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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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IN THE MATTER OF A REFERENCE BY THE CRIMINAL CASES REVIEW COMMISSION

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THE KING

v

PATRICK JOSEPH THOMPSON

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Mr O'Donoghue KC with Mr Bassett (instructed by O'Muirigh Solicitors) for the Appellant
Mr Murphy KC with Mr Steer (instructed by the Public Prosecution Service) for the Respondent

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Before: Keegan LCJ, Treacy LJ and Fowler J

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KEEGAN LCJ ***(delivering the judgment of the court)***

Introduction

[1] This is a reference from the Criminal Cases Review Commission ("the CCRC") under section 10(1) of the Criminal Appeal Act 1995 ("the 1995 Act"). The CCRC, having reviewed the appellant's conviction on 31 March 1976 for four counts murder and one of membership of a proscribed organisation, has determined that there is a real possibility that the appellant's conviction would not be upheld were the reference to be made.

[2] In accordance with section 14(4A) of the 1995 Act, the CCRC has referred the conviction on the ground that the findings against Detective Inspector Mitchell, who was discredited by the Court of Appeal in *R v Latimer* [1992] NIJB 89, render the conviction unsafe. Subsequently, the referral has been distilled by the appellant into two substantive grounds, that:

(i) The confession of Mr Thompson is unsafe on grounds of ill-treatment; and

(ii) There was unreliable recording of the confession.

Factual background

[3] The tragic circumstances of this case occurred on 17 July 1975 after British Army helicopters landed in a field near Tullydonnell, County Armagh. As the soldiers crossed the field, they noticed a suspicious object lying ahead. Five officers, Major Willis, Warrant Officer Garside, Corporal Brown, Sergeant McCarter and Sergeant Evans, proceeded to investigate. While they were standing by the object, at approximately 9:40am, a landmine exploded instantly killing Major Willis, Warrant Officer Garside, Corporal Brown and Sergeant McCarter. Sergeant Evans was taken to hospital.

[4] Just before the explosion, a man had been spotted by Corporal Anthony Warriner using the optical sight of his rifle ("SLR") running from the scene. Corporal Warriner was positioned 150 yards from this man (although this fact was disputed at trial) but had tuned his SLR to four-times magnification, allowing him to record some detail. In evidence that was accepted by the trial judge, Corporal Warriner identified the man as being in his twenties and as being well built with "brown collar-length curly hair." This account was backed up by four separate officers, although they had not viewed this man through their SLRs.

[5] Fifteen minutes after the explosion, Mr Thompson, the appellant, was stopped by army officers while driving a green Ford Cortina. The appellant bore the same features as the man viewed by Corporal Warriner. The appellant explained to the officers that he had been to Crossmaglen to buy paint and that he had heard no explosion. A search of the Cortina did not find any paint. Officers observed that Mr Thompson had fresh scratch marks on his forehead and wrist and that his shoes were damp.

[6] It soon became apparent that the car which the appellant drove was not in fact his. Two army officers, Warriner and Sales, brought Mr Thompson to Garvey's Garage nearby, where they examined an Austin 1800 car, which had a flat tyre. At this point, Mr Thompson admitted that he had heard the explosion while he was trying to change the wheel but professed that he had only lied in the hope that he would not be arrested. The appellant was subsequently arrested by Lieutenant Dannant. He was then taken to Bessbrook RUC station, and his home address was searched.

[7] The facts up to this point have not been disputed by the parties. It is rather Mr Thompson's alleged treatment at Bessbrook that gives rise to controversy for while being held there, Mr Thompson made a complaint of assault against the police. This was investigated but not brought further by the Director of Public

Prosecutions. The appellant maintained this complaint at his trial. At Bessbrook, the appellant was questioned without a solicitor present. He was questioned by four interviewing officers: Detective Constable Kenneth Hassan, Detective Constable Norman Carlisle, Detective Sergeant Robert McFarland and Detective Inspector James Mitchell. The appellant was interviewed a total of five times. In the first three interviews he denied responsibility for the attack. In the fourth interview, a confession was recorded, and the appellant signed a statement that detailed the events of the explosion of 17 July 1975 and his involvement in the planning and execution of the attack. This confession was material to the appellant's conviction. The context is provided by examination of the appellant's interviews as follows.

