

A very English scandal

Alec Samuels shares his reflections on the legal significance of the Jeremy Thorpe case

The trial of Jeremy Thorpe, covered recently in the BBC drama, *A Very English Scandal*, took place nearly 40 years ago. The trial makes a good story and good drama, despite the passing of time. But what is the continuing legal significance of the case? Some of the legal issues have been resolved, some are still very much with us.

Conspiracy

In moral terms conspiracy to commit a serious crime is almost as bad as actually committing the crime, and involving others as well may be seen as an aggravating factor. However, to the jury the intention and the agreement will not seem as bad as an execution of the conspiracy. Furthermore, the execution, the act, would probably have been clear cut, whereas the mere preliminary agreement may be very unclear and uncertain. The intent was not to shoot and kill the alleged victim but merely to frighten him off, say the defence. A conspiracy is indeed admitted, but it was only for a comparatively minor purpose.

Similarly when Thorpe was accused of a homosexual act his counsel admitted that Thorpe had homosexual inclinations, thus by admission deflecting the gravity of the accusation but offering a plausible explanation for a misunderstanding.

Preliminary proceedings

The defending solicitor, David Napley, future President of the Law Society no less, was in favour of full preliminary proceedings. The defence, he said, would be able to see and to hear the prosecution witnesses before the trial and better prepare the defence accordingly. Conversely though the prosecution witnesses would have a sort of dress rehearsal, and at the trial would be prepared for the cross-examination and be able to give a more persuasive and convincing performance. The procedure has been abolished, partly because of the Thorpe case, and the delay and expense involved removed.

Immunity for the prosecution witness

The prosecution may be compelled to rely upon rather 'shady' characters as witnesses, and obliged to grant them immunity.



Hugh Grant: Thorpe's doppelganger?

“Proof of guilt & guilt are not quite the same things”

Newton fired the shot that killed the dog and aimed at Scott, but the gun jammed. Before the Thorpe trial he had been convicted for the dangerous use of a firearm and imprisoned for two years. So he was very much an accomplice in the alleged intended murder. He was shown to be a liar. He was receiving money from the media for his story. Bessell admitted deviousness and hypocrisy and lying; and that he was being paid by a newspaper for his story, and would be paid more if there was a conviction.

The victim

Scott, the intended victim, was unimpressive. He had been disclosing his homosexual relationship with Thorpe to Thorpe's family, friends and colleagues. He had been taking money from Thorpe, the inference being in return for keeping quiet about the relationship with Thorpe.

He was shown to be inconsistent, a fantasist, suffering psychiatric delusions, and a liar. He was receiving money from a newspaper for his story.

Potentially important witness for the prosecution not called

The original alleged 'hit man' was to be one Meighan, but he resiled from the conspiracy and merely supplied the gun which was used, unsuccessfully, by Newton. If called he might have strengthened the case for the prosecution; but he might not have done so. Why was he not called?

Circumstantial evidence

Theoretically circumstantial evidence may be as good and cogent as direct evidence, but in practice tends not to be so perceived. The defence says that too much reliance cannot be placed upon it, and there may be no corroboration. The judge may warn the jury to be particularly careful, and thus weaken the evidence or at least not encourage much reliance upon it.

Corroboration

Corroboration is not required by law. Uncorroborated evidence may be very cogent, albeit standing alone. But again the defence will make play about its absence, and the judge may urge caution upon the jury.

Police impropriety or incompetence?

There may be evidence of police impropriety or incompetence, which ought to be investigated, reported to the Independent Office for Police Conduct (IOPC), and disclosed to the defence in good time at the trial. In the Thorpe case various failings emerged. The police interviewed a witness, obtained a confession, but did not act under caution so the evidence was inadmissible. The police altered a witness statement and persuaded the witness to sign the redacted statement, there being no reference to Thorpe. This was done to protect a prominent public figure, such as Thorpe.

