

[Transcript] The News Agents / The man jailed for 17 years for a crime he didn't commit

This is a Global Player Original Podcast.

How do you think it would feel to be accused of a crime you didn't commit?

How do you think it would feel to be convicted for a crime that you didn't commit?

How do you think it would feel to spend 17 years in prison for a crime you didn't commit?

That was the fate of Andrew Malkinson.

He could have served less time if he had admitted to something he hadn't done.

But he couldn't bring himself to do that.

So he spent an extra 10 years in prison.

All the while the evidence that could have led to his prison sentence being overturned lay in greater Manchester Police headquarters undisturbed by incurious police officers, didn't bother to look into the case and nor did the body entrusted to do this, the Criminal Cases Review Commission.

But Andy Malkinson is now free and he talks to us at length today.

Welcome to the News Agents.

It's Lewis.

It is John and we are joined in the studio now by Andy Malkinson.

He was the man whose rape conviction was overturned and is getting used to the idea of freedom if not yet normality and we'll come to that in a minute.

And we're also joined by James Burley.

Now he is the investigator from the Charity Appeal which has played such a pivotal role in unearthing new evidence that has led to the quashing of Andy's sentence.

I should also say just in case you hear any rustling noises we are joined by Basil as well who is no-civil but Basil who is a black Spaniel who is sitting very quietly and calmly at the moment.

Andy look it's great to have you with us on the News Agents thank you very much for coming in to talk to us and I know you've done an awful lot of this sort of stuff but this will be the first I think lengthy interview that you've done.

I guess my first question is are you getting used to the idea of freedom?

Yes very slowly I mean it's not been long now but I am yeah getting used to it.

I've dreamed about this overturning it so many times that and it's still early days of course it's only a week less than two weeks since it was overturned but yeah it feels good.

Andy could you just in case people listening aren't familiar with your case could you just give a kind of brief potted history I know it's a very complicated thing but just a sort of outline of what happened and when.

I was a permanent resident of the Netherlands legal everything working and I found myself in the UK in 2003 for long complicated reasons but yeah I was just picked up for a violent horrific rape and questioned and at that point I thought this is really bad it's terrible they think I'm a suspect but I was sure it would be quickly resolved and they'd realise I'm not the guy and they never did they never did.

And at the court case it was purely dependent on identification there was no forensic evidence no linking you to the scene.

There never was of course but I was convicted entirely on eyewitness testimony and in fact there was a lot of the description given by the victim many many aspects of her description

absolutely didn't fit me so I was astonished that I was even a suspect it was it was strange. As the trial was progressing did you always assume that justice would prevail that you were going to not be convicted or could you sense during the trial that something was happening yeah you were not in control of.

Yeah both those things are true I did hope fervently that the truth would be unearthed and they would realise it was not me.

At the same time as the trial progressed I got a very dark feeling about being fitted up I sensed being fitted up rather than knew it because at that point I didn't know how they were doing it I didn't know why two I didn't know why all three witnesses had identified me but they did and I was very confused as to why because I never went out and during the few weeks I was staying there I never went out at night ever you know I was working all day I was tired I bought a few cans of beer sat in front of the TV and just fell asleep that was it never ever went outside so these people saying they saw me out was a complete mystery and it felt I've said it before like a car crash I was going through the windscreen in slow motion and how do you stop something as big as that.

It must have felt completely overwhelming it was yeah yeah.

To have the sort of the state yeah basically slowly compiling this case that you couldn't stop.

That's absolutely right it did it was overwhelming I can't really articulate how overwhelming it was it was just devastating I couldn't believe it had a very surreal quality to it why why me why am I being framed for this and you used the word why was I being fitted up yeah what does that mean well like I said that the description didn't fit me in any way except for I had dark skin I've always had dark skin everything else didn't fit me you know the scratch the the victim said she clearly very clearly unobiguously scratched her assailants face she said I've caused a deep scratch from the cheekbone down to the jaw and I was seen by many people I was working in a shopping centre I was seen by so many people nobody saw me with any scratches because I never had any.

