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## Court of Appeal hands down its judgment in the Daniel Morgan axe-murder case

***Jonathan Rees, Glenn Vian & Garry Vian -v- The Commissioner of Police for the Metropolis***

The Court of Appeal has today handed down a judgment allowing an appeal by Jonathan Rees, Glenn Vian and Garry Vian, who will now receive substantial damages from the Metropolitan Police to compensate for the scandalous behaviour of one its senior officers, amounting to malicious prosecution and misfeasance in a public office. Their claim for damages arose following their acquittal in 2012 of Daniel Morgan's murder at a trial which collapsed because of corrupt police behaviour (persuading a key witness to give a fabricated eye witness account against the defendants).

In its judgment the Court of Appeal considered that an earlier decision in February 2017 by Mr Justice Mitting, to deny damages to Messrs Rees, Vian and Vian, was a "negation of the rule of law". The Court also said that it "may well appear to be counter-intuitive to any ordinary member of the public" for Mr Justice Mitting (who now Chairs the Undercover Policing Inquiry) to have found that a Detective Chief Superintendent could be corrupt, but simultaneously find that he was not necessarily acting maliciously.

The costs of this case, to be met by the Metropolitan Police, are likely to be substantially in excess of £1million plus. The taxpayer has already funded the costs of extensive police investigations culminating in an abortive criminal trial which the Court of Appeal said would never have been brought had the full scale of the criminal behaviour of a Detective Chief Superintendent been known to prosecutors.

Damages will now be assessed and are likely to be substantial.

The Commissioner has sought permission to appeal to the Supreme Court.

Jonathan Rees and Glenn Vian were represented by Nicholas Bowen QC and David Lemer of Doughty Street Chambers, instructed by David Ware and Bob Williams of **Freedman Alexander LLP.**

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Garry Vian was represented by Stephen Simblett and Guile Nicholas Solicitors.

Nicholas Bowen QC said of the case that, "The Court of Appeal has today sent the clearest message to the Metropolitan Police that they cannot bend the rules whilst hoping to uphold the rule of law and the criminal justice system. Their misguided and expensive 25-year pursuit of the appellants has, sadly, not resulted in any answers for Daniel Morgan's family."

**Further Information:**

In March 1987 the body of Daniel Morgan was found in the car park of the Golden Lion Pub in Sydenham, South East London, with the murder weapon – an axe – still embedded in his face. The gruesome murder was the subject of several failed police investigations, many of them mired in allegations of police corruption; these led to a prolonged campaign by Mr Morgan's family to uncover the truth.

The police relentlessly pursued Jonathan Rees (Mr Morgan's former business partner), and brothers Glenn and Garry Vian, for the murder, with the investigation against them culminating in a prosecution commencing in 2008 but collapsing in ignominy in 2012, when it was found that the senior officer in the case, Detective Chief Superintendent Cook (a one-time presenter of BBC TV's "Crimewatch" programme) had persuaded the key "supergrass" witness (Gary Eaton, a professional criminal) to claim, entirely falsely, that he was the only eye witness to the murder. In a High Court trial for damages in 2017 Mr Justice Mitting found that DSC Cook's behaviour amounted to the criminal offence of perverting the course of justice. Despite coming to this extraordinary conclusion, he ruled that three of the four claimants should not be compensated (a decision which the Court of Appeal said today was counter-intuitive to any ordinary member of the public).

Mr Justice Mitting found that Eaton was not present at the scene of the murder at all. His account was a fabrication. Despite this, and his findings that Cook's contact with and prompting of Eaton rightly made Cook 'guilty' of perverting the course of justice, he nevertheless found that the claims in malicious prosecution and misfeasance failed. Among other reasons, he felt that, despite his appalling behaviour, Cook believed that the claimants were in fact guilty and he felt that, despite his wrongdoing, the claimants would have been prosecuted anyway.

Today's ruling by the Court of Appeal reverses these findings.

