

Miscarriages of justice assignment

It comes to no surprise that within the industry of the police, there have been several miscarriages of justice which have been the direct cause of poor policing and negligent handling of cases from within the judicial system. This has been prevalently exemplified through past cases such as the Birmingham six¹ which shines a light on the interrogation methods and treatment of the six men whilst in police custody as well as the murder of Rachel Nickell² which examines the tunnel vision like approach which led the police to miss vital clues of the real killer, Robert Napper, but instead allowed Colin Stagg to be convicted. Other areas of misconduct which have led to miscarriages of justice can be encompassed by archaic racial and cultural stigma's which have led to inadequate treatment of members of society whilst in police custody and more forceful arrests. A prevalent case which highlights this is the murder of Christopher Alder³. While there has been pressure put on the police to deliver justice and protect our societies, it cannot be ignored that the mishandling of evidence, racial stigma and stereotyping has been a leading cause to a lot of injustices within our legal system, therefore it is important to analyze to what extent have the police contributed to injustices and how a miscarriage of justice can be avoided in the future.

A case which highlights the importance to prevent miscarriages of justices within the police force is the case of Alder v Humberside Police and ORS⁴. This case was about the death of Christopher Alder, a former British army paratrooper of Nigerian descent, who was unlawfully killed by pustular asphyxiation. Alder was caught in an altercation in a night club which continued once he had left. This resulted in a knock to Alder causing him to hit his head against the pavement. Once admitted to hospital, his behavior had changed and he was acting strangely and was therefore later taken into Queens gardens police station for disturbing the peace, where he was exposed to the “*most*

¹ (1991) 93 Cr.App.R.287

² [1994] 9 WLUK 56

³ [2006] EWCA Civ 1741

⁴ [2006] EWCA Civ 1741

*serious neglect of duty.*⁵ Moreover, once brought to trial, many of the claims were “struck out” making it increasingly difficult for Ms Alder to receive any form of justice for her brother's mistreatment at the hands of police misconduct. These claims consisted of,

*“gas may of been used by the individual officers on Christopher Alder...Investigations into the monkey noises and racist remarks in the video had not been properly investigated.”*⁶,

alongside various other claims which were not addressed or properly investigated. This, as Ms Alder, the sister of the deceased summarized as unjust and *“if she and her brother had been white, she would not have been treated in the way she had described.”*⁷ The unfortunate conclusion of this case however is that the police officers responsible for the neglect of the Christopher Alder were acquitted of manslaughter and misconduct and as a result there was a miscarriage of justice as there was no justice for Mr Alder.

Another significant case which highlights the shortcomings of the police force regarding the attitudes and procedures of they had and conducted at the time is R.v McIlkenny⁸ , or better known as the Birmingham six. This was a case which consisted of six Irishmen who were falsely convicted and sentenced to life imprisonment for the Birmingham pub bombings. The significance of this case lies in the manner of interrogation where *“the appellant’s case was that their confessions, written or oral, were beaten out of them by a sustained campaign of police violence”*⁹. The six men were exposed to various interrogation techniques which echoed methods of torture such as sleep deprivation and mock executions to the point where one of the six *“fouled his trousers as a result of police brutality”*.¹⁰ Not only did this cause great anguish towards the police sector from

⁵ James Campbell, My Black Brother Died In Police Custody In Hull – The George Floyd Similarities Are Scary, [2020] < <https://www.hulldailymail.co.uk/news/hull-east-yorkshire-news/christopher-alder-george-floyd-death-4195831>> last accessed 7th January 2021

⁶ [2006] EWCA Civ 1741, para [8]

⁷ Ibid, para [3]

