Neutral Citation Number: [2015] EWCA Crim 1226

Case No: 201104569 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CENTRAL CRIMINAL COURT
His Honour Judge Denison QC
T19950621

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/07/2015

Before:

LADY JUSTICE RAFFERTY
MR JUSTICE WILLIAM DAVIS
and
HIS HONOUR JUDGE INMAN QC (SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

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Between:

REGINA	**Respondent**
- and -	
KEVIN LANE	**Applicant**

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- -

Mr Bennathan QC and Mr Mehigan for the **Applicant**
Mr Whittam QC and Miss Oakley for the **Respondent**

Hearing date: 10th June 2015

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Approved Judgment

Lady Justice Rafferty:

1. On the 21st March 1996 at the Central Criminal Court Kevin Lane was convicted after a retrial of the murder of Robert Magill and sentenced to life imprisonment the minimum term fixed at 18 years. The jury at his first trial before the Recorder of London could not agree, the second, before the Common Serjeant of London convicted him by a majority. He seeks an extension of time of more than 15 years in which to apply for leave to appeal against conviction. We grant the extension of time.

2. On Thursday 13th October 1994 by way of five shots to the head probably from a sawn-off shotgun Robert Magill was murdered. Two men were seen to have carried out the killing. The Crown's case was that the Applicant was the gunman and Roger Vincent the second. They drove off in a BMW registration URB 354X referred to at trial and in this judgment as the "murder vehicle". It had been sold by Charles Toms to a man giving the name James O'Riley who drove it away on the 5th October 1994.

3. An eye-witness known at trial as Mr Brown described the gunman as having shoulder length or below collar length hair and an outdoor weathered type complexion. The Crown sought to link the description of his complexion with the fact that the Applicant had until shortly before the shooting been living in Tenerife.

4. A few days after the shooting the murder vehicle was found in the Harrow area. Leonard "Pip" Bennett told police that he had agreed to dispose of it. Recovered from it was a grey plastic water pipe closed at one end, a cap for the other end loose in the boot. On the pipe and on the end were traces of nitro-glycerine consistent with there having been a firearm or ammunition in or near the pipe. In the pipe was a plastic bin liner and in the boot loose another liner. These were made by Onyx, only used in the Three Valley district, and only distributed from about 5th October. On the liner within the pipe were two of the Applicant's finger prints. The other bore Vincent's finger prints. On a matchbox in the car were finger marks the Applicant could have left, and on the window and on a matchbox fingermarks he accepted could have been left by his son.

5. He told the jury that on October 7th he borrowed the "murder vehicle" for a couple of days from Noel Purcell, the Applicant's partner's step-uncle. He had returned it to the car park of the Reindeer Public House which Purcell used as his office. The Applicant told the jury Purcell pre-trial had been completely out of touch.

6. Neighbours told police they had seen the "murder vehicle" outside the Applicant's home, one said it had been there longer than two days. Most claimed the car had been there for considerably longer than that, or on dates which the agreed evidence showed could not have been correct. Julie Green the licensee doubted that it could have been left overnight in her car park.

7. A minicab driver told the jury he had collected the Applicant from the pub car park after on the Applicant's own account he had dropped the car back. The Crown challenged him as an untruthful witness. WPC Atkinson, tendered by the Crown, told the jury she saw the "murder vehicle" on 11th October (two days before the shooting) being driven out of the car park and that she knew the Applicant who was not the driver.

8. The Applicant under a false name travelled to the UK from Tenerife on 28th to 29th September 1994, two weeks before the shooting. He told the jury this was because he feared the attention of the authorities in connection with a benefit claim. There was evidence that in fact no such investigation had been launched.

9. On the afternoon of the killing he bought a red BMW registration H347 XYT ("the other BMW") for £5,400 cash. The Crown's case was that the money was payment for his part in the killing. A police officer who featured large in both trials, Detective Sergeant Christopher Spackman, told the jury that by accident en route to work on 15th February 1995 he had seen the other BMW and followed it as it was driven to a garage. Later with a colleague he returned and recovered it. The Applicant relied on police photographs of that day which showed it parked behind a number of obviously damaged cars. He suggested it was extremely unlikely that it had only been driven to the garage that morning.

