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TRANSCRIPT OF “FILE ON 4” – “FAILED BY FORENSICS?”

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THE ATTACHED TRANSCRIPT WAS TYPED FROM A RECORDING AND NOT COPIED FROM AN ORIGINAL SCRIPT. BECAUSE OF THE RISK OF MISHEARING AND THE DIFFICULTY IN SOME CASES OF IDENTIFYING INDIVIDUAL SPEAKERS, THE BBC CANNOT VOUCH FOR ITS COMPLETE ACCURACY.

“FILE ON 4”

Transmission: Tuesday 5<sup>th</sup> June 2018

Repeat: Sunday 10<sup>th</sup> June 2018

Producer: Anna Meisel

Reporter: Melanie Abbott

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MUSIC

CAMERON: I get a phone call from a policeman, saying that there's been allegations against you and there's an investigation going on - would you be able to come in and talk?

ABBOTT: What did you think when you got that call?

CAMERON: I was, I had no idea who it could have been that was making allegations. I had no idea what they were. They wouldn't tell me on the phone either, so that's what was again worrying, because I didn't – I just didn't know.

ABBOTT: What were the allegations?

CAMERON: One count of rape and five counts of sex with a person under the age of sixteen.

ABBOTT: Did you have sex with this girl?

CAMERON: I didn't.

PAUL: It was about 9 o'clock I think. There was a few of them, and they started searching my house and they said, 'We're arresting you on suspicion of a number of allegations; rape, assault.' Basically my world just collapsed.

ABBOTT: Two men accused of rape. Both faced the prospect of prison and both lost their jobs. And this hung over them for more than two years. They were both later cleared by what's known as digital forensic evidence - it includes CCTV, emails and - crucially in these cases - messages and videos found on mobile phones. This kind of evidence is often vital for solving crime nowadays. But police have admitted to File on 4 there's so much of it, they don't have the time to check it all, risking innocent people being jailed and the guilty going free.

VAUGHAN: This technology is growing faster than we can keep up. We need to understand what capabilities law enforcement will need now and in the future. That's under review at the moment actually.

ABBOTT: This review is extremely urgent, isn't it?

VAUGHAN: Well, it is urgent.

CAMERON: I'm a big fan of Marvel, mainly because of the films. It sort of drew me back to the comics. I like Avengers and I even collect quite a lot of Guardians of the Galaxy as well. I've got easily twenty ... or twenty to fifty of just Guardians.

ABBOTT: That's Cameron. He seemed unassuming and slightly nervous - a self-confessed nerd with a love of comics. Back in 2014, when he was nineteen, in the modern way, he met a girl on Facebook. She was fifteen. Chatting online and exchanging more and more messages soon turned into meeting face to face.

CAMERON: I offered that we could drive and go to one of the local national park areas and just talk, because as much as I can talk on Facebook, it's actually nice to talk to someone in person.

ABBOTT: What can you remember about the first meeting?

CAMERON: Just that she was really bubbly. She was the same as that she was through messaging, which was very nice as well, that she wasn't a completely different person, and we got along.

ABBOTT: Fast forward to autumn 2015, and the pair had only seen each other a few times when the police told him she'd accused him of rape. [MUSIC] He said their relationship had been platonic, based mainly on Facebook messages. But a few months later, the police offered him a caution if he admitted the offence. It would go on his record, but there'd be no further punishment.

CAMERON: I was almost left in tears, because I was sitting there thinking, I know I'm innocent, but yet they're offering me this like I'm guilty, when it either hasn't been fully investigated or it hasn't gone to trial. And so there was a very small part of me that thought, this could all be over, although a caution seems like maybe even an easier way out for myself, I would have 100% lost my job and that would have actually put me on the sex offenders list, which would just ruin my life regardless. So I stuck to, stuck to my answers and I stood, stood my ground and said, no, I want to keep going. I was told about four or five months later that I was going to be charged.

