John Button And Darryl Beamish Cleared Of Murder Four Decades After Serial Killer's Execution

By Tom Percy*

On the morning of October 26, 1964, 33-year-old convicted murderer Eric Edgar Cooke was sitting in the death cell at Fremantle Prison near Perth, Australia. [1] He was waiting to be executed, and had spent the last two hours with Reverend George Jenkins. Unprompted, Cooke reached for the Minister's bible and took it out of his hand. Holding it fervently Cooke said, "I swear before almighty God that I killed Anderson and Brewer." It was not the first time he had said this, but given the circumstances it took on special significance. A few moments later a hood was placed over his head and he was taken the 42 steps from the cell to the gallows, and within a minute he was dead.

The Reverend Jenkins recorded Cooke's last words verbatim in a Statutory Declaration some days later. Words that were to cause a controversy in legal, historical and political circles that would not be resolved for over 40 years.

Journalist Estelle Blackburn finds proof Cooke's confession was true

In late 1998 a journalist I hardly knew made an appointment to see me at my office in Perth. I had met Estelle Blackburn briefly on two occasions over the past decade. I knew nothing however, of the fact that she had spent the past six years researching the story of Eric Cooke generally, and specifically the case of John Button, who had been convicted in 1963 of running over his girlfriend. Neither did I know that in her pursuit of Button's case she had given up full-time work and already sold almost all of her material assets too keep the project and the book afloat.

She had apparently been referred to me by Judge Alan Fenbury. She wanted me to be involved in appealing Button's conviction, which might require about a million dollars worth of legal work. The bad news was that I would have to do it for free. Before I had her escorted from my office, she asked if before dismissing the idea out of hand I would read her book Broken Lives. [2] The book was about to be released and she gave me an advance copy.

Shortly after that I was scheduled to go somewhere, and being short of reading material tossed the book in my bag thinking that I might read it as a last resort if I couldn't buy something better at the airport. I did however read the book, and the rest, as they say in the classics, is history.

After I returned, I couldn't get back to Blackburn quick enough. I told her I was "in." All we needed was a solicitor crazy enough to take on all the work that was going to be involved in resurrecting a nearly 40-year-old case from scratch. [3] I suggested that she should approach Jonathan Davies. He was about the only person I knew who might have been nearly mad enough to say yes and take the case for free. But say yes he did, and the Button case was up and running.

After we worked on Button's case for about a year, Western Australia's Attorney General gave his approval for it to go back to Court. Blackburn then suggested we should take on Darryl Beamish's case as well. We didn't know if Beamish would have anything to do with us or a proposed appeal, but Blackburn tracked him down. And then there were two cases.

Darryl Beamish

Darryl Beamish, a deaf mute who communicates by signing, was convicted in August 1961 of willfully murdering 22-year-old Jillian Brewer on December 20, 1959. Brewer's murder in her suburban Perth home was savage and brutal.

There was no direct or forensic evidence linking Beamish with the crime. The prosecution's case was based on Beamish's alleged confession 14 months after the crime. Beamish's "confession" consisted of repeating back to his police interrogators details of the crime they told him through an interpreter. Beamish was 20 when sentenced to death, but his sentence was subsequently commuted to life imprisonment. He was released on parole in 1976 after 15 years imprisonment. [4]

John Button

A little over three years after Brewer's murder, 17-year-old Rosemary Anderson was run down by a vehicle in Perth on February 9, 1963. She sustained shocking injuries from which she died shortly thereafter. John Button was her 19-year-old boyfriend. He had no prior record of any kind, but he was charged with being the driver of the car. The prosecution alleged that in a fit of temper he deliberately drove the car at her in an attempt to kill her. As with Beamish, the prosecution's case was based on Button's alleged confession after many hours of intense interrogation.

Darryl Beamish, Estelle Blackburn and John Button (L to R) at the Western Australia supreme court celebrating Beamish's exoneration on April 1, 2005

Button was convicted of manslaughter in May 1963. He served 5 years of a 10-year sentence in Fremantle Prison before being released on parole in 1968.

Beamish and Button appeal after Cooke confesses

Eric Edgar Cooke was arrested for an unrelated murder four months after Button's conviction. Cooke subsequently confessed to murdering Brewer and Anderson, as well as murdering another six persons from 1959 to 1963.

Cooke's confessions to Brewer and Anderson's murders led to the convictions of both Beamish and Button being the subject of fresh evidence appeals to the Court of Criminal Appeal. The appeals were dismissed in May 1964.

The critical issue in the 1964 appeals was Cooke's confessions, and what weight, if any, should be given to them. Cooke testified during hearings for the appeals. The decision of the Court of Criminal Appeal was to the effect that Cooke's testimony was inherently unreliable.

2001 Button appeal

Button's appeal in 2001 was based on fresh evidence that we asserted proved that the vehicle driven by Button on the night in question was not the vehicle that struck Anderson. We also relied on Cooke's confessions, in the light of his credible confessions to a number of other highly similar hit and run crimes.

This evidence, we argued was to be "similar fact" evidence in reverse. Usually the doc-

Button cont. on p. 21

Button cont. from p. 20

trine of "similar facts" allows the prosecution to call evidence to show that an accused person has committed strikingly similar crimes to the one under investigation, and to use that evidence as proof of guilt. We sought to show that Cooke had been in the habit of committing strikingly similar acts of running women down, and that this should be admissible as evidence of his guilt of running down Anderson.