10. His evidence was that he had made good money in Tenerife and he called Owen Cleary in support. Cleary spoke of money sent between England and Tenerife through Barclays and Thomas Cook. DS Spackman went to Tenerife between the first trial and the re-trial. We shall return to the evidence about records of any financial transactions.

11. The Crown led evidence that the Applicant and his family had left their home in the period after the shooting and the arrest of Vincent. The Applicant explained those trips as uncontroversial family arrangements.

12. Amongst the Crown's exhibits was a book seized from the Applicant's mother's home in which was a hand written list of those working at his security firm. It included an entry for a doorman recorded as "O'Riley", the name given by the individual who had bought the "murder vehicle". The Applicant called a man named John Riley who claimed to be the man recorded in the doorman's book, and who denied having bought the "murder vehicle".

13. Grounds of Appeal composed and advanced by Mr Bennathan QC, who did not appear below are first that Christopher Spackman was de facto the officer in the case. He has subsequently been shown to have been as Mr Bennathan described it "spectacularly corrupt" and the submission advanced is that he can be shown to have misbehaved during the preparation of the Applicant's trial. Mr Bennathan relies both on specific examples of what he contends is the method by which Spackman built the case against the Applicant and upon the general concern he suggests this court should have about so corrupt an officer who was at the heart of the Crown's team.

14. Second, he contends that there is now a solid basis to believe that the two killers were Vincent, who had stood trial with the Applicant but been acquitted, and David Smith. Vincent and Smith were later convicted of the gangland contract killing of David King. With that in mind, so the submission goes, material now available ties Smith and Vincent together both before and during the events leading to the killing of Magill and the subsequent trial.

15. Finally, a third ground suggests that Spackman, Vincent and Smith knew one another and had off the record meetings before the Applicant's trial. Thereafter, it is said,

Spackman can be shown to have given evidence designed to help Vincent and he might have failed to produce evidence capable of harming him.

Spackman's dishonesty

16. Mr Bennathan relying on material made available post-trial suggests that Spackman is at the extreme end of any spectrum of dishonesty, his misconduct profoundly dishonest and involving outrageous risk-taking for years before and after the Applicant's trial.

17. Some seven years after the Applicant's trial Spackman was convicted of dishonesty. An useful record of this is within the Judgment in *R v Khan and Bashir* [2005] EWCA Crim 3100. The by then Inspector Spackman was sentenced for:

    i) Attempting to steal £160,000 from Hertfordshire Police custody a sum seized from John Mayer.

    ii) Intimidating Mayer, threatening him with report to the Inland Revenue should he seek to reclaim the sum.

    iii) Persuading the police accounts department to issue a cheque to Mayer.

    iv) Forging a document supplied to the police accounts department.

    v) Attempting to open an account in the name of Mayer in collaboration with a known criminal.

    vi) Attempting to secure a cheque by forging a witness statement from Mayer.

    vii) Associating with and possibly further corrupting two other criminals.

18. Khan and Bashir, successful on appeal, had been convicted of using cloned credit cards to buy expensive designer goods. Spackman was one of the officers in the case. The Crown had alleged they bought two Tag Heuer watches in March 1998. When the Criminal Cases Review Commission ("CCRC") sought access to the exhibited watches Hertfordshire Police told it they had been destroyed. Arrested in 2002 Spackman was wearing one and an associate had the second. The implication for which Mr Bennathan contends is that Spackman was creating false records of exhibits and then stealing property seized by at the latest 1998.

19. Against Bashir the Crown at trial relied upon Spackman's evidence that he had seen Bashir with another offender using stolen credit cards to buy goods and when by chance he came upon Bashir driving decided to follow him. Bashir's defence was alibi. Spackman's account of the fortuitous sighting and his decision to follow Mr Bennathan relies upon as echoing Spackman's evidence at the Applicant's trial that he had by chance come across the other BMW.