ABBOTT: As we'll hear later, the case against Cameron seemed to be based on the digital forensic evidence of the Facebook messages between them. His case is just one we've uncovered involving digital evidence which either hasn't been analysed or has been discounted. Digital evidence is a new discipline to add to traditional forensics like fingerprinting and DNA. Angela Gallop is a forensic scientist with more than forty years' experience.

GALLOP: There has been a great shift in the kind of work that has been done. Traditional forensic science, or certainly aspects of it, have taken a bit more of a back seat in favour of digital forensics, so looking at information from mobile phones, personal computers, CCTV and so on, which has now become much more important, reflecting the fact that people are simply living in a completely different way – living on their

GALLOP cont: mobile devices and so on - and there's a lot of information, forensic type information that you can get from them.

ABBOTT: It's not the only change. The forensic science industry has gone through a massive upheaval. There used to be a national, Government-owned forensic science service. Angela Gallop started her career there as a young scientist.

GALLOP: The police forces were able to have as much forensic science as they wanted. It was provided as a common service from central Government, so there was no reason why they should think about exactly what they were asking to be done, so consequently they used to ask for lots of stuff to be done in each of their cases, and we would get whole wardrobes full of clothing to be examined and that sort of thing, and of course that wasn't sustainable.

ABBOTT: In 2005, the service was privatised and had to compete with external companies. Police forces put contracts out to tender and decided who would get the work. Angela Gallop says it was often the cheapest bid. At the same time, police started developing their own in-house forensic teams. With a declining income, the national service closed in 2012.

GALLOP: It was bad enough leading up to that, but then after that, that really began to bite. Gradually less work was commissioned in every case. There's more focused work with police doing a lot it themselves, particularly the initial bits. Prices dropped to really unhealthy levels, where there was sort of very little in the way of margin for paying for discussing cases as you were doing them.

ABBOTT: The key strategy for forensics in this new world wasn't published by the Home Office until 2016 - four years after the closure of the national service. And then it was criticised by a Select Committee of MPs as vague, lacking in detail. Poor planning's coincided with the budgets for both private companies and police in-house services shrinking over the last decade. Figures obtained by File on 4 show a drop of more than a quarter, despite the increased workload from digital forensics. From that reduced pot, significantly less is going to private providers, who complain they must spend a lot getting





TULLY cont: failures of that kind, then perhaps it showed that policing was not the right place to do forensic science. And if we persist in seeing failures to meet the standards, then, then my view will become that it would be better to outsource all of the work.

ABBOTT: Do you think we're at that stage now?

TULLY: I think that there are probably some forces where that would probably be a better outcome.

ABBOTT: Can you tell us which forces they are?

TULLY: No, I don't think that would be appropriate.

ABBOTT: Isn't that a matter of public interest?

TULLY: No, because I think to pick out one or two forces when a lot are non-compliant relies to a certain amount on a level of hearsay and anecdotal evidence.

ABBOTT: But don't the defence solicitors who are handling cases from that force deserve to know, to enable people to get a fair trial?

TULLY: Do they deserve to know if my own personal view is that that force would probably be better to outsource? Not until that's properly evidenced.

MUSIC

ABBOTT: So the regulator thinks some police forces aren't meeting the standards for their own forensic work, but refuses to say which ones. She can't force the police to get accreditation, because her role is only advisory. She's been asking for three years for the powers to stop police and private companies doing work she thinks isn't up to scratch.

If you had statutory powers already, the justice system would be a safer, fairer place?

TULLY: I think that's fair to say, because I think more organisations would have reached the quality standards that have been set.

ABBOTT: The Home Office says she will get those powers, which MPs first recommended seven years ago and the Government agreed to, back in 2015. So is this an empty promise? We wanted to ask the Home Secretary Sajid Javid, but he declined to talk to us. Instead, we were sent a statement saying forensic services are being delivered faster, more reliably, to higher standards and with greater scrutiny than ever before, and that accreditation should be an important factor. But the way forensics are done isn't the same for every force in the UK.

