

C. J. Watson
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5 September 2009

Jeff Orr
Chief Legal Counsel
Office of Legal Counsel
Ministry of Justice
PO Box 180
WELLINGTON

Dear Mr. Orr

Application for Royal Prerogative of Mercy

I refer to your letter of 18 June 2009 addressed to my son Scott, care of myself and also copied to him Care of Christchurch Prison.

Comments about the Court of Appeal

Thank you for the enclosures supplied with your letter. I concede that a notice of appeal was filed against the non-parole period of seventeen years. I do not agree that the appeal against the non-parole period was in fact pursued with the Court of Appeal. To that end I enclose copies of both the crown and defense appeal submissions neither of which makes any mention of such an appeal. I suggest that the filed appeal falls into the same category as that of the first ground of appeal specified in the appeal against conviction, that *“the verdict of the jury was unreasonable and cannot be supported having regard to the evidence”* as commented on by the Court of Appeal. I suggest that the court did not consider either ground number one or an appeal against the non-parole period and in effect there was no appeal on these grounds.

Appointment of Kristy McDonald QC

It is I who have recorded my misgivings regarding the appointment of Ms. McDonald, my son, having no means of researching her professional involvements, has passed no comment. That you

choose to ignore these misgivings is a matter for discussion at some future date.

Identification evidence and Guy Wallace

“It is beyond question that the case against him depended substantially on the correctness of those identifications, because if they were incorrect the Crown case was seriously undermined.”

THE QUEEN v SCOTT WATSON [2000] NZCA 46 (8 May 2000)

You have requested that I procure from Guy Wallace an affidavit covering the issues you have set out in your letter. Before doing this I would require an indemnity that neither I, nor Mr. Wallace, will be accused of collusion, or in my case coercion, at any future date. You should be aware that a number of lawyers over a long period have advised me to maintain my distance from people who were witnesses in this case. I have always endeavoured to do so. Your request goes against that advice.

Having said that, there is a considerable body of evidence which relates to the Wallace purported identification, identification in general, and the police handling of identification issues, which you should be aware of and which would expand the requirements for clarification that you have laid down.

Rozlyn McNeilly Guy Wallace and Montage B

McNeilly gave evidence regarding the “identification” of the man at the bar tending to reinforce Wallace’s evidence that the ‘man at the bar’ was also the ‘man on the naiad’. She choose photo 3 in montage B and qualified her choice in the same manner as Wallace by noting that the hair on the man in photo 3 was shorter than she remembered. On 27 November 2000 She provided an affidavit as enclosed. This is a copy (the original may be viewed at the offices of my lawyer, Chris Clark of Hardy-Jones and Clark in Blenheim).

Delayed formal identification procedure

McNeilly was not shown this montage until 20 March 1998 nearly three months after the disappearance of Hope and Smart and Wallace was not asked until 20 April 1998 nearly four months after the event. This delay is somewhat suspicious in itself and makes one wonder why the prime suspect was not shown to the key witnesses somewhat closer to the time of the alleged crime. Both suspect and

witnesses were available within days of the new year. These suspicions are borne out by the enclosed documents (appendix B) which together support the proposition that most or all of the important witnesses available to identify the mystery man, did in fact, participate in a formal identification procedure at an early date. What value would the purported “identifications” relied upon by the Crown and Heron J have had, had it been known that a prior formal identification procedure had failed to provide the required result and so been expunged from the record?

A recently reported (by Assistant Commissioner Gavin Jones) four year police investigation deals with the matter thus:

“The issue as to whether Wallace was shown Montage A is unclear, at least as of 18 February when the first affidavit was sworn. The briefing notes of 11 January 1998 include a comment from Detective Sergeant Moore “*The only thing of note relates to Scott Watson. It seems very unusual that Wallace does not know Scott Watson. He does know his mother. When shown a photographic Montage Wallace did not pick Watson out*”.

It seems that the source of this comment may have arisen from a Q/A interview of Wallace by Detective Sergeant Moore on 11 January (*note- Assistant Commissioner Jones is ‘honestly mistaken’ about this date. The Interview occurred on 27 April 1998 and the photo under discussion was shown to Wallace on 9 January of that year*) after Detective Fitzgerald had completed a video interview with Wallace. There is a documented reference on the Op TAM file to the Q/A interview in which Detective Sergeant Moore questions Wallace about being shown a ‘single’ photograph. There is no other information on the Op TAM file that clearly establishes that Montage A was shown to Wallace. Therefore in my assessment it is more likely that the reference in the briefing notes to the Montage should in fact have been a reference to the ‘single’ photograph. However, my assessment is speculation only and I cannot advance this issue any further.”

You will see by reference to the enclosed documents (appendix B) and in particular the ‘transcript of recorded interview with Guy Wallace’ pages 22 and 23 dated 26 February 1998 that Wallace gives detail of being shown “***a line up in a manila folder***”, long before the creation (on 17 March 1998) of ‘montage B’.

Wallace depositions evidence

I have included for your consideration Guy Wallace’s depositions transcript. This was given under oath and before a judge. It is, unlike his trial evidence quite straightforward and unambiguous, in particular, Pages 181 –182

241 Q. Well, can I just tell you that that photograph was taken on New Year's Eve?

- A. Really.
- 242 Q. Yes. At probably around 10 or half past 10 in the evening some five, six hours before you delivered these people to the ketch?
- A. Well, I'd find that very hard to believe.
- 243 Q. Well Scott Watson couldn't have been the man, could he?
- A. I find it very hard to believe that's the time element that that photo was taken.
- 244 Q. Just accept from me for the moment if you would that that photograph was taken some hours before you dropped those people off to the ketch? -
- A. Okay.
- 245 Q. That is proved by other evidence in the case, and I believe it

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- was some time around 10:00 or 10.30 on New Year's Eve?
- A. Well, if that is the case then it wasn't Scott Watson that I dropped off.
- 246 Q. That's right. This man sitting here with the red tie on is Scott Watson, right? -y
- A. Right.
- 247 Q. You identify the accused. But he was not the man that got off your Naiad with-Ben Smart and Olivia Hope, was he, couldn't have been-?
- A. Not if that photo was in that timeframe, no.

The 'identification' subject as it applies to Wallace, extends beyond any "purported retraction/s" of evidence by Guy Wallace and certainly beyond the points you have noted in your letter. Please update your requirements and also advise of a method of meeting these that does not leave me open to any detrimental accusations at a later date.

Yours Sincerely

C. J. Watson

Enclosures. -Prosecution and Defence appeal submissions
 -Affidavit Roz McNeilly 27/11/2000
 -Depositions hearing - Guy Wallace
 -Appendix B including Wallace interview Doc 12635