The interviews

[8] A summary of the interviews has been provided by the appellant's counsel in this case. We summarise it here and record that these facts are common case between the parties:

(i) 1st interview: on 18 July 1975 between 11:30am and 12:45pm. Present were DC Carlisle and DC Hassan. The appellant denied the offences and provided an explanation for his movements and presence in the area. The appellant accepted at this stage that he heard the explosion, but that he lied to Corporal Warriner because he "didn't want to get lifted again."

(ii) 2nd interview: on 18 July 1975 between 3:00pm and 4:05pm. DC Carlisle and DC Hassan were present. The appellant was further questioned about his movements, and it was put to him that a person of similar build and wearing similar clothing was seen by the Army running across the field five minutes before the explosion. The appellant again denied that this was him.

(iii) 3rd interview: on 18 July 1975 between 4:25pm and 5:35pm. DCs Carlisle and Hassan again present. The appellant again gave an account of his movements and presence in the area.

(iv) 4th interview: on 18 July 1975 between 8:10pm and 10:35pm. Present was DI Mitchell, DS McFarland and DCs Carlisle and Hassan. It was alleged that the appellant intimated that he would make a written statement. Before doing so he was invited to give a verbal account which it is said he did.

(v) 5th interview: commenced on 18 July 1975 at 11:00pm and finished at 1:00am 19 July 1975. DI Mitchell was present; the appellant collapsed in pain two hours after this interview.

[9] In addition, the appellant was asked to prepare a sketch of the area which he maintains was from a sketch placed on the table at interview. A handwritten letter was found on the appellant's person at a later stage which is said to contradict his account, however, this issue did not form a significant part of this appeal.

The trial

[10] These charges were contested. The trial, heard between 1 and 31 March 1976, was conducted by Jones LJ ("the trial judge"), sitting as a Diplock Court. During the trial the judge heard evidence across nineteen days, including from the appellant, the interviewing officers and from medical professionals who had independently examined Mr Thompson after his initial allegations of ill-treatment whilst at Bessbrook. The court forms its understanding of the witness testimony at the trial from the comprehensive written judgment of Jones LJ.

[11] Having heard Mr Thompson's testimony, Jones LJ, summarised the allegations in the following way in his judgment:

> "[At the second and third interviews] he was made to stand against a wall and do more press-ups and made to get up onto and down from a chair at running speed, and he was thumped in the stomach, he said, and slapped across the face by Hassan. He said that on two occasions a plastic bag was put over his head, and on one occasion, at least, it was tightened or tied at the bottom by a belt he had been wearing, and once it was tightened by itself by twisting and that this made him very dizzy and panicky for air and gasping for breath, and it was kept on for what seemed like minutes but was possibly only about a minute … he said that the two policemen, Hassan and Carlisle, kept pushing at the back of his ear with their fingers and thumb and they kept accusing him of causing the explosion, and on one occasion they said 'you'll make a statement before you get out of here', and his denials were followed by beatings mostly on the stomach and across the feet. He also said he was put against the wall of the room and made to watch a certain part of the wall at eye level, and he also said on one occasion, when standing in the coroner facing the two detectives, one held his chin up with his hand while the other punched him in the stomach."

[12] As stated by Jones LJ, the alleged ill-treatment occurred only in the first three interviews. By the time of the fourth interview, it was alleged that the interviewing officers opted for a change in approach. It is of note, then, that the fourth interview is the first occasion where DI Mitchell was present. We revert to the trial judge's retelling of the allegation which is as follows:

> "The accused then spoke of the fourth interview, the time of which he was not sure, but I am satisfied it started at

> 8:10pm as I have said. He said that he was badgered (my word) and they kept on saying 'come on, Paddy, you got it' (referring to some green marks on his trousers) 'at the firing point. You're with the Provos' and 'you done it.' He said he denied all these allegations and was terrified and he was physically abused, and Mitchell threatened him when he denied involvement in the explosion, saying, 'There's an easy way and a hard way' and Detective Sergeant McFarland struck him once. He then said he signed a written statement and put his initials on it on different pages, but it was not voluntarily dictated by him as they kept on saying what happened and wrote it down and that he signed it as he couldn't take anymore punishment."