#### ACTUALITY IN CAR

ABBOTT: We're just arriving now at the Scottish police authority, where I'm going to find out more about forensics this side of the border. We're just pulling into their headquarters now; it's an absolutely enormous building, and it looks quite modern and futuristic, slightly M15-ish. Here, there is still a national forensic science service, and I'm going to meet the director, Tom Nelson.

NELSON: In Scotland, the service is very different. In 2007, the Scottish Government decided to bring forensic services together, so in 2007 we brought together eight Scenes of Crime departments, which were basically managed by the local Chief Constables. We had a fingerprint service and we had four laboratories, so those organisations were all brought together to provide a national forensic science service for the people of Scotland.

ABBOTT: What difference do you think that's made to the work of the forensic services?

NELSON: I think one of the real benefits of the model we have here in Scotland, it does allow that police investigation to move forward using obviously all the police techniques. And then, on a separate stream, we have the scientific, and that doesn't

NELSON cont: mean that we don't cross over and don't talk and obviously share results, etcetera, etcetera, but, at the end of the day, to me it does provide that sterile corridor.

ABBOTT: Without that sterile corridor, he worries the police get too close to the forensic scientists who are supposed to be independent. Scotland isn't covered by the forensic science regulator, but unlike many forces in England and Wales, they've gone the extra mile to get full accreditation - the first in the UK to do so.

NELSON: Accreditation does cost money. Anything that you bring in has a financial cost to that. However, in terms of Scotland, what it allows me to do is to sleep at night. It allows a third party to come in and to go through your processes and to check the work that you're doing. And, yes, it is costly, but I think the benefits to the criminal justice system are immense and therefore worth that spend.

ABBOTT: But even here it's not without problems. Digital work is done separately by the Scottish Police and hasn't got accreditation. And it's the digital forensics, as we've already heard, which are becoming more and more important. Particularly when it's one person's word against another's. Remember Cameron? When we last heard from him, he'd been charged with rape, he believed on the basis of Facebook messages between him and his accuser.

CAMERON: I was getting worried I might actually have to prepare myself that I might be going to prison, especially for something that I didn't do.

#### ACTUALITY IN COFFEE SHOP

ABBOTT: Cameron at this stage realised he needed a good solicitor to mount his defence, to prove his innocence. He contacted a man called Ian Kelsey, who is sitting next to me now, just outside Southwark Crown Court in London, where he is working on another case. Ian, just explain to me what happened when Cameron contacted you.

KELSEY: Certain Facebook messages had been put to him in interview and he was concerned as to whether the police were looking at a selective number of Facebook messages, as was I, and I was concerned that there may have been a conversation that had been taken out of context.

ABBOTT: You have got some of the emails on your laptop here. Perhaps you could just open it up and show them to me?

KELSEY: Yes, sure. Yeah, for example, one of the messages says, 'Hi, sorry if I sent you this message three times. I don't mean to bug you, I just want to say sorry and ideally apologise in person. I was a twat and deserve hate, but want a last chance if you'll let me. Let me know.'

ABBOTT: I suppose the police thought this could be from someone who had done something he felt guilty about?

KELSEY: Absolutely, and you could construe it in that way. She replies, 'Okay, I'll see you. I'm a bit of a pushover, so that's lucky for you, I guess.' The conversation then goes on and then she asks him whether he had a relationship with a friend of hers, [MUSIC] and then the conversation, I think it's fair to say, one can say degenerates from thereon in, and quite clearly she wasn't very happy about the fact that he had had a relationship with a friend of hers.

ABBOTT: When I asked Cameron about that, he said he'd lied and never slept with her friend. He says he's grown up a lot since then and regrets that lie. But there was something I wanted to confront him about. There was one message where you were apologising. You said, 'I'm sorry for what happened.' What was that about?

CAMERON: I was apologising, because she maybe thought something was there that, that wasn't because I, I wouldn't have let it happen.

ABBOTT: I'm sorry for what happened – it sounds like you're referring to a specific incident though.

