

## 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**