

## Proving Innocence Is No Longer Necessary For Wrongful Conviction Compensation In England

Eamonn MacDermott and Raymond McCartney were tried in January 1979 in Belfast, Northern Ireland for the 1977 murder of detective constable Liam McNulty, and McCartney was also tried for the murder of Geoffrey Agate. The sole evidence against the men were admissions they made during interrogations, which they claimed were coerced by ill-treatment by the police. The men were convicted and sentenced to life in prison.

Their appeals were denied in 1982, and McCartney served 15 years before he was paroled in 1994, and MacDermott served 17 years before his parole in 1996.

In 2006 MacDermott and McCartney filed a new appeal based on new evidence that the prosecution failed to disclose during their trial: the police had assaulted the men in order to obtain their confessions, and that a confession obtained under similar circumstances by one of the officers involved had been quashed.

In February 2007 Northern Ireland's Court of Appeal quashed the men's convictions based on the unreliability of their confessions that the jury relied on to convict them.

In the United Kingdom Section 133 of the Criminal Justice Act 1988 mandates that the Secretary of State for Justice shall pay compensation 'when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice.' The law was enacted to conform with Article 14(6) of the International Covenant on Civil and Political Rights 1966 that the United Kingdom ratified in May 1976. Section 133 and Article 14(6) both refer to a 'miscarriage of justice' as the standard for when compensation should be awarded.

A 'miscarriage of justice' under section 133 had been interpreted to mean that a person is only eligible for compensation if a fact not available at trial conclusively proves he or she is innocent of their convicted offence.

MacDermott and McCartney filed claims for compensation, which were denied in 2008 by England's Secretary of State for Justice on the grounds their convictions had



Raymond McCartney (L) and Eamonn MacDermott

not been quashed on the basis of their innocence. The men appealed to the Court of Appeals, which affirmed the denial. They then appealed to the Supreme Court, which made a landmark ruling on May 11, 2011 that broadens what constitutes a "miscarriage of justice" under the compensation statute. By a 5 to 4 majority England's Supreme Court ruled in an opinion written by Lord Phillips that for the purposes of a compensation claim under Section 133:

*"A new fact will show that a miscarriage of justice has occurred when it so undermines the evidence against the defendant that no conviction could possibly be based upon it. ... This test will not guarantee that all those who are entitled to compensation are in fact innocent. It will, however, ensure that when innocent defendants are convicted on evi-*

dence which is subsequently discredited, they are not precluded from obtaining compensation because they cannot prove their innocence beyond reasonable doubt." *In the Matter of an Application by Eamonn MacDermott for Judicial Review* (Northern Ireland), [2011] UKSC 18 (May 11, 2011), ¶55

Consequently, McCartney and MacDermott can pursue their compensation claims because:

"The newly discovered facts in the case of Mr. McCartney and Mr. MacDermott ... so undermine the evidence against them that no conviction could possibly be based upon it. There can be no reasonable doubt of this. Accordingly I would allow their appeal and hold that they are entitled to compensation pursuant to the provisions of section 133." *Id.* at ¶65

In 2010 the Secretary of State for Justice rejected 36 of 37 wrongful conviction compensation claims. It is expected that some of those claimants, like McCartney and MacDermott, will now prevail in new applications submitted based on the Supreme Court's ruling.

Sources:

[In the Matter of](#) an Application by Eamonn MacDermott for Judicial Review (Northern Ireland), [2011] UKSC 18, May 11, 2011.

[Degrees of innocence](#): The Supreme Court makes it easier for victims of wrongful imprisonment to get compensation, *The Economist*, May 12, 2011.

[Two men jailed](#) for murder can seek compensation, *Irish Times*, May 12, 2011.

## Maurice Caldwell Exonerated After 21 Years Imprisonment For Murder

Maurice Caldwell was convicted by a jury in 1991 of the 1990 murder of a woman during a drug deal at a San Francisco apartment complex.

An eyewitness told police immediately after the crime that she was looking out her apartment window and saw the shooting, but she didn't recognize either of the two men who shot the woman. The witness was Mary Cobbs, and Caldwell, 22, was her next door neighbor. When the police brought Caldwell to her door she told them he wasn't one of the shooters. Two weeks later she picked Caldwell out of a lineup as a shooter and he was charged with the murder.

There was no physical evidence linking Caldwell to the crime and he was convicted based on his neighbor's testimony he was one of the shooters. Caldwell was sentenced



Maurice Caldwell released on March 28, 2011 (CBS, San Fran)

to 27 years to life in prison. His convictions were affirmed on appeal.

Caldwell contacted the Northern California Innocence Project, which accepted his case in 2008. The [NCIP](#) reinvestigated Caldwell's case. They obtained a declaration from Marritte Funches that he was one of two men involved in the shooting and that Caldwell was not involved. Funches is serving a life sentence without possibility of parole in Nevada for a different murder. The NCIP also obtained declarations from two eyewitnesses to the murder who didn't testify at Caldwell's trial. They both stated Caldwell was not involved in the crime. Cobbs had died so she couldn't be questioned.

Based on the new evidence Caldwell filed a state *habeas corpus* petition seeking a new trial based on his trial lawyer's ineffectiveness for failing to adequately investigate his case.