⁸ (1991) 93 Cr.App.R.287

⁹Ibid, *293

¹⁰ R.v McIlkenny (1991) 93 Cr.App.R.287, para [11]

the public, but it also brought into question the reasoning of the judicial system as *“the prosecution’s evidence, bar the coincidences, was in fact hardly credible, but nevertheless swallowed whole. the confessions of the four who capitulated were brief; non described.”*¹¹ This meant that the police force where so desperate to find culprits for the bombings that the confessions, no matter how forced or fragile where credible in the court of law bringing into question the integrity of the English criminal judicial system. Moreover no one had questioned the defendant’s injuries during the court proceedings and despite there being criminal cases being built against the police officers, they were quashed. Although there is clear evidence of police brutality, it is also important to consider the context of the time. The bombing had happened in 1974 during which *“ there was a rising tide of violence, assassinations, bombings and casual shootings, over the next few years.”*¹² and therefore, there was an increasing pressure on the police force to capture the people responsible, as *“Violent events now multiplied in Britan itself, with atrocious murders of civilians in Birmingham, Guildford.”*¹³. Moreover, due to the rising tide of Irish attacks on the English mainland, there was a preexisting stigma towards the Irish public, however this did not excuse some of the interrogation methods used by the police to extract confessions out of the six Irish men arrested. Indeed, these interrogations would go unquestioned at the first trial namely as the men no longer had any signs of injury that where noticeable *“except for the bruise under Walker ‘s eye “*¹⁴. this was of paramount importance as it meant there was no substantial evidence and neither was it raised for investigation into the types of treatments and interrogation methods these men were subjected to and therefore there was no justice dealt on behalf of these men, regardless of the false conviction in the first trial and first appeal.

¹¹ Gareth Peirce, The Birmingham six: Have we learned from our disgraceful past [2011] < <https://www.theguardian.com/theguardian/2011/mar/12/gareth-peirce-birmingham-six>> Accessed 4th of January 2021

¹² Kenneth O. Morgan, Britain in the Seventies – OUR unfinest Hour?, Revue Francais de Civilisation Brtinanique [online], XXII- Hors Serie, [2017] P[20] << <https://journals.openedition.org/rfcb/1662#quotation>>> last accessed 4th of January 2021

¹³ Ibid, para [20]

¹⁴ R.v McIlkenny (1991) 93 Cr.App.R.287, para [29]

The case Regina v Stagg¹⁵ highlights the importance of police evidence and the intricacies of police investigations and how paramount it is to consider every outcome rather than manipulate the direction of a case towards a suspect. The victim, Rachel Nickell was stabbed 47 times outside of Wimbledon Common with the main suspect, Colin Stagg, a solitary dog walker who regularly used the route the attack took place on. A covert investigation was formed by the name of Ezzell which served as an attempt to get Mr Stagg to implicate himself. This, the Honorable Mr Justice Ognall stated “*betrays, not only an excess of zeal, but a substantial attempt to incriminate a suspect by positive and deceptive conduct of the grossest kind.*”¹⁶ Mr Stagg was wrongly convicted despite not admitting to the crime. The Miscarriage of justice lay in the matter that the evidence admitted was circumstantial and archaic. Although there was no DNA evidence found which appeared to be Mr Stagg’s, the police felt they had enough evidence to convict him. Indeed, it is held in one article, where Alec Samuels reveals that “*Subsequently, improved techniques in 2004 enabled DNA to be identified from retained specimens, identifying Napper*”¹⁷ this indicates a significant flaw within the police as, although technology has advanced, it is nonetheless still advancing and therefore there will be stages where the polices’ technology will once again fall short. Resultingly, to say a miscarriage of justice is produced from lack of modern or improved technology would be to suggest that a miscarriage of justice would be inevitable in the future as technology will always carry on developing. However, this is not to say that measures can be taken to avoid this. As Alec Samuels again, points out in his article that, “*the police may even rely, over rely upon DNA and not trouble to investigate further for other evidence*”¹⁸, as prevalent from the case, therefore it would be of paramount importance to always

¹⁵ [1994] 9 WLUK 56

¹⁶ Ibid, para [65]