CAMERON: Again, that's why I, I, I don't really like the, the, the – I can't get the words out today. I don't like the, the spaced out messages, because, just for example, that taken out of context is, could, could sound a lot worse than, than it is. And how I, how I see it is I was, I was apologising for not, not being what she maybe wanted me to be. And it, I agree, it could look like that, but that's, that's how I see it and that's why it is.

ABBOTT: In January this year, Cameron's trial began with his defence still asking to see all of the Facebook messages, not just those his accused had shown the police.

CAMERON: It was revealed that the complainant, she had revealed that there were other Facebook messages on her phone. There were 30,000 unread un-reviewed messages on her account, and that was when both my barrister and solicitor said they couldn't consciously in their right mind review this in a day or even a week. They wanted to actually sit down and actually relook at this, and the only thing that they could see as a good thing would be to postpone the trial again.

ABBOTT: A new trial date was set for this month. But he and his solicitor still hadn't seen those thousands of Facebook messages. Then, three weeks ago, Cameron finally found out the case was being dropped.

CAMERON: I was completely speechless – that entire day was surreal, because we, we had no idea that that entire ordeal, that entire two years – almost three years of waiting and almost feelings of dread and hopelessness, literally just changed in in a couple of seconds, and they threw it out, so ...

ABBOTT: And did they give a reason?

CAMERON: They did say in light of the messages, which had come out, they were, they had no reasonable chance of prosecution.

KELSEY: I feel that that should have been identified far earlier - probably at the investigation stage of the proceedings by having a smartphone downloaded at that stage, it might have saved a lot of wasted money and a lot of stress and anxiety.

ABBOTT: Thirty thousand messages though – that is an awful lot to go through. You could argue that if the police believed this girl and the messages that they did see seemed to back up her case, then they were right in doing what they did?

KELSEY: This is purely resources. I was told by a friend of mine, who was a police officer, that they almost breathe a sigh of relief these days if they get access to a mobile phone and find they can't get into it, because it means there's less work to go through. You've got to be prepared to give the resource to the investigators, to give the resources to the prosecutors to enable them to do their job properly, otherwise all we are doing is running along, allowing prosecutions, which are little more than Russian roulette. But at the end of the day, there will be innocent people going to prison.

ABBOTT: Cameron was waiting for two years and nine months. During that time, he lost his job, his friends and his belief in justice. The Crown Prosecution Service told us these Facebook messages hadn't previously been seen by either the police or the prosecution. And after a review of new evidence, they decided there was no longer a realistic prospect of conviction. We asked Avon and Somerset Police why the messages weren't handed over when Cameron's solicitor first asked in September last year. They didn't answer, but told us they carry out thorough reviews of cases at any stage needed, and then take any further action necessary.

## MUSIC

ABBOTT: In Cameron's case, they didn't seem to look at the evidence. But in a similar case, the police did look, but said what they found was of no use. It involves a man we'll call Paul. He'd been having a long-running affair. Soon after ending it, he had an unexpected knock on the door one Sunday morning.

PAUL: it was about 9 o'clock, I think. There was a few of them, and they started searching my house and they said, 'We're arresting you on suspicion of a number of allegations; rape, assault.' Basically, my world just collapsed. It was like a surreal moment.

ABBOTT: Paul's never told the details of his story before, and they're sensitive and personal, so we've changed his name and an actor is speaking his words to protect his identity and that of the other people involved.

PAUL: I said, 'What the hell are you talking about? This is absolutely crazy, this is nonsense.' You know, it was early morning and to wake up to that. And they said, 'You'll have to come with us.'

ABBOTT: He told the police he could clear all this up quickly.

PAUL: I said, 'Go and look at my phone, all of your queries will be answered.' All of the evidence was there. This individual told the officers in every encounter with me she didn't want to get involved in the intimacy. There was a whole range of video evidence to prove that this was wholly not the case. The video evidence proved she was the dominant party – aggressively, in fact, as my solicitor pointed out.

ABBOTT: What did that film show then?