[13] This allegation was directly contested by DI Mitchell in his own testimony. He, in turn, was supported by DCs Hassan and Carlisle and DS McFarland.

[14] For his part, the trial judge made clear that if the allegations made by Mr Thompson at the time had been substantiated, he would have deemed the confession evidence inadmissible. The terms in which Jones LJ expressed this view are firm and unequivocal and read as follows:

> "I have no doubt in my mind that if such treatment, or anything like such treatment, was meted out to the accused it would clearly constitute torture or inhuman or degrading treatment, indeed all three types of such treatment, and on the accused's story such treatment, or even any of it, would have been intended to induce him, and did induce him, to make the statements, including the sketches, which are challenged …"

[15] In addition, Jones LJ stated again in very clear terms that had the confession been found inadmissible, the prosecution case would fail as follows:

> "I do not consider that those circumstances established the case against the accused. I regard them, in conjunction with the time factor, as raising an atmosphere of suspicion against him, but taken alone I do not consider that they do more than that, and I put any such suspicion out of my mind when approaching the other aspects of the case, particularly that touching upon the various police interviews and the taking, and admissibility of, the statements, verbal and written (including two sketches) which he is said to have made to the police.

> It seems to me, however, that the written statement and the sketches go so far to the root of the Crown case that if they are excluded the Crown case must fail altogether …"

[16] Of course, we must also look at the entirety of the evidence called in this case. The prosecution's case was supported by testimony from three medical professionals who had examined Mr Thompson after the appellant had collapsed not long after he had signed the confession in the early hours of 19 July 1975. The first to examine Mr Thompson was Dr McVerry, a GP who was onsite on other duties at the time.

[17] Dr McVerry arrived at 1:35am. A detailed examination was not possible. He found no obvious sign of injury. No notes of allegations of ill treatment. The patient was semi-comatose. As to the fit which the appellant had, Dr McVerry stated as follows:

> "He diagnosed the accused as suffering from a hysterical fit and if he had thought otherwise, he would have advised his removal to hospital. He said he saw no evidence of blood staining - the accused had at the time complained of spitting up blood - or vomiting and he said that the police seemed to be attending with the accused with great care and concern."

In addition, it is of note that Dr McVerry was not able to exclude minor injury but arranged for Dr Ward to examine the appellant.

[18] Dr Ward came to see the appellant at 9:25am on 19 July 1975 and arranged for the attendance of Mr Dane, a Surgical Registrar at Craigavon Hospital. Dr Ward received complaints that he had been beaten and kicked by CID plain clothes men with fists and boots on his abdomen, testicles and buttocks, that his head had been knocked against a wall and that his neck muscles were very painful and tender. Dr Ward found no evidence of ill treatment. He did, however, report that he saw a little mucous tear near the appellant's mouth but that he saw no vomit. He considered that there was "a very considerable change" compared to the man he had seen before the interviews.

[19] Mr Dane examined the appellant at 10:00am on 19 July 1975. He took a history in which the appellant said he had constant and severe pain in his abdomen and testes and that this was due to physical violence on 18 July, but the appellant was reluctant to provide details. He said there was no evidence of bruises except for two spots on his lower leg which were sustained prior to the alleged violence. There was no discolouration, and the chest and rib cage were normal. He found nothing abnormal in the abdomen and no bruising or swelling of the scrotal skin. He suggested the appellant's condition could be due to "hysterical reaction" but that he was slightly unhappy in making a diagnosis as to that as he didn't see the appellant

at the time it occurred. There was a suggestion that the strain of the interview and what he had admitted to could cause upset. Finally, he stated that the scrotum was very easily bruised.

