

1. INTRODUCTION

- 1.1 British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.
- 1.2 BIRW has monitored the case of Christopher "Christy" Walsh since 1992, when he was first convicted of possession of a coffee jar bomb in Northern Ireland. Throughout that time, Christy Walsh, who has no paramilitary associations and no previous convictions, has consistently maintained his innocence of this offence, and has continued to campaign to clear his name long after his release from prison. Since his release he has made his home in the Republic of Ireland because he does not feel safe in Northern Ireland, where he has been branded as a terrorist.
- 1.3 BIRW has a number of serious concerns about Christy Walsh's conviction. We are equally concerned that the criminal justice system has let him down at every turn. If ever there was a clear case of a miscarriage of justice, this is it.

2. ARREST AND CONVICTION

- 2.1 Christy Walsh was arrested at around 1:40 pm on 5th June 1991 as he walked through an alley between Kerrykeel Gardens and Suffolk Road in Belfast. He was stopped by a British soldier, Corporal Blacklock, who claimed that he told Christy Walsh to take his hands out of his pockets and that, when he did so, he had a coffee jar bomb¹ in his right hand. Christy Walsh has always denied this version of events, and says that instead Corporal Blacklock drew his attention to a coffee jar sitting on a nearby wall, which Christy Walsh did not know anything about and which he did not touch.
- 2.2 Christy Walsh was arrested and, as was common at that time, he was held without charge and without access to his lawyer for two days. Once he had been granted an interview with his lawyer, Christy Walsh gave a full account of what had happened to the police. He was held for five days altogether, and then charged with possession of a coffee jar bomb with intent to cause an explosion.
- 2.3 On 11th October 1991, unusually, Christy Walsh was placed back in police custody. He was offered a deal; if he pleaded guilty he would receive a supposedly lenient sentence of six years in prison. He was also physically

¹ A crude but effective home-made explosive device

assaulted by the police. His lawyer applied for a writ of habeas corpus and he was returned to prison to await his trial. On 17th January 1994 an out-of-court settlement was made regarding the assault.

2.4 Nine months after his arrest, Christy Walsh learned that a second soldier, Private Boyce, was claiming to have had a clear and unobstructed view of Christy Walsh producing the bomb from his pocket. Although Private Boyce's statement was dated 7th June 1991, two days after the arrest, he told the court when Christy Walsh came to trial that he had made the statement on the day of the arrest. Whichever, if either, of those dates is correct, Private Boyce's claims were never put to Christy Walsh under police questioning.

2.5 Christy Walsh was convicted by Petrie J in the juryless Diplock court on 7th December 1992 and he served a fourteen year prison sentence. He was permanently labelled as an IRA bomber. From the day of his arrest to the present day he has protested his innocence of this offence.

3. THE FORENSIC EVIDENCE

3.1 Corporal Blacklock claimed that, when he ordered Christy Walsh to empty his pockets, he took the coffee jar bomb from his pocket with his right hand. This seems inherently unlikely. If Christy Walsh had indeed had a coffee jar bomb in one of his pockets, his best course of action would have been to leave it there in the hope that it would not be discovered. It was not in his best interests to incriminate himself in this way.

3.2 Christy Walsh was not wearing gloves, yet his fingerprints were not found on the bomb, said to have the best surface of any exhibit to receive fingerprint evidence. RDX, a component of the plastic explosive called Semtex, was allegedly found on the swab taken from Christy Walsh's left hand, but none was found on the right hand swab. Yet the forensic expert claiming to have detected this trace, Dr Murray, kept no samples or records of how he arrived at his findings. It has also been learned that the test methods used by Dr Murray could return a positive result mimicking RDX from contact with innocent substances such as plastics or foam rubber. None of the fibres found on Christy Walsh's clothing matched those found on the bomb.

3.3 According to independent expert Dr J B F Lloyd, strong solvents are required to remove RDX and PETN (the other principal component of Semtex), yet there was no sign that any attempt had been made to clean the jar². Dr Lloyd also queried the ability of IRA bomb makers to avoid contamination of the exterior of the device³.