PAUL: Well, I mean, obviously I'm not comfortable talking about it, because it was private intimacy between two consenting adults, but it was clearly consensual.

ABBOTT: And who did the filming?

PAUL: She did. She not only filmed the intimacy between us, but the video messaging she sent to me was on my phone. She's clearly holding the camera. It was so damned obvious that I'm flabbergasted it went on so long.

ABBOTT: Was she talking to the camera while you were actually having sexual relations?

PAUL: Yeah, repeatedly - not once, not twice, repeatedly. There's loads on there, it's indisputable.

ABBOTT: Paul also says his accuser repeatedly called him hundreds of times and sent messages suggesting a hotel meeting. He says she admitted she hadn't been raped. He was expecting the police to check their mobile phones and drop the case. Instead, a year later, he was charged. The police said they checked the phone and it wasn't relevant. But at the pre-trial hearing two years later, it was shown to the prosecution.

PAUL: I was within earshot as the prosecutor read those messages. As soon as she finished reading them, she said, 'Oh my God, this can't go on.'

ABBOTT: The case was adjourned, but the charges weren't formally dropped for another ten months.

PAUL: It's outrageous. It's outrageous. A key element of the evidence I was eventually acquitted on, was with the Crown from day one.

ABBOTT: What has it meant for you family, your job, your reputation, all of those things?

PAUL: Lost, gone. I have to rebuild all of that from day one, as though I've never had a career. I have to start from scratch. I've been proven innocent, but it will take me a heck of a long time for me to recover from that.

ABBOTT: The police handling Paul's case say a backlog of forensic digital work meant the material on his phone wasn't examined for four months and was then given to the defence listed as 'unused material'. But as officers worked with prosecutors on the case, and more messages and phone calls came to light after Paul was charged, it became necessary to review this material. It's starting to be a familiar theme. A number of rape trials have collapsed after digital evidence emerged clearing the accused. The Metropolitan Police is reviewing 600 rape and sexual assault cases to check for mistakes involving digital forensics. And last week, the CPS said failing to examine digital evidence in time was a factor in abandoning 19 rape and sexual assault cases.

MUSIC

ABBOTT: As we've heard, many have little confidence in the police carrying out their own forensic work. And the regulator says some should outsource the work to private companies. But even then, there's no guarantee things won't go wrong. One company, with the proper, full accreditation many think is so important, is Randox Testing Services Ltd. It carried out work for police forces for drug and drink driving, but is now under criminal investigation. In January last year, it was discovered scientists may have been manipulating results. Two former employees are on police bail. And 10,000 samples are being retested. One of them belongs to Philip Kemp.

KEMP: I got pulled over by the police, who was in an unmarked vehicle at the time, and they said that they smelt cannabis in my car. So I got swabbed and that came back positive. In turn, I got some bloods taken. My blood sample came back saying that I'd exceeded the limit. And I knew at that point that I was at the top of a downhill slope, and I knew that everything after that point was going to start falling apart.

ABBOTT: You didn't doubt the result then?

KEMP: Erm, well, I didn't doubt it at all because it's forensic science. You can't really argue with forensic science.

ABBOTT: Philip sheepishly told me he'd smoked a few joints at a party the previous night, but never thought it would still be in his system. He was banned from driving for 12 months in February last year and fined £150. That may seem a fairly light sentence, but it had a huge impact on his life. He lost his job, so couldn't manage repayments on a £6,000 debt which was keeping his family afloat. Bailiffs came knocking at his door. Then, a year after the ban, he received a letter.

KEMP: This is the key sentence – 'Your sample has been retested by this other toxicology company and the quantity of drugs is now below the legal limit.'

ABBOTT: Did you have any idea that they were doing more tests on your samples?

KEMP: Not at all. I thought the case had been finished and that was it, I'd hear no more about it. I'd get my licence back in 12 months and I could build my life after that point, but getting this letter was a big weight off the shoulders.

ABBOTT: What do you think about the fact that you got this letter though after you had finished the ban?