¹⁷ Alec Samuels, The Rachel Nickells Case: reflections on the significance, Med Sci Law [2012], para [14] < https://heinonline-org.ezproxy.derby.ac.uk/HOL/Page?public=true&handle=hein.journals/mdsclw52&div=44&start_page=181&collection=journals&set_as_cursor=0&men_tab=srchresults> last accessed 6th January 2021

¹⁸ Ibid, para [19]

consider other routes and clues in an investigation. Because of the focus being constantly on Colin Stagg, there was little peripheral vision on any other suspects such as Robert Napper, the true murderer who was not captured and convicted until much later whilst Colin Stagg had served time for a crime he did not commit.

To avoid any miscarriages of justice as a result of police misconduct, there are certain measures that could be initiated. The Home office has made suggestions regarding tackling the misconduct of some police officers, for example having a national register produced for officers dismissed from the police force for reasons such as misconduct, *“the register has been made available to vetting and anti-corruption officers in police forces.”*¹⁹, as well as this, the government have also *“amended the Criminal Justice and Courts Bill to introduce a new offence of police corruption “*²⁰. These reforms would bring about significant change towards the police force and how police officers handle various procedures when dealing with the public and would directly ensure that another miscarriage of justice such as the unanswered death of Christopher Alder would not happen again as this would not only mean that an offence would be committed due to misconduct, but also it would be impacting the career of any police officer who would make the mistake of behaving out of gross misconduct. Another way in which this can be achieved would be through some of the reforms suggested by the home office such as assigning Police and Crime Commissioners for local areas which,

*” the public will be able to vote directly for an individual to represent them on crime and policing, thereby giving them a greater say in measures to reduce crime and improve community safety in the area.”*²¹,

¹⁹ Home Office, Improving police integrity: reforming the police complaints and disciplinary systems, [2014] Cm 8976, para [1.5] <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385900/45363_Cm_8976_Press.pdf> last accessed 8th January 2021

²⁰ Ibid, para [1.9]

²¹ Home Office, Policing in the 21st century: Reconnecting police and the people, [2010], para [2.1], page 11 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118233/respone-policing-21st.pdf> last accessed 8th January 2021

this would suggest a desire for a deeper connection with the community the police aid and protect therefore this would in turn develop a lower stigma towards racial profiling or stereotyping as the police would know the community they protect, allowing for there to be reduced chances for injustices. Moreover, other suggested reforms consist of there being new police and crime panels which would be put in place to scrutinize Police and Crime Commissioners' decisions with district councils being granted formal involvement. Alongside this there will be" *A framework of checks and balances to scrutinize PCC's*"²² this indicates a greater scope of scrutiny on the police and therefore less discretion on police officers which in the past have used their discretion and stigma towards what a threat may be, for example in the case of the Birmingham six²³. Further reforms have been suggested by the home office in efforts to limiting misconduct from within the police, "*Public confidence, the basis of our model for policing with consent, threatens to be damaged by a continuous series of events and revelations relation to police misconduct*"²⁴. The article refers to a statutory Code of Ethics.²⁵ which has been published by the college of policing where" *Chief constables are responsible for embedding the code within their force*"²⁶. The code in question highlights two key obligations: The first one is" *I will act with fairness and impartiality; I will not discriminate unlawfully or unfairly*"²⁷, this would urge police officers to act objectively without any

²² Ibid, Page 2

²³ R.v McIlkenny (1991) 93 Cr.App.R.287

²⁴ Home office, *improving police integrity: reforming the police complaints and disciplinary systems*, Cm 8976 [2014] page 4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385900/45363_Cm_8976_Press.pdf> last accessed 8th January 2021

²⁵ College of Policing, *Code of Ethics: A code of practice for the principles and standards of professional behaviors for the policing profession of England and Wales*, [2014] para [3.1] < https://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf> accessed 6th January 2021

²⁶ Home office, *improving police integrity: reforming the police complaints and disciplinary systems*, Cm 8976 [2014] para 1.5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385900/45363_Cm_8976_Press.pdf> last accessed 8th January 2021