² Lloyd Report, paragraph 6.1.1. b

³ Ibid, paragraph 6.1.2 a

- 3.4 Inspector Glass of the Royal Ulster Constabulary (RUC)⁴ told the court during the trial that the chances of finding fingerprints on the sellotape (an adhesive tape used in the construction of the bomb) would be “one in a million”. Dr. Lloyd said that this is not so. The non-sticky side of sellotape takes prints, which can be detected by powdering. Furthermore, the lid of the coffee jar had been covered with sellotape with its sticky side out, which anyone who has ever used sellotape will know if an excellent receptor of fingerprints. In addition, the paper label had been removed from the coffee jar, leaving some of the glass, which is also a good receptor, exposed. Inspector Glass also asserted that the examination by the Forensic Science Laboratory reduced the chances of retrieving any prints, but Dr Lloyd pointed out that the laboratory’s examination had been carried out with a view to subsequent fingerprint testing⁵. Dr Lloyd and another forensic expert, Professor Brian Caddy, could find no evidence of any fingerprint examination ever having been carried out.
- 3.5 According to Dr Lloyd, the traces of RDX allegedly found on Christy Walsh could have resulted from his contact with soldiers, police officers, or the plastic gloves placed on his hands at the time of his arrest, if, indeed any such traces had in fact be found. They might also have been picked up in the police station, or from contact with a contaminated surface or person, or by touching the wall on which the coffee jar bomb was placed.⁶ Dr Lloyd concluded that:
“Overall, there is a significant element of doubt that the forensic science results could be due to Mr Walsh’s being in possession of the bomb and due to his handling the bomb, as was alleged.”⁷
He also concluded that the traces found may not have been RDX at all, but substances which mimicked those explosives.⁸ The prosecution’s forensic expert, Dr Murray, was on hand but not called to rebutt any of Dr Lloyd’s evidence.
- 3.6 Instead of concluding, as most judges would, that the absence of forensic evidence linking Christy Walsh to the bomb cast reasonable doubt on his guilt, the trial judge found instead that the forensic evidence “did not assist the crown case” and so was “neutral”. This meant that the test he applied was that of whose evidence he believed, that of Christy Walsh, a man of previously good character, or that of the soldiers. He chose the soldiers’ testimony, despite finding that their evidence had been “open to criticism”. In order to convict Christy Walsh, the judge drew an adverse inference from Christy Walsh’s alleged lack of co-operation with the police at the scene of the arrest, which flew in the face of the evidence

4 The Northern Ireland police force, now known as the Police Service of Northern Ireland

5 Ibid, paragraph 11

6 Ibid, paragraph 13

7 Ibid, paragraph 15 f

8 Ibid, paragraph 15 a and b

of both soldiers and police officers that Christy Walsh has been fully cooperative, and was also an inference the judge had no power to draw. The Court of Appeal ultimately⁹ ruled this inference to be unlawful.

- 3.7 Most troubling of all, the coffee jar bomb, and all other exhibits in the case, have unaccountably gone missing, so are no longer available for forensic testing.
4. THE FIRST APPEAL
 - 4.1 Christy Walsh appealed against his conviction. Normally the Diplock courts were extremely slow, but on 24th September 1993 Christy Walsh was informed that his appeal would take place only three days after he received the trial transcripts. Neither he nor his lawyers had adequate time to prepare. Christy Walsh protested that the court was railroading him, and the Lord Chief Justice and two other judges had to adjourn while a new panel of judges was convened.
 - 4.2 The appeal was heard on 15th December 1993 by McCallum LJ, McDermott LJ, and Higgins LJ. On 7th January 1994 the court upheld the conviction. It would appear to have been a rubber-stamping exercise.
5. APPLICATION TO THE CRIMINAL CASES REVIEW COMMISSION
 - 5.1 Christy Walsh had only one hope of overturning his conviction, which was to persuade the Criminal Cases Review Commission (CCRC) to refer his case back to the Court of Appeal.
 - 5.2 At BIRW's suggestion, Christy Walsh appealed for eyewitnesses to his arrest. This appeal was published by the *Irish News* on 1st July 1996. The climate in Northern Ireland had changed considerably since 1991, and the peace process was beginning to take hold. People who would have been too frightened to come forward in 1991 might feel differently now. Indeed, two eyewitnesses, neither of whom knew Christy Walsh, nor he them, did come forward.
 - 5.3 The CCRC sought new sworn statements from Corporal Blacklock and Private Boyce. Corporal Blacklock admitted that he had been coached prior to giving evidence at the trial. Private Boyce completely retracted his trial evidence.
 - 5.4 Eventually in March 2000 the Criminal Cases Review Commission referred his case back to the Court of Appeal, vindicating BIRW's own long-standing concerns that he had suffered a miscarriage of justice in the Diplock courts.
6. THE SECOND APPEAL

