IN THE MATTER OF:-

Rex

-v-

ALICE WHEELDON

WINNIE MASON

ALFRED GEORGE MASON

1917

SKELETON ARGUMENT

IN SUPPORT OF

APPLICATION TO THE CRIMINAL CASES REVIEW COMMISSION

ABOUT THIS DOCUMENT

This is the Skeleton Argument for the application to the Criminal Cases Review Commission in respect of *R v Wheeldon* 1917.

It is supported by a separate document, the Expanded Argument, which collates, analyses and distills a vast amount of source material, including court reports, newly released government and institutional records, photographs, family papers, historical research and digitized newspapers.

All this material has been extensively referenced and organized, with copies of original documents provided, to assist the Commission in assessing the application.

The Skeleton Argument was prepared by Ben Williams and Andrew Smith QC, for the Applicant, Chloe Mason, descendant of the convicted Defendants.

The Expanded Argument was prepared by the Applicant.

Referencing

Source documents cited in the text can be found in the **Documents** folder, with the location specified through a series of nested subfolders [Held: xxx > yyy > zzz]

For example, to view a document whose location is cited as [Held: TNA > MEPO 9356 > MEPO 9356 – Family Letters 1917 > 01] the reader would go to the folder TNA – The National Archives, find the MEPO 9356 subfolder inside that ('MEPO' refers to the Metropolitan Police), then the MEPO 9356 – Family Letters 1917 subfolder inside that, and finally the 01 subfolder, where the document can be viewed.

Proceedings

The copy of trial proceedings given here is from the unique volume titled *Record of Proceedings Rex v Wheeldon,* copied by the University of Cambridge Library. This source is used because it contains the only copy of the full trial, whereas the copy in the DPP files held in The National Archive does not include the first two days of the five-day trial. This volume has sequential numbering, handwritten at top right, unlike the DPP files. Citations give page numbers from this *Record* in the format: 'in *Record* p. X [Held: Proceedings]'.

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1. PREAMBLE

Summary of the case

1.1. On 7 December 1916, in the midst of the First World War, David Lloyd George succeeded H. H. Asquith as Prime Minister. Lloyd George had been at the heart of the War Cabinet as Minister of Munitions and the Secretary of State for War, and a vocal proponent of the controversial introduction of general conscription during May 1916.

1.2. On 21 December 1916, a man using the name 'Alex Gordon', an undercover agent employed by Herbert Booth, Ministry of Munitions (PMS2), was sent to Derby from Liverpool. Posing as a conscientious objector seeking accommodation, he was referred to Hettie Wheeldon, who had until recently been the local secretary of the No-Conscription Fellowship, and to her mother, Alice Wheeldon.

1.3. Alice Wheeldon was a 50-year-old resident of Derby. She earned money selling second-hand clothes, and was a politically active pacifist, socialist and feminist. She and her husband, William Augustus, had four adult children: three daughters (Nellie, Hettie and Winnie) and a son, William Marshall (Will), who was a conscientious objector. Only two of her daughters, Hettie and Nellie, were living in the Derby household with their parents.

1.4. Alice and her children were supportive of the anti-war movement and members of the No-Conscription Fellowship. 'Alex Gordon' visited the Wheeldons for the first time on 26 December. After sharing a meal with them, he was referred to lodgings elsewhere by Hettie Wheeldon. He returned to the Wheeldon household the next day, 27 December 1916.

1.5. On 27 December 1916, 'Gordon' telegraphed Booth. Booth then travelled by train to Derby via London following instruction from his senior officer at PMS2 (Labouchere). Booth was met by 'Gordon' in Derby.

1.6. On the evening of 29 December 1916, 'Gordon' introduced Booth to Alice Wheeldon as 'Comrade Bert', another conscientious objector.

1.7. On 1 January 1917 a parcel was intercepted at the Derby railway station. It contained poison that had been sent from Southampton by Alice Wheeldon's daughter, Winnie Mason, and supplied by her son-in-law, Winnie's husband, Alfred Mason, a pharmacist.

1.8. This parcel of poison formed the basis of the Crown case.

1.9. Alice Wheeldon and her daughters Harriet Wheeldon and Winnie Mason, along with Alfred Mason, were arrested on 30 January 1917, with charges laid on 3 February 1917. They were prosecuted on charges of conspiring to murder (and of soliciting and proposing the murder of) the Prime Minister, David Lloyd George, and Sir Arthur Henderson, Labour leader and a member of the small War Cabinet.

1.10. The Crown's case was that the Defendant Alice Wheeldon had suggested to 'Gordon' that she would procure poison for 'Gordon' to assassinate Lloyd George and Henderson. The Defendants' case was that Alice believed 'Gordon' to be a conscientious objector who would help Alice with an 'emigration scheme' for her son and two others (referred to by Alice as 'her three boys'). For his part, 'Gordon' sought assistance from Alice for his friends wishing to escape from an internment camp. At 'Gordon''s request Alice

agreed to get the poison for 'Gordon', who had told Alice it was to kill guard dogs to assist in this escape.