On one of the key questions in malicious prosecution cases, the Court of Appeal addressed the question of whether or not the prosecution was brought maliciously. In finding that Cook lacked the necessary malice due to Cook believing that the Claimants were in fact guilty of the murder, the decision of the High Court gave a green light to police officers manufacturing evidence and yet avoiding civil liability in damages for malicious prosecution. The Court of Appeal has rightly identified that such proposition cannot be allowed to stand as it is 'a negation of the rule of law' and would be "contrary to basic principle" and any other conclusion would, in the eyes of the general public, defy common sense.

The Court of Appeal also concluded that the criminal behaviour of Cook was such as to 'taint' the entire case. Had the Crown Prosecution Service known of his conduct when deciding whether or not to charge, the Court of Appeal found that it was 'inconceivable that … the CPS would have advised that murder charges be brought." On this basis, the Claimants also succeeded in their claims for misfeasance in public office. Quoting the judgement of Lady Justice King, "*With respect to the very experienced Judge at first instance, Mitting J, the outcome which he reached, namely that although acting corruptly Cook was not also acting maliciously, may well appear to be counter intuitive to any ordinary member of the public. To say that Cook, a prosecutor guilty of perverting the course of justice by creating false evidence against the appellants, was, on account of his belief in their guilt, not acting maliciously, is rather like saying that Robin Hood was not guilty of theft….any seeming endorsement of such dishonest behaviour, particularly within the police force, leads to a serious and unacceptable "negation of the rule of law*.

Lord Justice Coulson made the following points:

*"I am in no doubt that Cook acted maliciously….any other finding, on the facts of this case, would be a negation of the rule of law. It would be contrary to basic principle to find, as the judge did, that a senior policeman can pervert the course of justice to create false evidence against the appellants, but not be guilty of malice simply because he personally believed them to be guilty of Daniel Morgan's murder*."

It seems extraordinary that the police chose to defend the criminal behaviour of DCS Cook following the damning conclusions expressed at the end of the criminal proceedings, long before these claims were brought.

Had they been convicted, it is likely that the Claimants would have spent the rest of their lives in prison. The factual findings of Mr Justice Mitting in the High Court with regard to Cook's attempt to pervert the course of justice were inevitable. Thankfully, the apparent reluctance of the High Court to draw the correct legal conclusions from Cook's conduct has now been corrected.

However, the police budget, already under great strain, now faces paying increased damages and interest as well as greatly increased legal costs (including their own) may even top two million pounds.

As Lord Justice Coulson said in his judgement,

*"There is one final point that I would wish to make. The key question with which both Mitting J and this court have wrestled was whether or not, absent Eaton and the actions of Cook, there was the necessary RPC [reasonable and probable cause]. Considerable court and judicial resources have been expended on endeavouring to answer this question: the original trial took 3 weeks, and the appeal a full one and a half days, involving 6 counsel, including 2 QCs. And yet it is likely that the answer to that very question was contained in the contemporaneous documents relating to the original decision to charge, for which the CPS have claimed legal and professional privilege.*

*I accept that the CPS are entitled to claim privilege for such documents and we have been scrupulous to avoid drawing any adverse inference at all from their absence, even though this has allowed the appellants to submit that the CPS and/or police have a policy of disclosing the charge documents when it helps them, and not when it does not. That submission was based on the fact that, in the similar case of Mouncher v Chief Constable of South Wales [2016] EWHC 1367 (QB), privilege in this same class of documents was waived.*

*It seems to me that, in circumstances where the funding for both the Court Service and the CPS comes out of the same MoJ budget, and at a time when budgetary constraints within the MoJ are all-pervasive, it is an obvious waste of valuable resources for courts to spend time trying to answer complex hypothetical questions without sight of the documents that are likely to contain the answers. This issue needs to be considered at the highest level of the CPS: I am not satisfied that its consequences have been fully grasped by those responsible for defending this (and other similar) claims."*

Mr Rees and Messrs Vian's cases will now be returned to the High Court for their damages to be determined. They expect to receive substantial payments in damages and costs.

For questions please contact David Ware at Freedman Alexander LLP on 020 8393 0941 or david.ware@fallp.co.uk or Maurice MacSweeney at Doughty Street Chambers on 020 7404 1313 or m.macsweeney@doughtystreet.co.uk