⁹ At the second appeal

- 6.1 To BIRW's great surprise and intense disappointment, in January 2002 the Court of Appeal, led by the Lord Chief Justice, Sir Robert Carswell, refused to quash Christy Walsh's conviction, issuing one of the worst judgments we have ever seen. Carswell LCJ has been one of those judges who had excused himself from hearing Christy Walsh's first appeal after Christy Walsh complained that he was being railroaded.
- 6.2 In essence, the court held that, because it did not believe the evidence of one of the two eyewitnesses who had come forward, Conor Bradley, Christy Walsh's own credibility was undermined. The Lord Chief Justice said that the court was "unable to say how he [Conor Bradley] brought his account forward" and rejected his account as false and "not worthy of belief". He then went on to use Conor Bradley's adjudged unreliability to undermine Christy Walsh's credibility. In fact, Conor Bradley came forward after Christy Walsh followed advice given to him by British Irish RIGHTS WATCH when he lost his original appeal. We suggested that he seek media coverage for his case and that he appeal for any eyewitnesses there may have been to come forward. Conor Bradley came forward in response to this publicity. He was not known to Christy Walsh, and was repaid for his public spiritedness by having his reputation blackened by no less a figure that the Lord Chief Justice of Northern Ireland. We are at a loss to understand how an eyewitness unknown to the defendant can be used to undermine the defendant's credibility. This was, in our view, self-evidently wrong and should have provided ample grounds for leave to appeal to the House of Lords and to take a case to the European Court of Human Rights, but neither body allowed Christy Walsh to seek further redress.
- 6.3 Secondly, and of almost equal importance, it was submitted to the court, following the European case of John Murray v UK¹⁰, that it had been wrong to draw inferences from Christy Walsh's silence under police questioning when he had not had the benefit of legal advice. The Court of Appeal, wrongly in our opinion, refused to follow Murray, and, quite extraordinarily, went on to say that even if Christy Walsh's Article 6 right to a fair trial had been breached in this regard, the conviction would nevertheless not be unsafe.
- 6.4 Thirdly, the Court of Appeal declined to accept that the trial judge ought to have made specific reference to Christy Walsh's previous good character when assessing the truthfulness or otherwise of his evidence. The Lord Chief Justice was of the opinion that it could be taken as read that an experienced judge would be mindful of such matters. However, absent any reference to it, it is not possible to determine from the face of the judgment whether the trial judge took any account of Christy Walsh's previous good character, nor what weight he attached to it. Since

¹⁰ Case no. 41/1994/488/570

Diplock judges must issue reasoned judgments, defendants should not have to guess their reasons nor make assumptions about them.

- 6.5 Fourthly, one of the key weaknesses in the original case against Christy Walsh lay in the forensic evidence. No explosives residue was found on the external surface of the coffee jar, but residue allegedly was found on one of Christy Walsh's hands. However, no residue was found in the jacket pocket from which he allegedly withdrew the bomb. It has never been clear how residue found its way onto Christy Walsh's hand, nor why it was not transferred to the bomb or the pocket. Furthermore, there is now reliable evidence that no such trace was ever detected and if a trace was detected that it was not explosive residue. Dr Murray was not called as a witness to explain this new evidence. The CCRC found during its investigation that the coffee jar is no longer to be found. The Court of Appeal made no mention of this disturbing fact.
- 6.6 Last, but by no means least, Lord Chief Justice Carswell had shown himself in a number of cases to be hostile to referrals back by the CCRC. No judge, let alone a Lord Chief Justice, likes the implicit criticism that a referral back entails, but Lord Chief Justice Carswell strikes us as having been particularly defensive. He has sought to limit the scope of appeal hearings in cases of referral back, and has indicated in obiter dicta a general resentment of the CCRC purporting to "know better" than the Northern Ireland courts. In Christy Walsh's case, Lord Chief Justice Carswell did not reconsider the conviction in its entirety, but limited himself in his judgment to consideration of those issues identified as fresh evidence by the Commission. Furthermore, he declined to accept the CCRC's Statement of Reasons in evidence and he expressly disregarded some of the reasons set out by the CCRC, including the new statements from the soldiers. Many observers in Northern Ireland believed that the Lord Chief Justice was looking for a vehicle for rejecting a recommendation by the CCRC, and in our view Christy Walsh had the misfortune to be the case he selected.
- 6.7 For all the above reasons, BIRW are convinced that the judgment of the Court of Appeal in itself amounts to a further miscarriage of justice. BIRW made a submission on Christy Walsh's behalf to the Criminal Cases Review Commission asking them to re-open his case on that basis, but they have declined to do so.