1.11. The Defendants came up for trial at the Central Criminal Court on 6 March 1917, before Low J, prosecuted by the Attorney-General, The Right Hon. F.E. Smith KC MP (later Lord Birkenhead), leading Mr Hugo Young KC, Sir Archibald Bodkin and Mr Maddocks. The Defendants were all represented by Mr Sayed H. Riza.

1.12. The Defendants were introduced by the Attorney-General as follows: 'a very desperate and dangerous body of people, consisting of persons who are bitterly hostile to this country, shelterers of fugitives from the Army, and persons who do their best to injure Great Britain in the crisis in which this country finds itself to-day'.

1.13. At trial Booth gave evidence, but 'Gordon' was not called. No explanation was given by the Attorney-General beyond that there were reasons 'which seem to me good'.

1.14. The trial was restarted on 8 March due to a juror falling ill. Prior to this point, the trial had heard, over two days, the Attorney-General's opening address, all prosecution witnesses, and the opening of the defence case, with the evidence of the principal Defendant, Alice Wheeldon.

1.15. This 'second' trial consisted of 11 original jurors and one new juror. It concluded on 10 March 1916 with the Defendants, apart from Harriet Wheeldon, being convicted. Alice, Alfred and Winnie were sentenced to 10, 7 and 5 years' penal servitude respectively.

1.16. Permission to appeal was refused on 2 April 1917.

1.17. In failing health, Alice Wheeldon was released from prison on licence in December 1917. Prisoners Winnie and Alf Mason were released on 26 January 1919, after serving almost two years.

Core arguments of application for a reference

1.18. The essential premise of this application for a reference is that the case was driven through by unfair means. In particular, it is contended that a deliberate decision was made to keep 'Gordon' out of the way that amounted to an abuse of process. Further, this happened in a politically febrile atmosphere, generating enormous publicity and successfully degrading the reputation of the anti-war movement.

1.19. Primarily, it is contended that the decision to keep 'Gordon' out of the way was born of oblique motives. 'Gordon' can be demonstrated to have been William Rickard, a mentally unstable convicted criminal. In any event the effect of the decision was to render the trial unfair.

1.20. Such unfairness in the trial was compounded by other defects:

1.20.1. Following replacement of the ill juror, the trial was restarted but evidence was rushed through on the basis that 11 of the jurors had heard it before; and

1.20.2. Inadmissible bad character evidence was led against the Defendant, Alice.

1.21. This case presents the Commission with a unique opportunity to refer to the Court of Appeal an historic injustice, with minimal investigation. All of the core material has been collated, organised and helpfully analysed by the Applicant.

> Supporting material, including dramatis personae and contextual chronology: Expanded Argument, page 12

Applicant

1.22. Chloë Mason is the Applicant, and worked on the case jointly with her sister, Deirdre Mason, prior to the latter's untimely passing in 2017. Their father was Peter Mason, only child of Winnie and Alfred Mason, and grandson of Alice Wheeldon.

2. STATUTORY CRITERIA AND DISCRETION

Criteria for CCRC to refer cases for appeal (s13, Criminal Appeal Act 1995)

2.1. As the Commission will be well aware, s13 of the Criminal Appeal Act 1995 says:

> (1) A reference of a conviction, verdict, finding or sentence shall not be made under any of [sections 9 to 12B] unless—
>
> (a) the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made,
>
> (b) the Commission so consider—
>
> (i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or
>
> (ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and
>
> (c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.
>
> (2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it.

2.2. The bulk of the skeleton argument, and the material compiled by the Applicant, is concerned with persuading the Commission as to the existence of the 'real possibility' required by s13(1)(a).

2.3. Regarding s13(1)(b)(i) the Defendants sought leave to appeal their convictions by a Notice dated 19 March 1917 [Held: TNA > DPP 1-50 > *Application and grounds of appeal 1917.pdf*] on three grounds:

> (1) On the point of law
>
> That the prosecution kept out of the way the most material witness, to wit, one Alec Gordon and thereby perverted the course of justice to the detriment of the appellants.
>
> (2) That the learned Judge misdirected the jury in so far
>
> That he did not sufficiently point out to the jury that the evidence of Alice Wheeldon as to why Alec Gordon wanted the poison remained uncontradicted.

That he did not sufficiently point out to the jury the importance of the paper of instructions Exhibit No. 40, to the case for the defence.

(3) That the verdict of the jury is so against the weight of evidence as to be unreasonable and incapable of support.

2.4. Regarding s13(1)(c), permission to appeal on the above grounds was refused by Lord Reading LCJ, Avory & Rowlett JJ on 2 April 1917 [Held: TNA > *J 81-6 Court of Criminal Appeal Register 1917.pdf*]

2.5. Whilst the original application for leave to appeal raised the absence of 'Gordon', **the argument here raised is fundamentally different and is based on evidence unavailable to the Defendants:** it is now known that 'Alex Gordon' was an alias of William Rickard, a convicted criminal of unstable temperament, which was not disclosed to the Defence by the Crown. Additionally, the Applicant seeks to rely on the grounds of irregularities in the trial concerning the jury and the submission of evidence of bad character (see §1.20 above).