²⁷ College of Policing, *Code of Ethics: A code of practice for the principles and standards of professional behaviors for the policing profession of England and Wales*, [2014] page 3 < https://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf> accessed 6th January 2021

contextual stigmas of the time. Moreover, this would prevent any unnecessary arrests and encourage the police to look at more than one suspect regardless of statistics on types of members of society to commit crimes. The second point highlighted is” *I will only use force as part of my role and responsibilities, and only to the extent that is necessary, proportionate, and reasonable, in all the circumstances.*”²⁸, this will help reduce the effects of any police misconduct by police brutality and therefore keep the numbers of miscarriages of justice low. A further way which a miscarriage of justice can be prevented on behalf of the police, is addressed in the Police act 1996²⁹, specifically, in section 88 which states,

*“The chief officer of police for a police area shall be liable in respect of any unlawful conduct of constables under his direction and control in the performance or purported performance of their functions in like manner as a master is liable in respect of torts committed by his servants in the course of their employment, and accordingly shall, in the case of tort, be treated for all purposes as a joint tortfeasor”*³⁰

This shows an increased effort to add repercussions on the misconduct from police and therefore tackling more issues such as excessive force and impaired judgement based off racial and cultural stigmas. Moreover, as there is little to no force actually needed to solve or prevent crimes within societies it would be vastly irresponsible to not hold those police officers who pervert this logic in a gross way. Egon Bittner offers a similar insight, stating,

*“as long as there are fools who can insist that their comfort and pleasure take precedence over the needs of firemen for space for fighting a fire, and who will not move to make room, so long will there be a need for policemen.”*³¹

²⁸ College of Policing, Code of Ethics: A code of practice for the principles and standards of professional behaviors for the policing profession of England and Wales, [2014] page 8 < https://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf> accessed 6th January 2021

²⁹ Police Act [1996]

³⁰ Police Act 1996, s88(1)

³¹ Egon Bittner, Aspects of Police Work (North Eastern University Press 1990)

Furthermore, this echoes some of the core values within the Code of Ethics for the police, indicating that whilst there is a need for police officers to maintain the law, the continual allowance of each police officers' discretion towards their conduct regarding force should be limited as, to allow so would be feeding the production of injustices due to cultural and racial stigmas which exist within our society to this very day. Finally, reforms have been proposed to allow fast track programs for younger members from all backgrounds of society to join the police in hopes to increase the level of diversity and tolerance within the police and to create a new sense of safety within our communities. This would in return develop better cooperation and lower crime rate. This is evident by what is proposed by the home office, which states that they have introduced a fast-track scheme as well as *"a scheme to recruit individuals with proven track records outside policing directly at rank of superintendent"*³², this indicates the police sector's intentions to put younger and more ethnically diverse members of society in higher positions of power to counter archaic racial and cultural stigmas which have led the police in the past to act in gross misconduct. In support of this, Bittner argues that the police, *"where created as a mechanism for coping with the so-called dangerous classes...but the dangerous classes are simply people deprived of the privileges and societal benefits enjoyed mostly by rich white men"*³³,

this implies that a clear root of the cultural and racial stigma's stems back to early attitudes within our societies where numerous miscarriages of justices came to light.

Consequently, due to cases such as those mentioned in this essay, it is apparent that many miscarriages of justice have been the direct product of police misconduct. It has been mentioned the various ways in which the police have fallen short in the departments of equality and ethical procedures, namely interrogations such as the mock

³² Home office, *improving police integrity: reforming the police complaints and disciplinary systems*, Cm 8976 [2014] para [1.8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385900/453_63_Cm_8976_Press.pdf> last accessed 8th January 2021