I want to come back to the experience that you've been through but it's worth bringing James in now because James aspects of this about the two eyewitnesses there was parts of their background that were not disclosed to the court which is such stuff that you have since found out is that correct yeah absolutely so these are two witnesses who were presented as being honest witnesses acting effectively out of a sense of civic duty but through dogged investigation including taking the police to court we actually discovered that there was a lot more to these people so they were a couple the jury had no reason to doubt that these are anything other than respectable sort of upstanding citizens in fact they both had criminal histories including for dishonesty offenses the male witness was a long-term heroin user and most remarkably we managed to find out that he'd been arrested on the date that he came forward as a witness and also arrested on the date about six months later when he first identified Andy and what was so remarkable about him was that his purported sightings lasted a matter of seconds they were made from a moving vehicle and then six months on he picks out Andy after being arrested taken to court and then he comes to court in Andy's case and essentially gives evidence that he's completely certain he's made the correct identification and the jury just had no idea about this information.

So the jury had no idea and the defence team had no idea?

No and the defence actually made an explicit disclosure request for the previous convictions of all civilian witnesses and yet these ones weren't disclosed.

Andy you were sighing deeply there?

Yeah because it's still sounds so implausible and you know how could that even happen you know these these sequence of events.

And then you're in prison for a crime that you haven't committed?

Yeah.

And here is the sort of almost the Faustian deal that you're confronted with which is you can get out of prison early if you admit your guilt and go to classes with other sex offenders and whatever else or you can maintain your innocence which you did and you served an extra ten years of your life.

Yes.

Locked behind bars.

And quite as simple as simply admitting you're guilty it's more you know you can't sign a paper and say okay I did it and then they'll put you back on the streets it's not like that.

You have to undergo intensive sex offender treatment who used to be called SOTP they've simply renamed it now after 2014 it was discovered that despite holding me to ransom about doing these courses they're actually causing an increase in the risk of re-offending.

So I was held on a completely false premise there passed way past my tariff and I thought about doing it you know but you're going to sit there and listen to horror stories people have done terrible things and that's damaging enough to have to sit there and be included in that subset and then asked to describe what you'd done when you don't find why you've done nothing.

That was an impossible choice.

Have you ever attempted to do it?

No I didn't even attempt but I went through it painstakingly in my head I said well what if I just bite the bullet and say I did it but then you know the whole group will then pick you apart what did you do wrong were you feeling at the time and you just couldn't do it you know you're going to go like listen I didn't do it.

And before we move on completely to the prison experience were there other James were there other problems with the prosecution case other than the unreliable incredible nature of the witnesses?

Well I mean the fundamental thing was that there was an undisclosure so the jury and the defence weren't aware of a lot of these weaknesses but yeah I mean there was a weakness anyway because the case was entirely dependent on identification evidence which we know is a notorious source of wrongful convictions and the prosecution also had this issue which is that there was no forensic evidence against Andy and the way they explained that away it was by arguing a really unscientific sort of idea but they argued that he was forensically aware and that he had somehow deliberately made sure he didn't leave any kind of trace and when you know the details of the attack you know that's just such a nonsense idea.

And so Andy you end up getting convicted what was your initial sentence?

Discretionary life sentence with a tariff of seven years from the time of arrest.

And you spent that first night with that sentence in the prison cell knowing that you're facing

down that sentence?

After conviction yeah and sentencing yeah yeah that was terrible.

What was that like?

Terrible psychological burden thinking you know what's just happened to me you know why am I looking at an indeterminate period behind bars maybe I'll die here you know that's a real fear of dying in prison and so or even dying at your own hands you know giving up and dying at your own hands and lots of people kill themselves in prison.

Did you think about it?

Yeah I thought about a lot of stuff you know how did this happen how did I end up here you know why they went to sustain they saw me you know I thought about suicide as well yeah. And of course it's a tough environment to be in at any time for any person yeah but I guess if you're a sex offender and you have been convicted of rape yeah it's the lowest of the low.

So how were you treated?