Discretion of the CCRC (Section 9, Criminal Appeal Act 1995)

2.6. Sec. 9 of the Criminal Appeal Act 1995 states:

(1) Where a person has been convicted on indictment in England and Wales, the Commission -

(a) may at any time refer the conviction to the Court of Appeal and…

(2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the 1968 Act against the conviction.

2.7. It is acknowledged that the CCRC has to scrutinise posthumous applications for referral with care, for sound public policy reasons. It is submitted, however, that there are powerful grounds positively justifying referral of this unique case, which accord with the commission's casework policy on the exercise of its discretion.

2.7.1. The case is 'historic' in more than one sense. It is old but of real historical significance, with meaningful contemporary resonance.

2.7.2. The convictions were for offences of the utmost gravity: in terms of the nature of the crime fundamentally alleged; the status of the target; and the socio-political context in which the alleged conspiracy was formed.

2.7.3. The core premise of the application is that the conduct of the case constituted an affront to justice, the Defendants' right to a fair trial having been sacrificed in the name of political interests.

Appeals in cases of death (Section 7, Criminal Appeal Act 1995)

2.8. As a direct descendant of the Defendants, with a substantial interest in the outcome of the appeal, the Applicant qualifies as an 'approved person', as required by the Court of Appeal in cases where the Defendants are deceased. The Applicant's substantial interest in the appeal is further described in sections 3.1 and 3.2.

> Supporting material: Expanded Argument, page 46

3. REASONS TO EXERCISE DISCRETION IN FAVOUR OF REFERENCE

3.1. The profound feelings of humiliation, anger and sadness experienced by the Applicant and her family as a result of the case are described in the section 'Internal impacts: familial shame'. The sense of injustice was and is plainly felt very keenly. The impact of the case was particularly acute because its premise was anathema to the family's actual social and ethical outlook over generations.

> Supporting material: Expanded Argument, page 58

3.2. Examples are given by the Applicant of the convictions having meaningfully tarnished the family's name and reputation.

> Supporting material: Expanded Argument, page 61

3.3. A major factor in the timing of the application is delay due to suppression:

3.3.1. by the State, of official documents and records having been embargoed until relatively recently, and then gradually unearthed;

> Supporting material: Expanded Argument, page 63

3.3.2. by family, due to the emotional sensitivity of the matter. Since becoming properly and fully aware of the case the applicant has pursued the matter tirelessly and with thoroughness. Counsel have been enlisted to assist and advise on a *pro bono* basis.

> Supporting material: Expanded Argument, page 70

3.4. The issues involved in the application have significant contemporary resonance. Prosecutorial duties of fairness, particularly regarding disclosure, are of real concern currently. Use of undercover operatives to infiltrate political groups has been a subject of recent controversy and remains of public interest. We are within the centenary period of the First World War, the centenary year of the crucial *Sex Disqualification (Removal) Act* 1919, and it is now just over a hundred years since the trial in this case. There is also a real public interest in the case as an important event in the community history of Derby, as illustrated by the campaign by the Derby People's History Group to clear the Wheeldon family name.

> Supporting material: Expanded Argument, page 71

4. APPLICABLE LAW

General principles

4.1. References under s9(1)(a) of the Criminal Appeal Act 1995 ('the 1995 Act') are to be treated, in accordance with s9(2) of that Act, as an appeal against conviction under s1 of the Criminal Appeal Act 1968 ('the 1968 Act'). The test for allowing an appeal is in s2(1)(a): 'the Court of Appeal… shall allow an appeal against conviction if they think that the conviction is unsafe'.

4.2. Lord Bingham gave guidance, as a member of the judicial committee of the House of Lords, in *R v Pendleton* [2002] 1 Cr App R 441, on the proper approach to s2(1)(a) of the 1968 Act (at paragraph 7):

4.2.1. The section's predecessor is s4(1) of the Criminal Appeal Act 1907 which, with the accompanying sections, 'clearly expresses Parliament's overriding intention that the interests of justice should be served and also its expectation that the court would have to grapple with potentially difficult factual issues'.

4.2.2. The 'core provision' of s4(1) is 'now expressed more shortly and simply in s2 of the 1968 Act'.

4.3. His Lordship said the following in relation to fresh evidence (at paragraph 91):

> It will usually be wise for the Court of Appeal, in a case of any difficulty, to test their own provisional view [as to the effect of the evidence on the safety of the conviction] by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe.

4.4. In *R v Hanratty (Deceased)* [2002] 2 Cr.App.R. 30 the Court of Appeal, led by Lord Woolf LCJ, referred to Lord Bingham's judgment in *Pendleton* and summarised its 'most important lesson' as follows:

> It should be [the Court of Appeal's] central role to ensure that justice has been done and to rectify injustice.