KEMP: So it was a bit pointless it coming through, because I could receive, I could get my licence back after that point, but it was the charge, the criminal record, that aspect that I was pleased would get squashed.

ABBOTT: Sitting in front of me, in his kitchen in his small, tidy house, Philip tells me it's been a year of misery, which almost saw him lose his partner. But now he's looking for a new job with new motivation. One thing's certain, he says - he'll never touch cannabis again.

KEMP: First year I felt guilty and it was all my fault, especially in the eyes of everybody - the law, myself, including my partner, so it certainly was a testing period for us.

ABBOTT: Were there arguments?

KEMP: Oh, more than a few. There were some really bad times, yes.

ABBOTT: You do hear of some people who don't survive this kind of stress as a couple.

KEMP: We did break up. We got back together soon after, but it did get quite stressful.

ABBOTT: What's your thoughts when you hear the word Radox?

KEMP: Now it's, that's the company that's destroyed my life. When I hear the word, I don't think pleasant thoughts.

ABBOTT: We've been told nearly three-quarters of the 10,000 compromised samples have now been retested. Around fifty cases have been discontinued. But how many more Philip Kemps are there - cases set aside without going to the Court of Appeal? We asked the police and the CPS, but neither could tell us, passing us backwards and forwards. Brief research with solicitors uncovered another thirty people so far. Chief Constable James Vaughan, from the National Police Chiefs Council.

VAUGHAN: Right, well you've got better information than me at the moment. That data we are collecting, so that I can report it on a six monthly basis.

ABBOTT: It really is quite a mess, isn't it? How could something like this go unnoticed?

VAUGHAN: You're absolutely right. This is, it's recognised by me and the wider criminal justice community that when this information broke, the implications are huge. Thousands of people that may well have had an impact on their life ....

ABBOTT: And now you've got thousands of people who are waiting for their retesting and to find out what their future holds.

VAUGHAN: That is, and that is the case, and I have every sympathy with those people. The, I've been coordinating a national response to work through that retesting as rapidly as the national and international capability will allow, but there is only a finite number of scientists across England and Wales with the, with the necessary accreditation and skills to do this work.

MUSIC

ABBOTT: Is this debacle a symptom of the underfunding of forensics? The company says no, the commercial sector's capable of maintaining and improving on the standards set by the forensic science regulator. And, they say, these issues



VAUGHAN: I think I can give you that, I can give you that answer now. There is fragility. I think what's happened with Key Forensics has raised the potential risks that lie behind that.

ABBOTT: So why is the private sector struggling so much? Well, these documents could hold the answer. This is a confidential email I've been passed dating from 2011, so slightly old, but it gives an insight into cost cutting. It's from one of the big firms to a police procurement officer, asking why they weren't getting more work, despite having an exemplary record and all the relevant accreditation. The reply, here in black and white, says it's down to costs. This company, unlike some given work, had invested thousands of pounds getting accredited. I've also got here a copy of a letter to the then forensic science regulator, warning about serious miscarriages of justice because of cost-cutting. It's a worry shared by the current regulator, Gillian Tully.

TULLY: I have been thinking about whether it is actually an existential crisis of funding. Successive competitive tendering processes, whilst being very successful in one hand on reducing expenditure for the police, in my opinion have gone too far and there is not enough money now being spent on high quality forensic science.

ABBOTT: If the police are saying that they are underfunded though, what's the remedy?

TULLY: We have to make sure that we're not only looking at what's cheap for police, but what's good value for the end-to-end criminal justice system. And it's certainly not good value if we end up with any issues like miscarriages of justice or reviews in the future. We know how much reviews into failures cost, so just going for the cheapest service does not necessarily mean that it is good value.

MUSIC

ABBOTT: Change is underway. The Home Office is reviewing forensic science provision and it's setting aside another £6.7 million to address what it describes as the current and emerging challenges. For their part, police are injecting £30 million into the service in an initiative called Transforming Forensics. Chief Constables say