I was treated terribly abominably the prison officers the screws we call them they make every waking moments of your life in prison as miserable as they possibly can you know there's all kinds of ways they can and do do that.

Like what?

You know they're trying to intimidate you all the time try to push your buttons make you kick off and it works on a lot of people because there's a lot of volatile people there but it never worked with me but it comes at a psychological cost they're demeaning you they're intimidating you you want to shout out and say something but you just hold your tongue and take an awful lot of crap.

You know for example HMP Franklin I tried to get some new trainers and you can only get them from approved suppliers I think it's M&Ms I applied over and over and over again the original applications go missing it's a tactic they use on everybody who's refusing to do the courses it's to grind you down they don't so easily you know take you down the seg and give you a kick in although it still happens they go psychological warfare on you and it's terrible it's awful.

Were you subject to any violence from anyone when you were there prisoner or?

Not subject to but there's a constant threat of it you know people are fronting up to you and challenging you and you don't want to come across as too much of a sap and go please leave me alone but you kind of hold my tongue a lot you know and just just look at them look look look at them straight back and hope they don't smack me or stab me or burn me.

We telling other people in the prison that you were innocent I mean yeah cliché is that everyone says they're innocent right but yeah that is a cliché and it's not true not true no no most people over very open with me and say well I did it and a few guys said well I did it and this is this is real hell being in here so I can't imagine if you're an innocent like you say I can't imagine what you're going through.

Did they believe you?

Quite a few did quite a few didn't.

And you then tried to go through an appeals process?

Yeah.

Which got nowhere?

No they dismissed it they just dismissed it.

Which raises questions James about the way the system works and the criminal cases review commission which is the body that is charged to investigate these things you found things they didn't?

Yeah and I mean it's really a catastrophic failure on their part because they've got specific statutory powers that allow them to compel police forces to hand over material. We don't have a right of access like that at the pill you know we had to take the police to court twice in order to get the disclosure that we got and you know the CCRC and he first applied to them in 2009 and the evidence which the court of appeal yesterday ruled rendered Andy's conviction unsafe was sitting in police boxes of material since the time of his arrest and some of his conviction and the CCRC if they had simply in 2009 got the police files which they had the power to do.

So the CCRC?

So yeah the criminal cases review commission the body that's meant to investigate miscarries of justice if they'd simply got those police files in 2009 went through them they would have uncovered this evidence and they probably would have saved Andy a decade in prison. Why didn't they?

There's real issues with the CCRC so I mean there is underfunding but that doesn't anywhere near explain their failings there's a real cultural issue a sort of refusal to investigate cases because they see investigation often as speculative or a fishing expedition and that's just a ridiculous mindset to have.

If you don't look for evidence you won't find it and the difference is as we look for it and you know it took us a lot of time and effort but eventually we found this stuff but they could have found it very easily themselves.

I mean you describe a total lack of curiosity which is so fascinating because I mean look you know if you want to be a journalist you've got to be curious and you would have thought if you're part of a review commission curiosity about what has happened and getting to the bottom of it is absolutely essential.

Absolutely you need to start with the kind of curious open mind and there's a very revealing comment by one of their case review managers who are that's the people who do the actual case work at the CCRC which was recorded by an academic in a book about the CCRC written a few years back and that case review manager basically said well it's obvious most of them have done it i.e. most of them are guilty and if you go into your job with that mindset then of course you're going to convince yourself not to do an investigation and so there's a real issue there.

So having looked at this having been so closely involved with this do you come away with the impression that Andy got unlucky but realistically the criminal justice system is basically sound or do you think there are real structural problems associated with the police in this case Greater Manchester Police and the appellant bodies that you go to i'd like to hear both of you on that.