[20] A fourth doctor examined Mr Thompson on behalf of the defence. That was on 25 July 1975, six days after the collapse that necessitated the original medical examinations. On that date Mr Thompson was seen by Dr O'Rawe. Dr O'Rawe took the appellant's history and on examination, made the following observations as noted by Jones LJ:

> "Dr O'Rawe examined him and found a tender lump on the crown of his head and his neck was sore on the back and painful on flexion and extension and the accused said that this had been caused by squeezing with fingers. He said that the right sixth rib was very tender at the nipple line; his fifth rib was slightly tender; his eighth rib at the nipple line was tender but there was no evidence of a fracture. He had a one-inch scrape on the left upper abdomen with the underlying muscle tender. He said that the right groin seemed very tender with the pubic area very tender, and both testicles were very tender, but the testicles were not swollen. The left groin was slightly tender, and he walked with a limp because of the right groin pain. The doctor also stated that the accused said that his lower abdomen was all sore and unbending and that he had nightmares and that he had never been a nervous man and was always calm. He, the doctor, expressed the opinion that the accused's complaints were genuine, and he felt he was not deceived. And the doctor felt that the accused's spirit was broken by verbal and physical trauma, and he thought that his findings were consistent, and his injuries must have been severe considering a week had passed. But the doctor felt the accused was even frightened of him which he thought was odd."

[21] We also note that Dr O'Rawe recommended an x-ray for a potential rib fracture, however, that does not appear to have been taken up.

[22] In his overall assessment, the trial judge preferred the prosecution evidence, and the confession was deemed admissible. He explained that he found the interviewing officers to be "most impressive" and that he considered their testimony to be "honest and truthful" and of "very substantial accuracy." On the other hand, while recognising the appellant's previous good character, the trial judge did not find the appellant to be a satisfactory witness. Further, he found that the medical evidence advanced by the prosecution did not give "any reason to doubt […] the

policemen already called." Nor was he convinced by Dr O'Rawe's testimony. The judge preferred the "contemporaneous evidence of Mr Dane, supported insofar as it was by Dr McVerry and Dr Ward."

[23] Further evidence was considered by the trial judge, the veracity of which was not challenged in this appeal. In any event, it may be said that the key findings of the trial judge were that:

(i) The confession evidence was the crux of the prosecution's case to the effect that the accompanying circumstantial evidence would not have been enough to convict;

(ii) Any evidence of ill-treatment must be considered as torture or inhuman or degrading treatment;

(iii) If the appellant's case had been made out, or that if there had been evidence of even the most minor injury, the confession evidence would automatically be deemed inadmissible under section 6(2) of the Northern Ireland (Emergency Provisions) Act 1973;

(iv) Where the evidence of the interviewing policemen was honest and truthful, the evidence of the appellant was unsatisfactory;

(v) The interviewing policemens' account was backed up by the independent opinion of three examining doctors; and

(vi) The contemporaneous evidence was preferrable to that of the later examinations by Dr O'Rawe.

[24] Based on an assessment of all of the evidence, the trial judge found the appellant guilty and convicted him on all four counts of murder and on the fifth count of membership of a proscribed organisation. The gravamen of the trial judge's determination was as follows:

> "In my view this case is – indeed all five counts are – proved up to the hilt by the statements and sketches and indeed the evidence and the circumstances proved including the accused's lying denials, as I find, raise a case of very strong suspicion against him but with the statements and sketches make it a certainty. I therefore find that the Crown has established its case on each of the first four counts beyond a reasonable doubt of deliberately exploding a bomb with three men in its immediate vicinity and more about, as I find that he did beyond a reasonable doubt and can only amount to a case of murder as regards each of the four men killed. I

> therefore convict the accused on each of the first four counts and also on the fifth count which he admitted in his statement."

[25] Accordingly, Mr Thompson received a life sentence for the first four counts, with 30 years as the minimum period, and five years on count five.

[26] An appeal against conviction was lodged on 9 April 1976. The grounds of appeal alleged bias in the conduct of the trial, as the trial judge, it was said, failed to exclude the confession evidence, obtained as a result of ill treatment, and failed to give adequate and fair consideration of the evidence, including the medical evidence, called on behalf of the appellant.

[27] The appeal was dismissed on 31 March 1977. Delivering the judgment of the Court of Appeal, Lowry LCJ found that:

> "[t]here was no misdirection or failure to have regard to relevant evidence, as is made clear in the learned trial judge's long and meticulous judgment, one of the most careful and painstaking which I have had the privilege of reading."