4.5. In *R v Bentley (Deceased)* [2001] 1 Cr App R 21 the Court of Appeal, led by Lord Bingham CJ, set out principles of general application as to the approach which should be taken to appeals brought many years after conviction (emphasis added):

> (1) We must apply the substantive law… as applicable at the time…
>
> (2) The liability of a party to a joint enterprise must be determined according to the common law **as now understood**.
>
> (3) The conduct of the trial and the direction of the jury must be judged **according to the standards which we would now apply** in any other appeal…
>
> (4) We must judge the safety of the conviction **according to the standards which we would now apply** in any other appeal.

4.6. Returning to the judgment in *Hanratty*, the court noted (at paragraph 95):

> Here it is important to have in mind that a conviction can be unsafe for two distinct reasons that may, but do not necessarily, overlap. The first reason being that there is a doubt as to the safety of the conviction and the second being that the trial was materially flawed. The second reason can be independent of guilt because of the fundamental constitutional requirement that even a guilty Defendant is entitled, before being found guilty, to have a trial which conforms with at least the minimum standards of what is regarded in this jurisdiction as being an acceptable criminal trial.

4.7. It continued (paragraph 96):

> Fresh evidence which is of sufficient quality and is relevant to the question of guilt will usually contribute to the question of the safety of the conviction and so will be legally admissible if in its discretion the court decides to admit it. Where what is in question is not the evidence of guilt but the procedural quality of a trial, evidence relating to guilt will usually not be admissible because it will not address the defect in the trial unless it helps to place the defect in context. Evidence as to what happened at the trial may on the other hand be very important as to the extent to which the trial is flawed.

4.8. In relation to procedural defects, the court cited another decision of Lord Bingham in *Randall v R* [2002] 2 Cr App R 267 (PC) at its paragraph 97, which included the following passage:

> The right of a criminal Defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the Defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a Defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial.

4.9. On the effect of the passage of time, the Court of Appeal in *Hanratty* made it clear that current standards should be applied but 'the question of whether a trial is sufficiently seriously flawed, so as to make a conviction unsafe because it does not comply with what would be regarded today as the minimum standards, must be approached in the round' (paragraph 100). If 'what has happened did not comply with a rule which was in force at the time of trial [that] makes the non-compliance more serious than it would be if there was no rule in force' (paragraph 98).

Core submissions on legal principles

4.10. Here, it is the Applicant's case that:

4.10.1. The decision to keep 'Gordon' out of the way amounted to an abuse of process, rendering the convictions unsafe:

- In *R v Mullen* [1999] 2 Cr App R 143 the Court of Appeal confirmed that a conviction may be unsafe due to abuse of process because 'for a conviction to be safe, it must be lawful; and, if it results from a trial which should never

have taken place, it can hardly be regarded as safe'. Such abuse may come to light only after trial.

- On the basis that it was improperly motivated, the decision to keep 'Gordon' out of the way puts the case into the category of proceedings that would bring the administration of justice into disrepute (the second form of abuse identified in *R v Maxwell* [2010] UKSC 48).
- Furthermore, and in any event, it rendered the trial process unfair (the first form of abuse identified in Maxwell). 'Gordon' was a material witness for all the reasons set out below. Furthermore, the additional evidence regarding the true identity and history of 'Gordon', is such that:

  (a) It can reasonably be supposed that he would have damaged the prosecution's case if called and exposed to cross-examination; and,

  (b) If he had been deployed by the defence at trial, it would have profoundly affected the jury's decision.

4.10.2. Further and in any event, the irregularities in relation to the jury and bad character evidence render the conviction unsafe.

GROUNDS OF APPEAL

5. GROUND A. THE ROLE OF 'GORDON', THE FAILURE TO CALL HIM, AND THE FAILURE TO DISCLOSE HIS BACKGROUND

Ground A(1) Role of 'Gordon'

5.1. 'Gordon' was a critical figure in this prosecution in, inter alia, the following respects:

5.1.1. He encouraged the principal Defendant to embark upon an expedition of obtaining poison irrespective of whether the eventual victim of that poison was to be an animal or a human being.

> Supporting material: Expanded Argument, page 83

5.1.2. He purported to receive admissions of (a) intention to make and complicity in an attempt upon Lloyd George's life from the principal Defendant and (b) passed on material allegedly incriminating the Defendants to Booth, upon which Booth acted.

> Supporting material: Expanded Argument, page 92

5.1.3. He was present with Booth when Booth claimed incriminating admissions were made by the principal Defendant.

> Supporting material: Expanded Argument, page 98

5.2. At all material times 'Gordon' was a special agent in the employ of an agency of the British Government.

> Supporting material: Expanded Argument, page 99

Ground A(2) Failure to call 'Gordon'

5.3. No reasons were disclosed for the prosecution decision not to call 'Gordon'. The Attorney-General simply said that he took responsibility for the decision 'for reasons which seem to me good'. However:

5.3.1. 'Gordon' was 'named on the back of the indictment'.