20. Of great interest to Mr Bennathan was the date at which Spackman's criminality could be fixed at its earliest. A disclosed (post-trial) intelligence report suggested it was as early as 1994. The Respondent Crown does not concede that his dishonesty can be established as in existence that early. We have approached this case on the basis that Spackman's dishonesty may have pre-dated the offences of which he was

convicted and have not troubled exhaustively to unpick the competing evidence on the point.

21. The Applicant relies upon what he suggests is Spackman's centrality to the Applicant's trials. We were taken to a variety of sources to support Mr Bennathan's argument. In no particular order, the Crown Prosecution Service ("CPS") treated him as the de facto officer in the case, he was at most management meetings and conferences with counsel, held off-the-record meetings with Vincent when the latter was in custody awaiting trial, visited Smith as the Applicant's trial loomed, visited the Applicant's then Solicitor before the retrial and claimed to know the figures which led to the first jury failing to agree, and was the conduit for service of exhibits, statements, and unused material, including the O'Riley doorman's book with a note from Spackman that it was not for service on the defence. Finally the Holmes record of the investigation shows many hundreds of actions reports and messages in which he played a part.

22. During the Applicant's trial notes of Vincent's comments were kept by both defence teams. The Applicant's then solicitor's record has the Applicant asserting that Spackman was lying when he said he had chanced upon the other BMW, albeit leading counsel in a tactical decision to avoid unnecessary conflict with the police did not pursue it.

23. Invited to identify to what proposition his criticisms go, Mr Bennathan identified the expressed knowledge of the jury numbers as a clear sign either of impropriety or of dishonesty. Any figures supplied in a note to the judge should at all times have remained confidential to the judge. Next, Spackman is said to have told the Applicant's then solicitors that he understood WPC Atkinson had moderated her initial view and could not be certain it was not the Applicant driving the "murder vehicle" at The Reindeer Public House.

24. Since WPC Atkinson gave evidence supportive of the Applicant, Mr Bennathan's argument is that albeit that was the eventual position, Spackman made a flagrant dishonest attempt to damage the Applicant's case.

25. Rosalie Sharpe the fingerprint expert called by the Crown said Spackman would often ask her to do unofficial checks, a request she rejected. He told her he knew the identity of the person whose finger mark was on the water pipe in the boot of the "murder vehicle but that the individual "had no previous". Since such a person would not feature on a police database the contention is that either Spackman lied to Miss Sharpe or told her the truth but shared his knowledge with no one. Whichever be the truth, he behaved improperly.

26. The Applicant's case was that he wore his hair short. Mr Brown the closest eye witness to the murder spoke of the gunman having shoulder length hair. PC Timmins said that on arrest in January 1995 the Applicant's hair was long. Two witnesses Skerritt and Rossiter disclosed by the Crown in the unused schedule, described the Applicant respectively as having short dark brown and short dark hair. Notes by the Applicant's solicitor at the first trial recount his having been "waylayed by Spackman and told (Skerritt and Rossiter) don't wish to be involved and that therefore their whereabouts cannot be divulged". Skerritt in a 2006 witness statement to those now representing the Applicant, said he never expressed reluctance to come to court. The

proposition for which Mr Bennathan argues is that every time an useful witness for the Applicant emerged, Spackman compromised the effect of his evidence.

The Applicant's finances

27. Between the first and second trial Spackman went to Tenerife after Owen Cleary, a friend of the Applicant, told the jury he had sent money to the Applicant there. A statement (no longer available) was taken from a man named Garside.