Yeah there's a real problem yeah there's a real problem there's many things could be fixed quite quite easily i don't think the police should have control of evidence and disclosure that should not be in their remit they should concentrate on investigating cases doing police work you know there should be a separate body that holds the evidence so

they can't have deliberately destroyed pivotal evidence i mean the victim's clothing that's obviously vital to preserve but i think they deliberately did that i think they deliberately did that so to to to strengthen their case against you any possibility of me ever because they knew by then when they started to weed it as they said they knew by then i was strenuously continuing to maintain my innocence after 10 years and onwards you know and that is shocking very shocking yeah but i believe that's the truth i think it's not an accident do you think you met other innocent people in prison yeah i'm certain i did yeah yeah still serving yeah yeah certainly yeah yeah i have a friend who i can't identify but i know for sure andy let me just stop you there for a moment we're going to take a short break we'll be back with you in just a moment

this is the news agents

welcome back andrew malkinson is still with us and james we've heard about the structural problems i mean i would imagine that appeal gets endless letters from people saying i'm a victim of a miscarriage of justice i shouldn't be in prison you're a small charity how on earth do you decide which cases to take up which cases to you think we're not going near this one i mean we have to make really difficult decisions because we have limited resources and you worked on this case for a long time how long you worked on it well appeal took on the case in 2017 i've been working on it for the last five years or so that's a lot of resources a lot of money yeah and you know only a very small fraction of that was covered by legal aid and you know you just look for those kind of clear potential red flags in a case you know the discrepancies or description lack of forensic evidence etc so and then from that starting point you think okay if this person is innocent what investigation should we do to try and find some evidence that supports that so now welcome to the world thank you a rainy august in london but i'll trade that anytime for a single minute in prison i'm sure you absolutely would how do you see the future what about compensation yeah good point um obviously i want compensating because they can't give me back what they've stolen 17 years of your life no no and it's not just the time taken it's what what it represents it's it's constant fear pain anxiety misery longing yearning for freedom and hoping that something will come along to prove it so it's a very joyless void no joy no happiness no love and it's it's it's a horrific existence and uh yeah i want compensating for that the only way they can do that is to give me a bunch of money

and how much are they offered you nobody's offered me anything yet do you have any idea how much you might receive no no the demeanor of government now i heard the justice secretary on the radio this morning yeah who i thought was trying to strike a rather conciliatory tone and you know was saying look anyone who's put in prison for a long time you know you've got to put the wrongs right yeah yeah do you feel that the people are waking up to this the you know a sympathetic now in terms of how they're going to deal with your case i hope so and uh i've got a generally positive feeling about the the deluge of well wishes and um it's a good move from the government to do what they've done to rescind the ridiculous uh paying your captors for your own torture yeah that's good that's welcome but there's much more needs to be done as well that was the idea of you having to pay your bed and board out of your compensation yeah which seems an extraordinary it's an incredible clawback mechanism yeah to reduce what not not a hotel that you wish to stay in i think it's worth saying but isn't there something now about compensation that you have to prove your innocence beyond reasonable doubt before you're entitled yeah compensation which if

you've had a court case overturned as unreliable in the british legal system you are innocent you are innocent because you're innocent or you're guilty yeah you would have thought you've already done all that you've proved it ample but you don't need to prove it i don't need to prove it again do i why why why why is that a thing yeah i don't understand it i don't understand it great manchester police have said that they're truly sorry for what happened do you accept their apology do you think that you don't no no because i don't think it's a genuine apology i think it's a PR exercise from a corporate entity they're not sorry they they fought us every inch of the way we invited them to join appeal invited them to join this ccr cr application and they point blank refuse i don't even think they responded they fought disclosure of the vital evidence that they knew was important of course they must have known its significance and they fought us all the way so and then suddenly because it's been overturned say oh we're really sorry now no i suppose the other person in this that it must be appalling for is the victim exactly yeah i mean she's she's probably being retraumatized by all this thinking she got the right guy it's not her fault at all i want to make that clear it's not it's the way the police the greatest matches the police got a terribly traumatized woman to to identify she had falsely identified me but you know she wasn't in a good frame of mind either it was a loaded lineup as well i think i was the only dark-skinned guy on it and and i think i had the same t-shirt so it would be easy for somebody to i've no proof of this but it'd be very easy for some officer to go guy in the black shirt you know but she has had presumably now has to live with the fact that she thought that the person who must be committed the crime had gone to prison and he hasn't and he