**Caldwell cont. on p. 15**

## Two Men Wrongly Imprisoned For 29 Years Acquitted Of Murder

Takao Sugiyama and Shoji Sakurai were acquitted on May 24, 2011 of a 1967 robbery and murder in Tone, Japan. Convicted in 1970 and sentenced to life in prison, the two men were released on parole in 1996 after 29 years of incarceration.

Sugiyama and Sakurai, both 20, were arrested in October 1967 on suspicion of robbing and murdering a 62-year-old carpenter in Tone, about 40 miles northwest of Tokyo. They were charged with the crimes after they both confessed, although they retracted their confessions claiming they had been coerced by the police. An eyewitness also identified them as the perpetrator.

During their October 1970 trial they protested their innocence, but they were convicted based on their confessions and the eyewitness identification. They were sentenced to life in prison.

Their convictions were affirmed on appeal and they were released on parole in November 1996 — 29 years and 1 month after their arrest.

In 2001 Sugiyama and Sakurai filed a petition for a retrial. The petition was granted in 2005 by a High Court judge who found that the police pressured the men into signing confessions that didn't fit the facts of the crime. The judge also found it likely the police interview tapes had been edited, and



Shoji Sakurai (left) and Takao Sugiyama during their retrial.

that the men's convictions had been based on their dubious confessions. The prosecution appealed that ruling, but it was upheld by the Tokyo High Court in July 2008 and then by Japan's Supreme Court in December 2009.

Their retrial in the Mito District Court in Tsuchiura began in July 2010. The prosecution's case was again based on their confessions and the eyewitness identifications. Sugiyama and Sakurai's defense was the hairs and fingerprints found at the crime scene didn't match either man; the circumstances of the eyewitness identifications made them unreliable; they introduced the exculpatory testimony of a new eyewitness, a 78-year-old woman; and their confessions were false and coerced by the police. Their lawyers introduced evidence that an acoustics expert analyzed the audio tape of Sakurai's "confession" and discovered it had been edited in 13 places.

After the trial concluded in November 2010, the court was scheduled to announce its decision on March 16, 2011. However, it was rescheduled because the devastating earthquake and tsunami that struck Japan on March 11 crippled railways and other transit.

On May 24, 2011 presiding Judge Daisuke Kanda announced the acquittal of Sugiyama and Sakurai, based on the lack of objective evidence linking them to the crime, that the physical evidence excluded them from the crime scene, and that the eyewitness accounts lacked credibility. By acquitting the men the Court placed no weight on their confessions.

Sugiyama and Sakurai, both 64, can now pursue compensation for their 44-year ordeal.

National publicity about Sugiyama and Sakurai's case intensified the public debate in Japan that the country's legal system needs major reforms, particularly related to the law that allows a suspect to be jailed for up to 23 days and interrogated from morning to night. During those 23 days a suspect's lawyer is allowed only limited access to meet with their client. That law is one reason why Japan has a 99% conviction rate, and those convictions are typically based on a confession.

Sources:

[Japan's justice system on trial](#), *The Australian*, July 10, 2010.  
[Court acquits pair](#) after serving decades in jail, *The Japan Times*, May 25, 2011,  
[Japan court acquits two](#) after decades in jail, *AFP*, May 24, 2011.



## Caldwell cont. from p. 14

In 1993 Caldwell's trial lawyer, Craig Kenneth Martin, [was suspended](#) from practicing law for six months, but that punishment was stayed and he was placed on probation for a year. In 1996 Martin was [again suspended](#) from practicing law. His two year suspension was stayed and he was placed on three years of probation with an actual 90-day suspension. That was the fourth time Martin had been disciplined by the California Bar Association. On July 22, 2010 [Martin was](#) [disbarred](#) by the California Supreme Court from practicing law in California.

On December 16, 2010 Caldwell's petition for a new trial was granted based on Martin's ineffective assistance of counsel.

In January 2011 the San Francisco District Attorney's Office refiled the murder charge against Caldwell and announced their inten-

tion to retry him based on Cobbs' trial testimony that would be read into the record.

Caldwell's new lawyer filed a pre-trial motion challenging his retrial on the basis his due process right to a fair trial would be violated because he would not be able to cross-examine Cobbs, and the trial exhibits, such as the photos Cobbs referred to in her testimony, had been destroyed by the court. The judge agreed and ruled that Cobbs' testimony from Caldwell's first trial was inadmissible.

After the judge's ruling the DA offered Caldwell a deal: If he would plead guilty to voluntary manslaughter, attempted murder, and shooting into an occupied vehicle he would be sentenced to time served and released immediately. Caldwell refused the plea deal, stating he was innocent.

On March 25 the DA's Office moved to

dismiss the charge against Caldwell on the basis they couldn't proceed without Cobbs' testimony, and the judge ordered Caldwell's release from prison.

Caldwell, now 43, was released on March 28 after almost 21 years of wrongful incarceration.

The DA's Office refuses to admit that Caldwell is innocent, stating that they just don't have any evidence to prove he is guilty.

Sources:

[Conviction of S.F. man](#) in prison 21 years set aside, By Rachel Gordon, *Chronicle Staff Writer*, *San Francisco Chronicle*, December 17, 2010.  
[Retrial Set After '91](#) San Francisco Murder Conviction Tossed, *CBS San Francisco*, January 20, 2011.  
[Man convicted of murder](#) released from jail, *ABC Channel 7 (San Francisco)*, March 28, 2011.  
[Supreme Court Minutes](#), Thursday, July 22, 2010, *San Francisco, California*.