28. A note of a telephone conference pre second trial is that records of money sent from the UK via Barclays had been lost. The evidence, however, was in the summing up during the second trial summarised as that there were no records at the bank or at Thomas Cook of the relevant transactions. Mr Bennathan relies upon what he suggests is a change in emphasis, the type of subtle difference an investigating officer could impart to his evidence. He suggests a qualitative difference between an item lost compared to an item of whose existence there is no record. Invited to explain what this had to do with Spackman, Mr Bennathan said Spackman between trials was investigating the Applicant's finances. A Detective Sergeant behaving to the usual high standards of the police would be no more than the bagman, moving records from A to B. Spackman on the other hand was corrupt and determined, and we should draw an inference that he was part of deliberate distortion of the financial evidence to the disadvantage of the Applicant.

29. We do not follow how any nuancing of the position as to the records, even assuming it mattered, can be laid at the door of Spackman so as to support that contention. What evidence there was came from Garside, whose statement Spackman simply served.

The Description of the Gunman

30. Mr Brown told the jury his view of the gunman was good, unobstructed, on a clear day and from a few yards. Invited to describe the gunman he took the opportunity of looking at a note he had written immediately after the incident. He was handed a typed document, not seen in original or copy form by Mr Bennathan or by this court, but inferentially a version of the manuscript perhaps designed to ensure his real name was not known. A copy of the note includes "One skin head type about 25 years dark sturdy. One slimmer long hair with shotgun maybe 30 years". What record there is of his evidence is in a note by counsel in the first trial. The same procedure was probably adopted in the second trial.

31. His description to the jury included that the gunman had shoulder length hair and an outdoor weathered type of complexion. This was of interest to the Crown since the Applicant had recently come back from Tenerife and was probably tanned. His original manuscript note records Mr Brown's description of the non gunman as dark and is silent as to the complexion of the gunman. In evidence Mr Brown attached the weathered complexion to the gunman, a change adverse to the Applicant which Mr Bennathan suggests is explicable only by an alteration, by Spackman, to the typed copy of Mr Brown's description, an outrageous and risky falsification of the manuscript. He seeks to make that good by arguing that Mr Brown's evidence of one man with a weathered complexion must in his manuscript note be represented by "dark", we must deduce that the gunman was not the man with the weathered complexion.

32. In the retrial the Common Serjeant summing up suggested that descriptions from obviously shocked eye witnesses might not take the jury very far. Mr Bennathan points out that it was open to the jury to pay no heed to that observation and given Mr Brown's good view it may be the jury took careful note of his description and attached importance to it.

33. We agree. It may well be that it did. The difficulty attaching to the proposition advanced is the absence of evidence or identifiable material to support it. The submission invites speculation. Additionally, it depends upon inconsistency between manuscript note and oral evidence. Mr Brown's witness statement included the non gunman as dark haired. That is not inconsistent with "dark" in his manuscript.

Noel Purcell

34. Before the second trial those acting for the Applicant received a telephone message from Purcell which recorded that apparently Spackman went to the home of a female connected to Purcell asking what she knew. The female believed the police considered Purcell supplied the "murder vehicle".

35. This was put to Spackman who denied saying anything of the sort. The suggested importance is that any material linking Purcell with the "murder vehicle" would have helped the Applicant on the topic of contact with it. The Purcell claim precedes both the Applicant's and Spackman's trials. There is it is argued no obvious reason why Purcell should report this unless it were true and if true it founds the suggestion that Spackman had information helpful to the Applicant which he dishonestly when on oath denied.

36. Even assuming as we do that Spackman's corrupt and dishonest practices were in play before the Applicant's trial, this amounts to a woman's account to Purcell that Spackman held a particular belief. We are not persuaded that this submission advances the case for the Applicant.

Michael Cox

37. Mr Bennathan described as perhaps the most damaging evidence against the Applicant after the finger prints in and round the "murder vehicle" the suggestion of his sudden acquisition of large amounts of cash on the day of the shooting. He argues that the evidence as to it changed between the two trials, a proposition he accepts is based exclusively on the Applicant's recollection.

