

Unsafe Evidence

Information courtesy of Aziz Rahman of Rahman Ravelli Solicitors Halifax

It's often said that it's difficult to describe an elephant but you know one when you see one – not necessarily so with unsafe evidence where the only person who may be able to say with certainty that the evidence is unsafe is the person on the wrong end of it. Take for instance the very many cases where the Crown have had to review dozens of past cases because an expert witness they have been relying for years turns out to be unreliable, e.g. the case of Jim Bates who lied about his qualifications as a computer expert and eventually found himself in the dock.

This is why disclosure is of primary importance – calling for fair disclosure in all criminal cases has become something of a mantra for me as a criminal defence lawyer. If a witness is not as genuine as he appears to be, if there is some flaw in the process of gathering the critical evidence, if an informant has some secret motive, how are we the defence ever to properly know and challenge the evidence without the maximum of disclosure? This is what led to our case of R v H & C [2004] 2 AC 134 going all the way to the House of Lords and becoming the seminal case on disclosure and Public Interest Immunity applications.

Let us take a familiar scenario; a man who is no choir-boy, perhaps he has a record for drugs and violence, suddenly finds himself on the wrong end of a witness statement that alleges that he confessed to a murder of a man he hated. He said it down the pub to his friend – and yes his friend has only now come forward with information only because he himself is in trouble and wants to help himself. There is the evidence of motive, there is the confession, there is no alibi and the white man, 6' tall seen running away that night could fit the bill. Only two people know the witness is lying – the suspect and the accuser. Of course the evidence of why the informant comes forward will, or should be disclosed. But information that the witness has given intelligence in the past and it has been found wanting is not disclosed – is this not the same as the expert witness who turns out to have no credibility? It is only this sort of deep forensic probing that may reveal that an apparently credible statement could well be 'unsafe'. Alternatively, it maybe that our man is guilty – let the jury hear everything about the informant and everything about the suspect – and perhaps nothing from the Judge in summing-up the facts of the case and leave it to the good sense of the jury, 12 men (and women) true and good.

We, all of us that earn our living at the coalface of the criminal justice system, work in an adversarial system. The system isn't perfect but I'd rather be tried here than anywhere else in the world. But the truth is that there must be co-operation and trust between 'us and them'. There have been too many Colin Staggs. The reality is that there no such thing as 'unsafe evidence', there are only liars, cheats and charlatans that remain unexposed by the zealous over enthusiasm of apparatchiks or the sheer incompetence of those who, whether defending or prosecuting, lack the wherewithal to do what it takes to ensure that the jury hears everything it should hear. Let us hope we all learn the lessons of the past.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis and applies to England and Wales. It is intended for use as guidance only. If you propose taking action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

insidetime the National Newspaper for Prisoners