> Supporting material: Expanded Argument, page 110

5.3.2. Defence was not aware that 'Gordon' was not being called or made available.

> Supporting material: Expanded Argument, page 111

5.3.3. The guiding principle for calling witnesses at the time was set out by Baron Alderson in *R v Woodhead* (1847) Car & K 520: 'a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment; but the prosecutor ought to have all such witnesses in court, so that they may be called for the defence, if they are wanted for that purpose; if, however, they are called for the defence, the person calling them makes them his own witnesses'.

5.3.4. *R v Russell-Jones* [1995] 1 Cr App R 538 reviewed the history of that principle, referred to as 'the 1847 rule' which Lord Parker CJ had described (in *R v Oliva* (1965) 49 Cr App R 298) as having 'continued in full force' ever since it was laid down, but concluded that the prosecution's discretion was not 'unfettered'.

(a) The first limiting principle is that the discretion 'must be exercised in the interests of justice, so as to promote a fair trial' (p. 544D). The court should interfere if the prosecutor had acted out of an oblique motive, that is to say if he had not called his mind to his overall duty of fairness, as a minister of justice (p. 544F).

(b) The next principle is that the prosecution ought normally to call or offer to call all the witnesses who give direct evidence of the primary facts of the case, unless for good reason, in any instance, the prosecutor regards the witness's evidence as unworthy of belief. That reflected statements of principle by Lord Roche in *Seneviratine v R.* [1936] 3 All ER 36, and by Lord Hewart CJ in *R v Harris* [1927] 2 KB 587 (see p. 545C).

Certainly by current standards, this was a situation in which it would have been contrary to the interests of justice to require the defence to call 'Gordon', and so, if the Crown refused to do so, the learned judge ought to have exercised his power to call the witness (see *R v Haringey Justices Ex. p. DPP* [1996] QB 351).

> Supporting material: Expanded Argument, page 112

5.4. The failure to call 'Gordon', or make him available, prevented the defence from exploring:

5.4.1. 'Gordon''s personal involvement with investigating escapes from internment camps and his dealings with dogs in that context. It was the defence case that all discussion about poison and guard dogs in internment camps originated from 'Gordon'.

> Supporting material: Expanded Argument, page 117

5.4.2. The accuracy of Booth's notes alleging admissions by the principal Defendant at a time when 'Gordon' was present. In the context of Booth being permitted to rely on his notes without being required to exhaust his memory, the evidence of 'Gordon' may have undermined the accuracy/reliability/honesty of those notes.

> Supporting material: Expanded Argument, page 123

Ground A(3) Failure to disclose 'Gordon''s background

5.5. The decision not to call 'Gordon' was not a legitimate decision, nor made in good faith. It was a deliberate (and successful) attempt to suppress from the defence and from the jury that in truth 'Gordon' was a man both of mental instability and serious criminal background, called William Rickard.

5.5.1. The fact that 'Alex Gordon' was in truth William Rickard is demonstrated by contemporaneous sources – photographs, handwriting, official registers, etc. and supported further by recorded admissions Rickard made personally under one or other alias. This evidence is summarised in *Graphical summary of evidence identifying 'Alex Gordon' as William Rickard* on page 13 of this document.

> Supporting material: Expanded Argument, page 126

5.5.2. Rickard had been in mental institutions and had criminal convictions including for blackmail. None of this was disclosed to the defence.

> Supporting material: Expanded Argument, page 144

5.5.3. Prosecution confirmed its awareness of 'Gordon''s antecedents immediately before his withdrawal as a witness.

> Supporting material: Expanded Argument, page 150

5.6. 'Gordon' was kept out of the way by Sir Charles Matthews, the DPP, during the trial and then deliberately sent to South Africa shortly afterwards to remove all risk of his antecedents being exposed.

> Supporting material: Expanded Argument, page 154

5.7. In the circumstances the defence were denied any opportunity to cross-examine any prosecution witness on 'Gordon''s criminal antecedents and mental history. The relevance of this is that Booth acted on information provided by 'Gordon' and disclosure would have exposed Booth to cross-examination on both his competence and reliability in acting on the word of such a man.