38. Cox sold the other BMW to the Applicant on the day of the murder. At the first trial Cox told the jury that some days before the shooting the Applicant had been in discussion with him about buying a car and said that the timing of the exchange of cash was on a day of Cox's choice, not the Applicant's. This either weakened or was capable of weakening an otherwise damning coincidence upon which the Crown relied. There is no complete transcript of Cox's evidence but there is of the Applicant's during the first trial. He aligned himself with the history as set out by Cox and was not challenged in cross-examination. A handwritten note of Cox's evidence compiled by those representing him includes "There was nothing unusual in Kevin (Lane) paying cash for the BMW…wouldn't disagree with that…Kevin on the look out for a car to buy… I believe it was for some day prior to 13.10.94"

39. By the retrial the defence had been told that Cox was missing. Spackman had made a statement setting out what he described as his fruitless attempts to find Cox. The Crown was permitted to read Cox's witness statement which lacked the qualification as to who chose the date of purchase.

40. Cox gave evidence before us *de bene esse* and told us that he had not disappeared between the trials. He had not moved house. He worked with his adult son, who was closer to Lane than was Cox, and each would have known the other's address. Cox would if asked have given evidence in the retrial. On the merits he could not at this stage many years later give any help on who chose the date of purchase.

41. He explained that he cannot really remember but it is possible that after the first trial someone said something about coming back but that he never heard anymore about it. His evidence was that his business address was in Ruislip and the business was still trading there at the time of trial.

42. The argument is that it is inevitable, given his known background, that Spackman distorted the true position, which was that Cox was available.

43. The submission is that the Court cannot be confident that this was not another brazen attempt by the dishonest Spackman to damage the Applicant's case and without more it should cast serious doubt upon the safety of the conviction. Though in an elegantly succinct summing up the Common Serjeant laid no great emphasis on the purchase of the other BMW, when he rejected a submission of no case to answer at the close of the case for the Crown he did so on the basis of palm prints and of purchase of that car.

44. Whilst it is true Cox was a witness for the Crown, there was nothing to stop the Applicant's defence team exploring the possibility of finding him. In any event, the high point for the Applicant is Spackman telling the Applicant's defence team that Cox was missing. There was no evidence before us of any investigation of Spakman's assertions as to where he got that information. We are not persuaded that it calls into question the safety of the conviction.

O'Riley and the doormen book

45. The Applicant was involved in the running of a club. At the retrial the doormen book was produced. It appeared to bear a name and a number for O'Riley, the same name as that of the man who bought the "murder vehicle" a few days before the shooting. Were the doorman entry accurate it was capable of linking the Applicant to the "murder vehicle". Mr Bennathan conceded that there may be many men named O'Riley but argued that their might come a time when a jury decided there were too many coincidences to accept the Applicant's claims that he was not guilty. The doorman's book had been supplied to junior counsel for the Crown by Spackman between the two trials with a handwritten note "Not for service on the Defence".

46. The Applicant called a Mr Riley who told the jury that his name was not O'Riley and that his were not the details recorded in the book and he had nothing to do with the "murder vehicle".

47. Mr Bennathan described the entry as a clumsy attempt by forgery to implicate the Applicant by setting up a connection between the buyer of the car and someone in the Applicant's employ or under his direction. It is impossible to know what evidence the jury accepted and what it rejected. For all those now representing the Applicant know it could have disregarded the evidence of Mr Riley. The submission is that this should be set against the contextual background of the improper and daring behaviour of Spackman. Looked upon in that way the possibility that he altered the name in the doorman's book (from Riley to O'Riley) is entirely plausible.

48. Once again the difficulty confronting Mr Bennathan is that this submission is founded in speculation. There is nothing more than an assertion that perhaps Spackman, reliably corrupt and dishonest, added a forgery to his list of anti-Applicant manoeuvres. There is nothing to suggest the entry was a forgery in the first place, let alone that Spackman was its author.

