13 of the Criminal Appeal Act 1995.**
- 4 The History of this matter in short is that on or about 12.30pm on Monday 19th November 1990, a man called Ronald Cook was shot and killed at 12, King George V Avenue, London E16. It was not disputed that the Applicant was present in the house when the murder occurred.**
- 5 The case for the Crown is outlined in the Case Summary which those making these submissions found in the files maintained at the Central Criminal Court after an order was obtained on 16th May 2002 from the Learned Recorder of London.**
- 6 It must be noted that whilst the case for the Crown at Trial was that the Applicant had fired the fatal shot (second shot to head) the Case Summary does not indicate that this was to be the case at trial. Against this the Trial Judge in fact directed the jury that the reality of the case against the Applicant was that it rested on an *alleged agreement* between the Applicant and the co-defendant that the co-defendant should kill the victim and that the jury should proceed on the basis that the Applicant had not fired either shot.**
- 7 It is submitted that whilst a potential inference could be made if the jury accepted the full thrust of the Prosecution there was no admissible evidence of any *alleged agreement* and that the Learned Trial Judge should not have directed the jury in the manner which, to all intent and purposes, was prejudicial to the defence case. It is submitted that once the Trial Judge directed the Jury that the case rested on an *alleged agreement* the Jury would have little to any alternative but to return findings of guilt.**
- 8 The Prosecution case at trial was also marred by the introduction of a Mr. Brian Thorogood who had been living together with the Applicant whilst the victim had been in prison. It was part of the prosecution case that the**

imminent release of the victim from prison would cause great difficulties for her relationship with Mr. Thorogood and as such the Applicant plotted with the co-defendant to dispose of the victim. It was not made clear by the Crown whether Mr. Thorogood was a party to such an alleged agreement between the Applicant and the co-defendant.

- 9 A thrust of these submissions are raised owing to the confused state of the proceedings and the documents discovered in the Court files owing to the order obtained before the Recorder of London.
- 10 The alleged offence occurred at 12.30pm Monday 19th November 1990. The Applicant was interviewed as a witness shortly thereafter. A further statement was taken on 20th November 1990.
- 11 Arrested the Applicant was committed for trial by the Thames Magistrates Court on 13th March 1991.
- 12 The Indictment was raised and signed by an Officer of the Crown Court on 19th April 1991.
- 13 It is submitted that whilst the Indictment Rules in general are directory and not mandatory such can only be the case where no prejudice is suffered by the Accused.
- 14 The CCRC are asked to consider a clear violation of the Indictment (Procedure) Rules 1971, rr.2, 4,5 but specifically Rule 5: “(1) Subject to the provisions of this rule, a bill of indictment shall be preferred- (a) where a defendant has been committed for trial, within a period of 28 days commencing with the date of committal.”
- 15 It is fully accepted that whilst (2) and (3) of the above Rules permit either a Judge of the crown Court upon Application or Officer of the Court upon Application to extend such by a further 28 days careful examination of the Court Files show clearly that no such applications were received, made, or granted and as such on the issue alone should be referred to the Court of Appeal as a ground of appeal. In fact no Judge of the Crown Court heard this matter prior to 24/4/91 (HH Judge Richard Lowry) on a bail application.
- 16 Coupled with such by examination of the Court files it was clear that the Applicant was in fact not tried upon the signed indictment preferred on 19th April 1991 well out of time but upon an indictment not signed. Whilst alone this would not necessarily prove fatal- recent cases (R-v-Palmer 2002) show that prejudice must be present-the said indictment upon which the Applicant was tried was indeed prejudicial as it added the name of *Brian Thorogood* as a named conspirator.
- 17 It is submitted the CCRC refer the matter on these grounds on the basis the trial being a nullity and that justice could not be seen to be done if the Court of Appeal were not availed of the opportunity at ruling on these two main issues. In R-v-Palmer 2002 the Learned Registrar of Criminal Appeal

himself referred the case to the full Court of Appeal as an emergency hearing since, had the issues of nullity been successfully appealed would have made all other submissions superfluous. When Applicants/Appellants raise the question of nullity it is evident the matters as a matter of law must be referred as quickly as possible to the Court of Appeal.