Graphical summary of evidence identifying 'Alex Gordon' as William Rickard

1887

William Rickard born
24 October 1887
Father Alfred Rickard
Mother Caroline Rickard [1]

1899

William Rickard
On discharge 13 April 1899, from Holloway Prison to Darenth Schools. [2]

1908

William Rickard alias 'Francis Carrington' sentenced at Dover Quarter Sessions [3]

1914

William Rickard marries Lily Quinton, 26 February 1914 [4]

1916

'Francis Vivian' working at Leicester Mail, when hired by Herbert Booth ostensibly as a journalist but effectively as an agent for PMS2.[5]

Booth works with **'Francis Vivian'** aka **'No. 5'** aka **'Alex Gordon'**. [6]

'Alex Gordon' approaches Wheeldon household. [7]

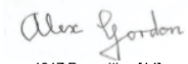
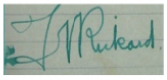
1917

Wheeldon trial, February 1917.
'Alex Gordon' named, but not called as witness. [8]

'Gordon' reported to have left England between March and May 1917. [9]

William Rickard travels to South Africa, with wife, Lily, 5 April 1917. [10]

Tours South Africa as **'Vivid, the Magnetic Man' and 'Cosmo'** confirmed by wife Lily Rickard [11]

AGE OF RICKARD	12 years		26 years	28 years	29 years
AGE REFERENCES	12 years Discharge record [2]		25 years Marriage Certificate [4]		29 years Shipping records [10]
HEIGHT REFERENCES		Rickard alias 'Francis Carrington' 1910: 5'6" without shoes Register of Habitual Criminals [12]			Unnamed man confirmed to be 'Alex Gordon' 1917: 5'6½"–5'7" Letter to *Labour Leader* from J Ramsay MacDonald MP [13]
OCCUPATION REFERENCES			Rickard 1914: Journalist Marriage Certificate [4]		
SIGNATURES				 1917 Deposition [14]	 Letter to Governor General, South Africa, May 1919 [15]

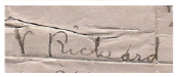
1919

William Rickard arrives back in England from South Africa,
with wife, Lily, and baby, Mavis,
11 September 1919 [16]

'Francis Vivian' shops around the story of his life as **'Alex Gordon'** to various newspapers and others, including Francis Rimington, secretary of the Leicester branch of the Socialist Labour Party.

At a meeting organised by Rimington on 24 November 1919 [17], he signs a receipt as Vivian/Gordon, witnessed by people who had known him as Alex Gordon at the Wheeldon household in 1916.

At the same meeting, he wires money received to Mrs L Rickard.



'F. Vivian'
'Alex Gordon'
in Daily Herald,
27 December 1919. [18]

1920

'Alex Gordon'
in Weston-Super-Mare Gazette, 20 March 1920, p.12 col 3,
'The 'Mystery Man'. [19]

1921

'Alex Gordon'
in World's Pictorial News, 19 February 1921, p. 1 [20]

1929

'Delamere Carrington', 'Alex Gordon', 'Francis Vivian', 'No. 5', William Rickard

Patient file, No. in Civil Register 11668,
Wiltshire County Mental Hospital.
Date of admission 12 June 1929. [21]

Admitted as 'Delamere Carrington'
Claims to be 'Alex Gordon'' and 'No. 5'
Established to be William Rickard

31 years 31 years Shipping records [16]	32 years	32 years	33 years	40 years 39 years Patient file [21]
				'Carrington', 'Gordon', Rickard: 5' 7" Patient file [21]
	'Gordon'/'Vivian' 1919: journalist, 'professional mesmerist' Daily Herald, 27 December 1919 [18]		'Gordon' 1920: 'poet, mystic, actor and diviner of criminals' Weston-Super-Mare Gazette, 20 March 1920 [19]	'Carrington', 'Gordon', Rickard, 1929: professional mesmerist, journalist, newspaper editor Patient file [21]

SOURCES

[1] Birth certificate [Held: Register Office - certificates]
[2] Discharge record [Held: Colney Hatch Asylum]
[3] Deposition [Held: Dover Quarter Sessions 1908]
[4] Marriage certificate [Held: Register Office - certificates]
[5] The Times, 8 February 1921, p.5, col. 2, 'Secret Service in the War' [Held: Newspapers]
[6] [Held: Wiltshire County Mental Hospital]
[7] 2nd Trial, Booth EIC, L2780-2785, in Record p.367; 2nd Trial, Alice Wheeldon, EIC L4090-4095, in Record pp. 431-432 [Held: Proceedings]
[8] List of Witnesses [Held: TNA > DPP 1-50 List of Witnesses]
[9] Minute by Inspector Patrick Quinn, 16 November 1917 [Held: TNA > MEPO > MEPO 9356 > MEPO 9356-73]
[10] Shipping records [Held: Shipping - Rickard 1917 & 1919]
[11] [Held: Wiltshire 1929]
[12] [Held: TNA > MEPO 6-21 1910]
[13] [Held: Ramsay MacDonald Papers]
[14] Gordon handwritten statement [Held: TNA > MEPO 9356 > MEPO 9356-05-02&03]
[15] [Held: South African National Archive 1919]
[16] Shipping records [Held: Shipping - Rickard 1917 & 1919]
[17] [Held: Mason Family Papers > Rimington papers 1919]
[18] [Held: Newspapers]
[19] [Held: Newspapers]
[20] [Held: Newspapers]
[21] [Held: Wiltshire County Mental Hospital]

Ground A Conclusion

5.8. In addressing this issue in the summing up the judge directed the jury wrongly on the approach to the absence of 'Gordon'. The judge stated: 'If you think the absence of 'Gordon' is so fatal and renders the prosecution so uncertain and the evidence in support of it so unreliable as that you would not be justified in convicting the prisoners, of course you are bound to acquit them.'