49. Drawing together his submissions on this aspect of the involvement of Spackman Mr Bennathan reminded us of *Khan and Bashir*:

> "The very serious nature of the subsequent criminal conduct of Spackman..is substantially more serious than that dealt with in previous authorities and displays an ability to conduct complicated deceptions within a police environment"

50. A circumstantial case against the Applicant he argues was built upon strata of evidence. Spackman had dealings with enough material to permit him to distort the truth so as to prejudice the Applicant. For example, were he lying about chancing upon the other BMW and locating the garage where it was stored he must have had a reason. The obvious one would be to conceal the real source of information which led him to it. Had that source been known it might have assisted the Applicant's case.

51. His comment to Rosalie Sharpe about knowing the identity of the depositor of a print on the "murder vehicle" is said to be highly significant in a case where at least one judge stressed the importance of the movements of the car. An additional owner or user, found by way of a name Spackman knew but kept to himself, might have fractured that link. This was a series of audacious acts of flagrant dishonesty carried out in the company of known criminals and should prompt this court to doubt the safety of the conviction.

Vincent and Smith

52. Vincent, a co-defendant with the Applicant in the first trial was found Not Guilty. Mr Bennathan readily concedes that the mere fact that notwithstanding the acquittal he was guilty is not capable of exculpating Lane in what was advanced by the Crown as joint enterprise. However he submits that there exists ample material to raise the suggestion that the obvious two candidates for the killing were Vincent and Smith. This was a contract killing. Often such arrangements require more than one at the scene and all involved must be known and trusted.

53. The Crown could establish he suggests only the most remote link between Vincent and the Applicant, Vincent having the Applicant's telephone number in a book and the dates of the two men's visit to Tenerife overlapped. The Crown relied on the use

of a water pipe when Vincent was a plumber. He had set up an alibi (that he had been at work in the Welsh office) disclosed so late as to preclude meaningful checks and queries. In the King murder trial Vincent advanced a complicated alibi once again held back until just before trial.

54. Smith set up an alibi claiming to have been at work as a driver. His interviews under caution however record officers telling him that his employers could not confirm it. By the first trial Smith told Vincent's defence team that he Smith had been at work with Vincent at the Welsh office and had told the police so. Consequently Mr Bennathan argues Smith had by definition advanced at least one false alibi.

55. Smith and Vincent were together more than once in circumstances upon which Mr Bennathan relies as setting up a doubt as to the Applicant's guilt. They had been arrested in connection with the attempted murder of Michael Greany who was shot in 1993, some 18 months before the murder of Magill. The names and dates of birth of Smith and Vincent feature in a police report on it. This shooting was thought connected to the earlier shooting of Jeffrey Hourigan, and thought in some circles to have provoked the Greany shooting. In March 1994 Smith and Vincent were connected with another shooting at he Letchford Arms Public House in Harrow when those involved made off in a vehicle belonging to the Smith family. Mr Bennathan suggests that since redaction prohibits any understanding were it to exist in the first place of why the names of Vincent and Smith appear in the police report, we should assume that the two were suspects. Spackman was part of the investigation.

56. Arrested for the murder of Magill Vincent, permitted one telephone call, elected to ring Smith's mother. This is suggested as an attempt to ensure that Smith, himself under arrest, knew that so too was Vincent.

57. After Magill's murder the police unsurprisingly received a large number of tipsoffs which proclaimed the identity of his killer. One named the Applicant, another exculpated him and some named a variety of others, but those named most often were Vincent and Smith.

58. Mr Bennathan conceded that such would not without more prompt a court to deem the conviction unsafe but he paints it as part of a compelling larger picture. He also conceded that, anonymous hearsay as it was, it would never be admissible at trial. That would not necessarily preclude its receipt by this Court in the interests of justice as going to the argument of whether a conviction were unsafe.

59. As to that last point he is correct. As to the balance of the argument, we are unpersuaded. Mentions of names during substantial investigations of serious crime, possible involvement in other violent crimes, known association, and the presence in at least one investigation of a corrupt dishonest officer also in the Applicant's trial do amount to nothing more than the commonplace. Geography makes the mere presence of Spackman in the investigatory team unexceptional. Harrow, Stanmore, and the locus of the Magill murder would trigger the involvement of the same group of officers trained for the purpose.