7. SUBSEQUENT DEVELOPMENTS

- 7.1 Since 2002, new information has come to light which casts further doubt on Christy Walsh's conviction and reinforces BIRW's persuasion that he has been the victim of a miscarriage of justice.
- 7.2 The Court of Appeal, in its consideration of the referral back by the Court of Appeal, had refused to entertain the new statements made by Corporal Blacklock and Private Boyce because it ruled that lawyers

acting for Christy Walsh has failed to comply with s. 25 of the Criminal Appeal Act (Northern Ireland) 1980, which concerns admissibility of evidence. Christy Walsh complained to the Law Society of Northern Ireland that his lawyers had been remiss in this regard. However, on 17th May 2005 the Law Society ruled that it “could not uphold” the Court of Appeal’s ruling that s. 25 had not been observed. On 26th August 2005, Alasdair MacLaughlin, the Northern Ireland Independent Lay Observer, upheld the Law Society’s ruling. The Court of Appeal was thus wrong in law.

- 7.3 Private Boyce, who subsequently withdrew his testimony when interviewed by the CCRC, gave evidence at the original trial which was at variance with that of all the other soldiers on patrol with him at the time of Christy Walsh’s arrest. He claimed that he had gone back onto Suffolk Road from the river bank that runs parallel to the road through a gateway just opposite the mouth of the alley where Christy Walsh was arrested, and that he had a clear and unobstructed view of the encounter between Christy Walsh and Corporal Blacklock. In his statement to the CCRC, Private Boyce withdrew this claim and said that he rejoined the Suffolk Road with the rest of his patrol, at a different point altogether. A recently acquired satellite image of the area shows conclusively that none of the soldiers, including Private Boyce, could have seen into the alley from the point where they rejoined Suffolk Road. At the trial, both Christy Walsh and Corporal Blacklock described Private Boyce as approaching from round the corner and not from the gateway, but the trial judge chose to believe Private Boyce’s evidence.
- 7.4 A previously undisclosed document from the Northern Ireland Forensic Science Laboratory suggests that Corporal Blacklock’s first account of the events made no mention of Christy Walsh handling the coffee jar bomb or placing it on the wall.
- 7.5 Leading independent forensic experts Professor Brian Caddy and Dr Lloyd who have re-examined the forensic evidence in this case, have found that, contrary to Inspector Glass’s evidence, there is no evidence that any fingerprint tests were ever carried out on the now-missing coffee jar bomb.
- 7.6 At the original trial, the prosecution relied on the proposition that the coffee jar bomb was primed and would have exploded had it shattered on impact. However, it has now come to light that, during the CCRC investigation, the chief forensic expert for the prosecution, Dr Murray, told one of the CCRC’s Commissioners, Laurence Elks, that the coffee jar was not in fact primed. The trial was therefore based on a false premise.
- 7.6 Christy Walsh has applied to the Court of Appeal to re-open his case on the basis of these and other matters. Since legal aid is not available, he has had to do so without benefit of legal representation.

8. CONCLUSION

- 8.1 Usually when a miscarriage of justice occurs, there are two victims: the person who has been wrongfully convicted and the victim (or his or her family), both of whom have been deprived of justice. However, in Christy Walsh's case there was no victim, if there was even a crime. Christy Walsh is therefore the sole victim of this particular miscarriage of justice. He has paid a very high price. He has served a fourteen-year jail sentence, he has lost his reputation, he has been branded as a terrorist, he has had to go into exile, and he and his family have suffered personally in many other ways.
- 8.2 BIRW, in sixteen years of observing the conflict in Northern Ireland, has never witnessed another case in which so many of the safety nets in the criminal justice system have failed to work. Christy Walsh has had a trial, two appeals, and a reference back by the CCRC, yet he has been unable to clear his name.
- 8.3 We believe that, like so many miscarriages of justice, the case against Christy Walsh went wrong right at the start. He was in the wrong place at the wrong time. The case against him was never strong enough to secure a conviction, so it was bolstered by false testimony and shoddy forensics, as has happened all too often in the Diplock courts. Those courts failed to subject the evidence to the anxious scrutiny it required, were too ready to take the word of the security forces over a person of previously blameless character, and failed in their duty to deliver a fair trial, as has also happened too often in Northern Ireland.
- 8.4 In our experience, it is very rare for a guilty person, who originally asserts his or her innocence but is convicted, to continue to assert that innocence once he or she has served his or her time. Although it cannot prove someone's innocence, the persistence even after freedom has been regained with claims of innocence is usually a good indication that the person is not guilty. Christy Walsh has been absolutely consistent. He has always maintained his innocence, and has doggedly continued to do so long after his release. It is a treasured maxim of our legal system that a person is innocent until proven guilty. In Christy Walsh's case, he has to find a way to prove that he is innocent – a much steeper hill to climb. This report sets out the concerns about his conviction held by British Irish RIGHTS WATCH, and also our concerns about the way in which Christy Walsh has been failed by the criminal justice system every step of the way. We believe that the truth will out and the day will come when Christy Walsh is able to establish his innocence and the severe miscarriage of justice that he has suffered will be exposed.

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