5.8.1. This direction confines itself to the mere fact of the absence of the witness. It does nothing to address why his presence might have been so important to the defence. The principal Defendant's account, that 'Gordon''s plan was to poison a dog, would have been lent substantial weight by 'Gordon''s inevitable admission that immediately prior to his contact with the Defendants he had been in Liverpool, investigating escape from London internment camps where he claimed dogs were deployed.

5.9. Further, until the truth of 'Gordon''s antecedents emerged, the judge's words could not address what would have been the central issue if proper disclosure had been made, namely that the source of all the hard evidence as supplied to Booth was from a man who was mentally unstable and a criminal who the prosecution had deliberately concealed to avoid the risk of either side calling him to give evidence.

5.10. It is beyond doubt that the prosecution knew of 'Gordon''s mental health and criminal antecedents (as established in 5.5.3). The clearest evidence is found in an account of a meeting between the DPP, Douglas Straight, the head of PMS2, and Sir Basil Thomson, the head of Metropolitan Police CID and Special Branch, in the French version of Sir Basil's memoirs. Correspondence between Major Melville Lee, of PMS2, and the DPP alludes to the revelation of 'Gordon''s identity and antecedents. Contemporaneous correspondence and the fact of 'Gordon''s name being included on the back of the indictment strongly suggests that the prosecution intended to call 'Gordon' but changed their mind late in the day. Furthermore, one of the prosecuting counsel (Bodkin) had been the Recorder in a criminal case where 'Gordon' was the Defendant and convicted of theft prior to the Wheeldon trial [Dover Quarter Sessions, files for the quarters ending 13 April 1908 and 4 August 1908. Held: Dover Quarter Sessions 1908].

5.11. There was no perceived need at the time for formal duties of disclosure because the courts were thought able to rely on notions of fair play and the integrity of those acting on behalf of the Crown in criminal cases. The duty of prosecuting counsel to act as 'a minister of justice' was well established by 1917: see *R v Puddick* (1865) 4 F & F 497, per Crompton J; and *R v Banks* [1916] 2 KB 621 per Avory J. By contemporaneous standards the concealment of 'Gordon''s true identity and antecedents was in breach of the Crown's general duties of fairness.

5.12. Furthermore, plainly, under the duties of disclosure now in force, such information, about a man of pivotal importance to the events concerned, would have been disclosable – whether or not, in fact, he was to be called to give evidence. It would have been potentially useful to the defence in any abuse of process argument; in exploration at trial of the Crown's reasons for not calling 'Gordon'; and/or in criticism of the essential basis of the Crown's case.

6. GROUND B: DISCHARGE OF JURY 1 AND EMPANELLING OF JURY 2

6.1. The first trial was aborted after the close of the prosecution case due to the illness of a juror. The defence argued that the juror should be allowed time to recover and the trial should then continue. The judge discharged the jury.

6.2. The second jury consisted of the original 11 jurors plus a new 12th juror. This was not a jury selected at random but simply the addition of one extra person to the existing 11. This was a defectively selected jury.

6.3. This defect was compounded with serious consequences because the judge prevented defence counsel from going into various evidential matters on the basis that such line of enquiry had been heard before. It had not been heard before by the new juror. The judge thereby expressly encouraged the other 11 jurors to relate evidence of what had been said in the first trial to the new juror and for him to act upon their reports. This is the very antithesis of the jury system and in direct contradiction of a jury acting only on what they had heard said in court.

6.4. In 1917 juries had to return unanimous verdicts. The verdict of the new juror was, on the judge's own direction, founded on evidence he never heard.

6.5. Authorities pre-dating this trial indicate the impropriety of the approach taken:

- *R v Edwards* 170 E.R. 1356 – the Defendant should have been given the right of objection to the panel and evidence should not have been simply read back (let alone as in this instance 'taken as read').
- *AG of NSW v Bertrand* (1865-67) L.R. 1 P.C. 520 – evidence on a retrial should not be read back to a jury from notes.

  The approach adopted in this case would have suffered from flaws analogous to those suffered by reading evidence back from notes, which was prohibited, presumably, because of the obvious primary deficiency that the jury would not have the opportunity of assessing the witnesses' demeanours. Hurrying through 'live' evidence would have had much the same deficiency, but with the added defect that details were omitted.

> Supporting material: Expanded Argument, page 159

7. GROUND C: ADMISSION OF AND JUDICIAL REFERENCE TO EVIDENCE OF THE DEFENDANTS' 'BAD CHARACTER'

7.1. In *Makin v. Att.-Gen. for N.S.W.* [1894] A. C. 57 the Privy Council provided the classic statement of the common law rule regarding evidence of 'bad character':

> 'It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried.
>
> 'On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears on the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.'