Pip Bennett

60. Bennett disposed of the "murder vehicle". DCs Kennedy and Rudd in November 1994 asked him about his acquisition of it. His first account seemed confused, claiming an acquaintance sold it to him. He then said he was given it by Dave who was white, 5 feet tall, medium build, blue eyed, with short black straight hair, clean shaven and in a similar age group to himself. Dave lived in Harrow and drove a large white lorry for a furniture mover.

61. All that description matched Smith. Interviewed as a suspect Bennett's description was put to him. DC Kennedy wrote:

> "When questioned further as to Dave's identity Bennett asked if he could speak to DC Rudd alone. I left the room…on my return DC Rudd told me that Bennett's revelation and then Bennett provided a witness statement"

62. Bennett's November 1994 witness statement records that the man, whom he did not know, who approached him to dispose of the car was light-skinned. Arrested and interviewed under caution Bennett stood by his witness statement. Interviewed again after arrest for assisting an offender and told that Vincent and Smith had been arrested for conspiracy to murder he agreed he knew both.

63. DC Rudd in one witness statement and two reports of late 1994 did not mention any private talk with Bennett. DC Kennedy's statement of February 1995, which did, was not disclosed at the Applicant's trial. On the same day Kennedy made his statement Rudd made another of his own, mentioning the off-the-record talk, also not disclosed. Smith's and Bennett's interviews under caution were not disclosed.

64. The suggestion therefore is that it is implausible that all Bennett did off-the-record was retreat from identifying someone he knew and it must be that sensitive information was concealed from those defending the Applicant. Vincent, Smith and Bennett were all connected. In an address book Bennett had the details of Smith and in a diary the phone number of Vincent. Vincent in a notebook had the name and address of Pip and the telephone number of Pip's sister. In a briefcase at Smith's home belonging to Vincent was a piece of paper upon which was written "Pip". In his witness statement Bennett said that at the Paradise public house he was approached to dispose of the car. Vincent was connected to that pub.

65. Mr Bennathan observed in passing that it is less than obvious to him why Bennett was not charged with assisting an offender. Had that been so his various accounts would have been in evidence and the Applicant and his team alerted to the identification of Smith as the recruiter of Bennett for disposal of the murder vehicle.

66. On 3rd October 2003 David King was shot 26 times in a gangland execution outside the gymnasium he owned. Vincent and Smith were convicted of his murder and their applications for leave to appeal against conviction rejected. During the trial each agreed that each was a full-time criminal. Vincent ran a debt collection business which the Judge described as little more than organised blackmail and Smith was a car thief and drug dealer. Smith accepted he was scientifically astute, Vincent

accepted that the two were like brothers and each advanced mutually supportive alibis the jury found to be false. They were the driver and the gunman.

67. Mr Bennathan argued that Smith is a very likely candidate for a role in the murder of Magill. He was a trusted life-long friend to Vincent. What need had Vincent of the Applicant, not even a close acquaintance?

68. Mr Bennathan submits that this Court has before now found it proper for a jury to know of material which pointed away from a defendant and toward other suspects: *Grieve* [2005] 1 Criminal Appeal Reports 7. The involvement and behaviour of Spackman on the one hand and the roles of Vincent and Smith on the other should he said be seen as connected. The three had corrupt relationships at the time of the Applicant's trial. Spackman was brought into the murder investigation because of his previous knowledge of Vincent and Smith. Vincent knew Spackman, describing him to his own lawyers as "very determined and bent". Spackman's later convictions indicated a willingness to associate with criminals and we have proceeded on the basis that his corruption pre-dated the Applicant's trials.

69. Vincent's custody records for the Magill murder shows it is said a surprisingly liberal regime of visits. An entry of December 1994 records a visit by Spackman to ascertain whether Vincent wanted an informal chat. Vincent confirmed that he was happy to have one without a solicitor informed or present. The next day an entry records that he was taken to an interview room at his request and spoke about sensitive matters to Spackman and Kennedy.