Cooke's confessions matched substantially if not completely the evidence of seven surviving victims of hit and runs, which was not known at the time Button was convicted. Those victims gave evidence at the appeal of the incidents in which they were run down, and the reports they made to the police.

Unknown to anyone at the time of Button's trial, Cooke had stolen a blue Holden sedan on the night that Anderson was killed. There was nothing particularly unusual in this: Cooke had regularly stolen cars and abandoned them at the end of his night's activities. But the co-incidence of him being out and about in a stolen vehicle on the very night of Anderson's death was very significant.

The Holden stolen by Cooke crashed into a tree in Kings Park near Perth shortly after Anderson was run down. The stolen car had never been connected to the Button case before Blackburn raised this as a possibility in her book. Subsequent examination of the police records and photos of the damage to the stolen Holden taken at the time indicate it had damage consistent with the fatal injuries inflicted on Anderson.

In contrast, the Simca driven by Button was virtually undamaged.

Subsequent tests conducted by American crash reconstruction expert William "Rusty" Haight using modern crash reconstruction methods indicated that it was far more possible that the Holden (and not Button's Simca) had been the vehicle which killed Anderson. Haight's expertise, despite being vigorously disputed by the government was unreservedly accepted by the Court. In its decision, the Court of Criminal Appeal was glowing in its acceptance of Haight's evidence, and perhaps above all the other grounds raised in the appeal, his evidence was the key to the appeal being allowed in February 2002.

2004 Beamish appeal

The essential proposition advanced in Beamish's 2004 appeal was that the fresh evidence, unknown and undisclosed to Beamish at the time of his trial or the 1964 appeal, demonstrated that Cooke's confession to the murder of Brewer was almost certainly true, and that the Court of Criminal Appeal's findings in 1964 in this regard were distinctly unsafe.

As with the Button appeal, Cooke's modus operandi was scrutinized.

The very existence of Cooke as a multiple murderer and as a person who frequented the area where Brewer lived, was unknown to anyone at the time of Beamish's trial. So our primary submission was that had Beamish's jury known of Cooke and his similar crimes, their verdict would almost inevitably have been different.

Other than having a propensity to run down young women at night in stolen vehicles, Cooke was the consummate home invader who often assaulted young single women in their homes at night as they slept. A number of those women that survived were called to testify at a hearing for Beamish's appeal. Until Blackburn began her investigation, there was no suggestion that their common assailant had been Cooke.

Upon a comparison of the details given to the police by the women at the time, and Cooke's confessions to these crimes, a compelling picture emerged. Cooke had a remarkable memory, and at the time of his arrest he confessed in graphic detail to numerous break and entering offences, literally dozens. He could give times, dates and addresses, as well as uncanny and minute particulars that could have been known only to the perpetrator. Even though none of these allegations had been levelled at him by the police, and none had been the subject of any publicity, the details given by Cooke matched almost exactly the details of the offences in question contained in the police reports.

Again, reverse "similar fact" evidence was relied on to establish Cooke's guilt, and to a significant extent it was the key to the success of Beamish's appeal in April 2005.

Government opposed the appeals of Beamish and Button

Both appeals were fiercely and bitterly contested by the government. There was less cooperation on the part of the government than in any other case I can remember. After the Button decision we had hoped that some degree of consensus might prevail, and that they might actually concede the Beamish appeal, but such was not to be.

The government's position was that the similar fact evidence in both cases was not admissible. It was however admitted, and the Court in Beamish's appeal held that it would be "absurd" not to take it into account.

The government also objected to admitting Cooke's gallows confession. The Court in Beamish's 2004 appeal disagreed and held that Cooke's confession was itself capable of giving rise to a reasonable doubt in the mind of a jury, and there was a significant possibility that a jury acting reasonably would have acquitted Beamish.

Legal legacy and lessons for the future

In strictly legal terms the legacy of the two appeals is a large one. In terms of the non-legal legacy of the cases, it can now be said that a contentious portion of the social history of Western Australia has now also been set to rest.

Almost fifty years after the murders of Brewer and Anderson the gallows at Fremantle Prison is now a mere tourist curio; patronless for a very long time. The lessons of the John Button and Darryl Beamish cases indicate, if nothing else, that that's the way it should stay.

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* About the author: Tom Percy is a barrister in Perth, Australia. He worked pro bono on the cases of John Button and Darryl Beamish for a total of six years. Tom Percy and Jonathan Davies were awarded the Australian Lawyers Alliance West Australian Civil Justice Award in August 2007 for their efforts exposing injustices in the West Australian legal system. With the author's permission, this is Justice Denied's edited version of his August 25, 2006 talk to the Rotary Club of Perth titled, "The Button and Beamish Cases."

Endnotes:

1 Perth is on Australia's western coast. It is the capital of the state of Western Australia, and perhaps most well-known internationally as the location of the 1987 America's Cup yacht race.

2 Broken Lives by Estelle Blackburn (Hardie Grant Publishing 1998) is available in Australia, but there is no distributor in the U.S.

3 Australia's legal practitioners are based on the British model of barristers who represent a client in court, and solicitors who handle legal matters outside the courtroom. In Western Australia however, the two roles are allowed to intermix to some degree.

4 Law Professor Peter Brett was disturbed enough by Beamish's case that in 1966 he wrote a concise book, The Beamish Case, in which he described Beamish's case as a "monstrous miscarriage of justice."