7.2. It remains good law in Commonwealth jurisdictions without a regime equivalent to sections 98—113 of the *Criminal Justice Act 2003* of England & Wales (see *Myers v R* [2016] AC 314 (PC).

7.3. The principle was applied in cases heard on appeal in the years immediately before the instant trial: *viz. R v Fisher* [1910] 1 KB 149; *R v Rodley* [1913] 3 KB 468.

7.4. The approach taken by the Crown also appears to have contravened expected standards of professional etiquette, which were sufficiently well-established by the time as to be enshrined in rules drawn up by the General Council of the Bar in 1917 concerning cross-examination.

7.5. The prosecution quite deliberately adduced from Booth evidence of alleged admissions by Alice Wheeldon of involvement in criminal acts and plots engaged in by the suffragette movement. The relevant passages from Booth's evidence are set out in Table 7-1.

7.6. In cross-examination Alice Wheeldon denied all the allegations of involvement in 'suffragette outrages', including the Breadsall Church arson, sending a skull to Home Secretary McKenna or 'the nail in the boot.'

> Supporting material: Expanded Argument, page 165

7.7. There was considerable scope for the jury to be prejudiced against Alice Wheeldon by the evidence of involvement in such notorious and controversial criminality. There appears to have been no justification for admissibility of the evidence, in line with the principles in *Makin* (above).

7.8. It is self-evident that the introduction of such information into evidence had the potential to prejudice the jury's assessment of the Defendants. It is submitted that it would not have satisfied the criteria for admission through any of the 'gateways' provided by the current law, under the *Criminal Justice Act 2003*. Still less would it have satisfied the stricter requirements of the common law at the time, if subjected to proper scrutiny.

Table 7-1. Booth's allegations of Alice Wheeldon's involvement in criminal acts or plots by the suffragette movement – from Booth's evidence

References are from the *Record of Proceedings* [Held: Proceedings]

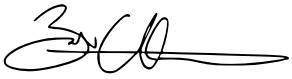
TRANSCRIPT REF.	CONTENT	NOTES
L101-103 in *Record* p.234	Q: Did she show you anything else? A: Yes. Q: Do you remember any other matter she mentioned to you specially on that occasion? A. Yes. Q. What was that? A: She was showing me her son's photograph, and all at once she said: 'You know about the **Breadsall job**, we were nearly copped, but we bloody well beat them.'…	See also XX by Riza L502 onwards, in *Record* p.255 Repeated in '2nd trial' – L2826 onwards, in *Record* p.368 XX by Riza in '2nd trial' – L3105 onwards, in *Record* p.382
L169 in *Record* p.237	Q. Anything else? You may refer to your notes. A. I am referring to them. Then I turned the conversation on to sabotage. There was some more conversation, and suddenly Gordon said: 'I cannot understand how the **Suffs burn Churches down'**. I said 'Oh, with petrol'. Mrs Wheeldon said 'We did it with petrol', then suddenly, as if she had admitted something, she said 'that is how they did it'.	Repeated in '2nd trial' – L2891 onwards, in *Record* p.371 XX in '2nd trial' L3082-3086 in *Record* p.381
L172 in *Record* p.237	A. … I said to her: 'What in your opinion would be the best way to poison Lloyd George'? Q. Did you say 'poison'? A: Yes. She said: 'We had a plan before when we' – that is the Suffragettes – 'spent £300 in trying to poison him. It was to **get a position in a hotel** where he stayed and **drive a nail through his boot that had been dipped in poison**. … We did intend to do **McKenna** in, and when we **sent the skull I was going to stick a poisoned needle through**, but it was argued an innocent person might touch it and die.'	See also XX by Riza L651 in *Record* p.260 Repeated in '2nd trial' L2892 onwards, in *Record* p.371.
L2950 in *Record* p.377 L2951 in *Record* p.377	Q: 'When you were leaving what became of the box?' A: She gave the box to Gordon and Gordon put it in his pocket.' Q: 'Did she say anything? A: 'She said …'Now **Walton Heath** will be the best place to **catch George with an air-gun**'. I said 'Right-ho''.	2nd Trial, Third Day Booth EIC, L2950-2952 in *Record* from p.377.

8. CONCLUSION

8.1. It is respectfully submitted to the Commission that there are powerful reasons to conclude that there is a real possibility of the verdicts being overturned if the case is referred to the Court of Appeal. Fundamentally, the role of 'Gordon' and his conspicuous absence from the trial, seen in light of the revelations as to his true identity and character, seismically undermine the safety of the convictions.

8.2. Further, there are powerful reasons for the Commission to exercise its discretion in favour of making a referral. The impact of the case upon the Defendants and their descendants, its historical importance and its contemporary resonance, all combine to make the application uniquely worthy of referral despite its age.

ANDREW SMITH QC



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Date: 11 November 2019