70. Vincent it would appear indicated an intention to litigate in the civil courts for false imprisonment after his acquittal. It may be that in that threatened suit he would have relied upon Spackman, quite improperly, visiting him in HMP Woodhill in January 1995. Vincent would have known that prisons keep record of visits and therefore it is more likely than not that he was telling the truth about the visit.

71. Spackman's account of this contact, undisclosed at trial, was that Vincent had approached him to "do a deal". This Mr Bennathan describes as odd. The concept of the officer in the case meeting a man he has just seen charged with murder in the absence of the latter's solicitor seems both irregular and fraught with danger. We note that no civil suit was launched.

72. Spackman visited Smith before the Applicant's trials, recording that Smith would not cooperate. He was certain Mr Bennathan suggests to have equipped himself with what Smith had to say about the murder. Set against Spackman's proven dishonesty his habit of visiting career criminals for poorly recorded conversations is significant.

73. Mr Bennathan relies on what he describes as two areas in which Spackman, cross-examined on behalf of Vincent, answered helpfully to an extent surprising unless the product of a corrupt relationship. In the first trial Vincent's alibi was his work at the Welsh office, not supported as Vincent would have wished by his employer. A later investigation in the King shooting on the other hand suggested that his employer's evidence was far more helpful to Vincent than the employer's witness statement might have revealed.

74. Vincent's leading counsel secured Spackman's agreement that Pip Bennett had said that a coloured man had gave him the "murder vehicle". Mr Bennathan conceded that in re-examination by Mr Michael Kalisher QC for the Crown Bennett agreed that he had given a number of accounts. Nevertheless so the submission goes he did not tell the jury that he Bennett had identified Vincent's good friend Smith and it is inconceivable Spackman was unaware that Bennett had done so.

75. In December 1994 Smith, arrested for Magill's murder and interviewed under caution also advanced an alibi that he was at work. Police told him his employers were less than comfortable in supporting it.

76. At no stage did Smith hint at an alibi for Vincent nor was he asked by police about Vincent's movements. Vincent's defence team had been seeking a copy of Smith's interview in which he claimed to have told Spackman that Vincent was at work with him at the time of the Magill murder. Counsel for Vincent suggested to Spackman that Smith in interview had advanced Vincent's alibi. Spackman knew of the interview and its date but claimed to be unaware of whether Smith had indeed said exactly that. Such a gap in the knowledge of the de facto officer in the case, not least since Spackman had earlier visited Smith in prison, is said to render his response implausible and it should add to a growing disquiet about the safety of the Applicant's conviction. For Smith to make such a claim to those defending his best friend Vincent would be dangerous unless he had been assured that Spackman would go along with what he was saying.

77. The sensible and perhaps exclusive explanation for these events must be it is submitted a corrupt relationship in which Spackman was assisting Vincent. Mr Bennathan conceded that the defence of the two was not a "cutthroat" but underlines that a career criminal and a profoundly dishonest police witness central to events behaving as they did must make this court regard with the greatest of suspicion the outcome of the trial.

Conclusion

78. This application could not have been in more skilled hands. In wide-ranging submissions which drew upon every possible argument Mr Bennathan sought in our view to build bricks without straw. As our judgement makes plain, with very few exceptions all the submissions were speculative and ranged along a spectrum from the readily comprehensible to the rather more challenging. Notably, with the possible exception of Mr Cox, no complaint in respect of Spackman has been shown to constitute his improper intervention or behaviour such as to call into question the proper conduct of the trial. Rather, outcomes or developments are described as possibly attributable to intervention by him.

79. The arguments are generalised criticism of Spackman's corrupt and dishonest behaviour with an invitation to us to translate that into his inevitably being the source of any development during the trial which was adverse to the Applicant and impermissibly so.

80. For all reasons given we are not persuaded that the safety of the conviction is in doubt and this application is rejected.