may well still be at large yeah and 20 years later she's having to relive it all it's a system let her down as well yeah yeah yeah it's not just me you know the damage is immense they've caused immense damage and your family and friends i mean at the time you were obviously saying look i'm innocent did they all believe you yeah yeah i'm sure they did yeah nobody's that would must have been a source of comfort yeah it was yeah nobody ever said to me if we don't believe you we think you might have done it nobody said that there was all staunch behind me so weird question

i know but did you take anything from the prison experience i mean did you i mean obviously it's changed you profoundly and you've got to live with it for the rest of your life yeah it's no getting away from it did you did you learn anything take anything positive you mean yeah uh do you think you'll ever be able to get to a place where i think it's such a negative terrible thing to have to endure it's hard to put anything positive spin on it but i did for example i i i did an open university degree in maths and physics i got that i got my bsc and from that i i used that as a springboard to go for a masters in a southern university but um i had to stop because of the news of the dna matching an unknown guy i just couldn't focus anymore but i've taken i've i've learned a lot about myself i've learned strengths i never knew i had through through adversity sure you know like anybody in a similar situation would and you let me ask you a sort of slightly crappy question that you get asked at careers interviews where someone says to you so tell me how do you see yourself in five years time yeah and i don't mean that in terms of well i'll be working at a whatever or be an astrophysicist at some research laboratory that would be nice and that'd be great but i mean i just wonder what you tell you see the kind of life and what is it you yearn for what is it you crave in life yeah it's actually a good question um i want my freedom back fully uh i want my economic freedom

back i want my compensation do you not feel totally free now even now not really no because because there's still fights to be fought you know so i'm not free of it it's not i can't go that's that done yeah i can't the door hasn't shut yet no the door hasn't shut yet i'm i'm still i'm still you know fighting unhaunted by it i think i need therapy to be honest is there anything else you'd like to say on the um well you've got the time yeah you know i don't want to be a uk citizen to be honest i i don't want to be associated with this country anymore i would like ideally in an ideal world to have a dutch passport so i would like if possible for the for the ministers this side to contact the ministers on the dutch side and see if they can perhaps arrange for me a dutch passport as a as a humanitarian compassionate gesture after what what i've endured and the position it's left me in the five year view i mean you know hopefully in a year's time maybe these legal battles will be behind you i hope so and then you know after that yeah i want to resume traveling well i'm still able-bodied i'm getting on a bit i'm 57 now you know i want to travel to lots of places in the world i've never seen before india example i want to go to australia to see my sisters i haven't seen them for 33 years i just want to travel and feel that sense of freedom again where you know you've got no we've got no worries very very best of luck to you thank you so much thank you for coming in to talk to us you're welcome and maybe come back and talk to us again a bit further down the road when hopefully some of these things are behind you i would love to and james let us salute you as well for the amazing work indefatigable work yeah that you have done on

this totally this is the news agents

it is quite the most extraordinary story and andy malkinson's kind of equanimity you'd have to say he's pretty bloody remarkable having served 18 years in prison tomorrow on the podcast we're going to look at some of the wider issues surrounding this case about the police about the criminal case about the criminal case review commission about the way sentencing is done the way investigations are done and we'll be talking to emily bolton who is the founder of appeal the charity that investigated and took up andy malkinson's case yeah and we'll be talking to her about although obviously andy malkinson should never have been in prison whether there is a danger as a result of this that there is a chilling effect in terms of police and the cps bringing the very tiny number of rape cases that do get to trial two trial in the first place which is obviously not what anyone would want and certainly not what i'm sure andy malkinson would want later

in the week as well we're also going to be talking about a story which i know some of you have been in touch with us to ask us to cover and is a really important story which is the marking boycott which is swept british universities as a result of the industrial action that has been taken place which means a whole generation the class of 2023 that have just left university leave with a degree but with no grade no mark not actually sure what their qualification is which could affect them far into the future so if that is you or you've been caught up in that do get in touch with us at newsagents at global dot com we'll see you tomorrow bye bye this has been a global player original podcast and a perso phonica production