- 18 The police officer who investigated this matter was D.I.Sandlin and it was conceded he had over the years established a relationship with the co-defendant of the Applicant. At trial much was made of the purported cell confession of the co-defendant which, if admitted into evidence, would prove to be prejudicial to the case of the Applicant. Two witness statements were made by the officer although the defence always maintained probably more were in existence and specifically on the 19th November 1990 the Applicant had stated that when she went to the police station she underwent a residue test to evidence that no firearm had been in her possession or fired by her at the time of the alleged incident. The Applicant has always stated this proved negative and notwithstanding the case for the Crown being that she had fired the second shot the results of the residue test would rebut such.
- 19 The CCRC will note that the preliminary submissions dated 6th June 2002 show that from the Court Files D.I. Sandlin made 3 Statements not two that were predominant at Trial. However, upon full search of the said file only 2 were “available” and as such those making these submissions respectfully submit that the existence of another statement not having been made available to the defence is a serious non-disclosure sufficient to have prejudiced the defence at trial and as such should be evaluated by the Court of Appeal.
- 20 The Appeals of both the Applicant and the co-defendant were heard on Wednesday 21st July 1993. The grounds of appeal were drafted by Counsel and were assisted by the fact the Trial Judge had issued a certificate certifying a point of appeal with regard to the admission into evidence of the purported cell confession of the co-defendant. The four main grounds of appeal-of which one was certified by the trial judge - are found on page 17 (c-G) of the transcript included in these submissions.
- 21 Without instructions from the Applicant and in somewhat unprecedented fashion Counsel for the Applicant (Mr. Thwaites) for reasons best known to himself abandoned the perfected grounds of appeal including the point certified by the trial judge and advanced the ground that the conviction was simple unsafe and unsatisfactory. It is submitted that since Counsel acted without instructions from the Applicant and in an unprecedented fashion abandoned a point certified by the trial judge, the Applicant was indeed fated to have the appeal dismissed without any fault being apportioned to the then composition of the Court of Appeal.
- 22 It cannot possible be the case that Counsel acting without instructions advances an appeal on behalf of the Applicant. If Counsel found himself in difficulties arguing the perfected grounds of appeal upon which (a) leave had been given by the trial judge (b) leave given by the single judge and (c) a point on appeal referred to the Court by the Registrar then the appropriate

manner should have been to withdraw from the case and bring these matters to the attention of the Court.

- 23 The Court of Appeal had limited powers to hear argument outside the perfected grounds. Clearly showing some concern at page 18 (b) of the transcript Lord Justice Roch states: “ *We shall comply with Mr. Thwaite’s request.*”
- 24 It is submitted the CCRC should refer the case before the full court to indeed hear argument because the grounds of appeal upon which a certificate existed from the trial judge and leave granted was indeed not heard on behalf of the Applicant and that Counsel had taken this decision without referral to the Applicant. It was clearly highly prejudicial leaving aside unique that Counsel abandons perfected grounds one of which certified by the trial judge himself.
- 25 The said relevant grounds of appeal advanced by the co-defendant are attached but nowhere within the Court files were to be found the grounds of appeal of the Applicant.
- 26 There is a further procedural concern, which indeed merits the attention of the Court of Appeal. The trial certificate attached in the hand-written form clearly show that on the 11-10-1991 a jury was discharged without giving a verdict but another jury convicts the Applicant on a majority verdict of 11-1 on 12th November 1991 after 26 days.
- 27 There is however, no evidence that another jury was in fact sworn and that according to the Applicant “one juror was discharged and replaced by another.” If indeed this were the case and since the trial commenced on 8-10-1991 it would have occurred some three days after the opening of the case. There is no reference to this in the Court files -as would be appropriate- and whilst *The Juries Act 1974 s.16 (1)* allows the trial judge to replace one discharged juror with another fresh juror there would have to be a “necessity” and a high degree of need. There is no complaint made of the trial judge but it must be noted that a capricious exercise of the discretion to discharge a juror may well render the conviction unsafe if the trial has continued: *R-v- Hambery (1977) Q.B.924,Cr.App.R.233,CA*
- 28 The decision of a trial judge to discharge a jury is not subject to review or appeal: *R-v- Lewis, 2 Cr.App. R. 180, CCA* however replacing one juror with a fresh juror can indeed be a substantial issue on appeal. We do not know what, if any, investigations were made by the trial judge prior to such. We do not know the reasons for such. What is known by the Court document is clearly misleading since it refers to a complete jury being discharged and another empanelled whereas it was a single juror.
- 29 Jury points must be considered by the Court of Appeal and leave is required or a direction given by the Court of Appeal to investigate any matters concerning the jury. As such on this issue also the CCRC are requested to refer the matter in accordance with the said powers cited.