Defendant not called to give evidence

Whether to advise the defendant not to give evidence can be a difficult matter for counsel; and is a difficult decision for the defendant himself. If he does not give evidence the jury may think that by inference he is admitting guilt, he is afraid to face up to the truth, and the warning to the jury by the judge may not be sufficient to repair the damage. By law the jury are entitled to draw such inferences as appear proper Criminal Justice and Public Order Act 1994, s 35.

On the other hand if he does go into the

witness box he could 'hang himself', he could be 'shredded' by cross-examination. Thorpe, on advice, did not give evidence.

The impact of counsel

It is widely believed that counsel can win or lose a case contrary to the evidence in the case, or the 'right decision'. The belief is largely mythical. The judge will strive for the fair trial based on the evidence, and will seek to curb any advocate excess or abuse. Griffiths-Jones was widely believed to have lost Lady Chatterley's lover case by inept advocacy. But in Thorpe the acquittal was widely and justly believed to be in large part due to the superb cross-examinations and final speech of George Carman QC, a renowned jury defence advocate.

The biased judge?

In Thorpe the trial judge Cantley J was accused by some of bias in his conduct of the trial and in his summing up. Certainly he already formed a poor opinion of the prosecution witnesses. He was lampooned: 'Members of the jury, whatever I may say the verdict is for you. Please retire and consider your not guilty verdict'. In the Jonathan Aitken trial the judge spoke of a defence character witness

as the 'fragrant Mary', allegedly an indication of a certain bias. The judges strive for impartiality. Any perceived partiality may well have a counter effect upon the jury.

Belated prosecution

The prosecution witness Newton was prosecuted and convicted for unlawful use of a dangerous firearm with intent to endanger life, in fact killing a dog; and then given immunity as a prosecution witness in the Thorpe trial. In 2018 could he be prosecuted for a conspiracy going back 40 years or so? Or attempted murder?

The terms of the grant of immunity would need to be scrutinised. There is no time limit for serious crime in England. Though the defendant is entitled to a fair trial, European Convention on Human Rights Article 6 and Police and Criminal Evidence Act 1984, s 78.

Offence at the time, not any longer

The alleged homosexual act was an offence at the time it was committed, but no longer so at the time of the trial. Would a prosecution then be possible for the offence and, if so, proper?

Conclusion

Despite the not guilty verdict Thorpe's public life was at an end. Today all the indications are that he was guilty. But as the case shows, and the problem still obtains, proof of guilt and guilt are not quite the same things.

NLJ

Sources

- ▶ *Jeremy Thorpe*, Michael Bloch, Little Brown, London, 2014, hardback, £25 – very fully sourced and referenced, eg p 584.
- ▶ *In my own time*, Jeremy Thorpe, Politico, 1999.
- ▶ *A Very English Scandal*, John Preston, Viking, 2016.
- ▶ *A Very English Scandal*, adapted by T Russell Davies, BBC May-June 2018.
- ▶ *Panorama*, Tom Mangold, BBC, 3 June 2018.
- ▶ *Not without prejudice*, David Napley, Harrap, London, 1982.
- ▶ *No ordinary man, a life of George Carman QC*, Dominic Carman, Hodder and Stoughton, 2002.



Alec Samuels, barrister



Mediation helps avoid costly court cases, bringing genuine understanding of the issues between parties. It is faster and more cost effective offering flexibility and certainty of outcome.

At Frost Group, we specialise in the following types of mediation:

- Commercial mediation
- Debt related disputes
- Insolvency mediation
- Shareholder and partner disputes

We have a range of pricing options designed to meet the circumstances of your case;

Bronze Ideal for more straightforward disputes
£500 plus VAT & disbursements

Silver perfect for more complex disputes where it may take longer to reach consensus
£1,500 plus VAT & disbursements

Bespoke the optimum for sensitive, complex or acrimonious disputes
From £3,000 plus VAT & disbursements

To find out more, contact Jeremy Frost on 020 8915 1012
or visit our website at www.frostgroup.co.uk