³³ Egon Bittner, *Aspects of Police Work* (North Eastern University Press 1990)

executions and beatings delivered to the Birmingham six³⁴ whilst in police holding. Other shortcomings stemming from the police departments consist of the handling of suspects and those in police custody as well as the blind sidedness and reluctance to broaden the frame of cases. Moreover, failure to consider other evidence and investigate potential leads has also resulted in miscarriages of justice occurring such as the heavy pressure which Colin Stagg was subjected to despite the overwhelming evidence pointing to Robert Napper. In consideration to all these issues, there is evidence to how the government wants to prevent any miscarriages of justice resulting from police misconduct from happening again. This has been evidenced from the numerous command orders from the home office suggesting reforms such as a more diverse recruiting system to tackle the challenges of racist and cultural stigmas which influence a small number of police officers to partake in police misconduct such as more forceful arrests and less favorable treatment of citizens in police custody such as Christopher Alder³⁵ where the police officers responsible were acquitted of manslaughter charges. To make sure this sort of injustice does not happen again the reforms suggested by the government where a report of any officers dismissed for misconduct which would be made aware to all vetting officers. Moreover, certain acts have been modified to include an offence of police corruption and introduced areas within the police act 1997³⁶ in hopes to raise complaints against police officers who have conducted misconduct in their jobs. The standard of policing has also been improved in hopes of preventing a miscarriage of justice as there is now a statutory code of ethics which must be followed by every police officer in the country which includes core values such as equality, diversity and the minimal and reasonable amount of force required when necessary. Finally, the government's approach to strengthening the connection between the communities and the police that protect them has been prevalent by appointing police and crime commissioners for those areas. They can also be scrutinized by the community's district panels and therefore have less discretion

³⁴ R.v Mcllkenny (1991) 93 Cr.App.R.287

³⁵ Alder v Humberside Police and ORS [2006] EWCA Civ 1741

³⁶ Police Act [1996]

which would help limit the amount of racial and cultural stigma which has fueled police misconduct resulting in miscarriages of justice.

Table of legislation:

Police Act 1996

College of Policing, Code of Ethics

Table of Cases:

Alder v Humberside Police and ORS [2006] EWCA Civ 1741

R.v McIlkenny (1991) 93 Cr.App.R.287

Regina v Stagg [1994] 9 WLUK 56

Journals

Alec Samuels, The Rachel Nickells Case: reflection on the significance, Med Sci Law [2012] < https://heinonline-org.ezproxy.derby.ac.uk/HOL/Page?public=true&handle=hein.journals/mdsclw52&div=44&start_page=181&collection=journals&set_as_cursor=0&men_tab=srchresults> last accessed 6th January 2021

Home Office, Improving police integrity: reforming the police complaints and disciplinary systems, [2014] Cm 8976
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385900/45363_Cm_8976_Press.pdf> last accessed 8th January 2021

Home Office, Policing in the 21st century: Reconnecting police and the people, [2010] <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118233/response-policing-21st.pdf> last accessed 8th January 2021

Articles

James Campbell, My Black Brother Died In Police Custody In Hull – The George Floyd Similarities Are Scary, [2020] < <https://www.hulldailymail.co.uk/news/hull-east-yorkshire-news/christopher-alder-george-floyd-death-4195831>> last accessed 7th January 2021

Gareth Peirce, The Birmingham six: Have we learned from our disgraceful past [2011] <
<https://www.theguardian.com/theguardian/2011/mar/12/gareth-peirce-birmingham-six>>
Accessed 4th of January 2021

Kenneth O. Morgan, Britain in the Seventies – Our unfinest Hour?, Revue Francais de
Civilisation Britanique [online], XXII- Hors Serie, [2017] P20 <<
<https://journals.openedition.org/rfcb/1662#quotation>>> last accessed 4th of January
2021

College of Policing, Code of Ethics: A code of practice for the principles and standards
of professional behaviors for the policing profession of England and Wales, [2014] page
3 < https://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf>
accessed 6th January 2021

Books

Egon Bittner, Aspects of Police Work (North Eastern University Press 1990)