30 THE CCRC are herein requested to use the powers vested in them under Sections 9-13 of the Criminal Appeal Act 1995 to refer the matter of the conviction at the Central Criminal Court of Linda Calvey on 12th November 1991 to the Court of Appeal Criminal Division.

APPEAL AGAINST SENTENCE

31 The Learned Trial Judge was Mr. Justice Hidden.

32 Upon conviction the Learned Trial Judge passed the mandatory sentence of “Life Imprisonment” with a recommendation to the then Secretary of State for the Home Department that the Applicant should serve 7 years prior to consideration for release.

33 The then Secretary of State for the Home Department unilaterally increased the recommended term to one of 15 years imprisonment prior to consideration for release.

34 This was more than double the term recommended by the Trial Judge.

35 The CCRC are requested to refer the matter to the Court of Appeal, Criminal Division who, whilst would not normally be involved in the “setting of the tariff” – now to be known as the “recommended term” can indeed express such in accordance with the recent ECHR decision in *STAFFORD – v- THE UNITED KINGDOM app. 46295/99 dated 28th May 2002*.

36 The Lord Chief Justice has himself indeed shortly thereafter issued a new practise direction pursuant to the above ECHR Case which would without doubt now permit the Applicant’s “recommended term” to be reviewed forthwith.

37 The CCRC noting the then “tariff” having been set by the Trial Judge at 7 years prior to consideration for release with the Secretary of State augmenting such to 15, and the new practise to be adopted post 28th May 2002 it is requested the matter be referred to the Court of Appeal for review of the now “recommended term” noting that the Applicant has been in custody some 12 years.

38 The CCRC are herein requested to use the powers vested in them under Sections 9-13 of the Criminal Appeal Act 1995 to refer the case of Linda Calvey to the Court of Appeal, Criminal Division to review the decision made by the Secretary of State increasing by 8 years the recommended term set by the Trial Judge to one of 15 years imprisonment prior to consideration for release-such a sentence as manifestly disproportionate to the one set by the Trial Judge.

NOTE TO CCRC

- 39 The CCRC are asked to note that upon requesting the Central Criminal Court on the 9th May 2002 for a certificate of conviction for the Applicant the General Office were kind enough to reply forthwith and attached the said certificate attached.
- 40 It is unusual however, in so far that it refers to: “*Appeal against conviction dismissed 21/7/1993. Appeal against conviction dismissed 15/10/1993*”
- 41 We have not been able to discover any documents, transcripts, papers whatsoever relating to the date of 15/10/1993.
- 42 It would thus as such be important to refer the case to the Court of Appeal, Criminal Division for a direction/investigation which only a referral could permit, in order to evaluate what occurred on 15/10/1993 and whether it were pertinent to the Applicant.
- 43 We are also attaching for completeness the letter dated April 8th 2002 by the Applicant herself addressed to the CCRC in response to the preliminary decision of the CCRC.

CONCLUSIONS

- 44 We take the view this matter in its entirety should be referred to the Court of Appeal, Criminal Division and that the CCRC use the full powers vested in them to refer the matter and to request an urgent and expedited hearing.
- 45 We thus kindly formally request the case of Linda Calvey referred to the Court of Appeal, Criminal Division by virtue of the Criminal Appeal Act 1995.

INTERNAZIONALE

AVV. GIOVANNI DI STEFANO
STUDIO LEGALE

June, 2002