[28] Accordingly, after the appeal Mr Thompson continued to serve his sentence. He was released from prison on 5 March 1992.

The CCRC decision to refer

[29] The appellant lodged an application with the CCRC on 27 February 2018. In that application, he advanced three grounds:

(i) Mr Thompson was the victim of prolonged, intended violence to coerce a signed confession in which he falsely admitted to the offences against him under the oppression of the interviewing officers.

(ii) Allegations were made against DI Mitchell in the course of the trial regarding 'staged' evidence. The rough notes taken by DI Mitchell in the early stages of the interview replicated the statement which was supposedly dictated by Mr Thompson. This supported Mr Thompson's allegation that the confession statement was concocted by the police.

(iii) The trial judge was biased in his conduct of the trial. This resulted in Mr Thompson not being allowed to access vital documents including military logs, medical evidence and witness statements. Such non-disclosure breached Mr Thompson's right to a fair trial.

[30] The CCRC record that the appellant was a man of good character with no criminal convictions. The prosecution rightly describes para [47] of the statement of reasons as significant. It reads as follows and is at the core of the case:

> "If the trial judge had been aware of serious concerns regarding Mitchell's integrity the CCRC considers that this would have been likely to cause him to doubt the reliability of DI Mitchell's account that Mr Thompson had made voluntary admissions to the offences in question. … the CCRC considers it likely that this would have led the Judge to exclude Mr Thompson's alleged admissions from the trial evidence or, if they were admitted into evidence, would have led the judge to conclude that the evidential weight of the admissions was significantly reduced."

[31] As this court has explained in *R v Smith* [2023] NICA 31, the CCRC was established under section 8 of the 1995 Act. Under section 10(1) of the 1995 Act the CCRC may at any time refer a conviction on indictment in Northern Ireland to the Court of Appeal. Such a reference shall be treated for all purposes as an appeal by the person convicted under section 1 of the Criminal Appeal (Northern Ireland) Act 1980.

[32] The requirements which govern a reference are covered under section 13 of the 1995 Act. A reference in respect of a conviction can only be made under section 10 if:

(a) the Commission consider there is a real possibility that it would not be upheld were the reference to be made;

(b) the Commission so consider 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;

(c) an appeal against the conviction has been determined or leave to appeal against it has been refused.

[33] However, nothing stated at (b) or (c) above prevents the CCRC making a reference if it appears that there are exceptional circumstances which justify making it.

[34] Further provisions in respect of references are provided at section 14 of the 1995 Act to include:

(a) A conviction may be referred under section 10 either after an application has been made by or on behalf of the person to whom it relates or without an application having been so made (section 14(1)).

(b) In considering whether to make a reference under section 10 the Commission shall have regard to:

(i) Any application or representations made to the Commission by or on behalf of the person to whom it relates;

(ii) Any other representations made to the Commission in relation to it; and

(iii) Any other matters which appear to the Commission to be relevant (section 14(2)).

(c) Where the Commission make a reference under section 10, they shall:

(i) Give to the Court of Appeal a statement of reasons for making the reference; and

(ii) send a copy of the statement to every person who appears to the Commission to be likely to be a party to any proceedings on the appeal arising from the reference (section 14(4)).

(d) Subject to subsection (4B), where a reference under section 10 is treated as an appeal against any conviction the appeal may not be on any ground which is not related to any reason given by the Commission for making the reference (section 14(4A)).

(e) The Court of Appeal may give leave for an appeal on a ground not related to any reason given by the Commission for making the reference (section 14(4B)).

[35] As stated at page 8 of their referral, the CCRC made the following enquiries:

(i) Checks with the PSNI to find out whether they held disciplinary files for any of the four officers who interviewed Mr Thompson (PSNI advised on 31 May 2019 that no such files were held).

(ii) Checks with the PPS to find out whether they held DPP complaint files for any of the four officers who interviewed Mr Thompson. The CCRC received files in full in June 2019.

(iii) Instructing a forensic document adviser, Mr Stephen Cosslett of Key Forensic Services, to carry out a forensic examination of the original witness statement of Mr Thompson, the diagram of the bomb and the diagram of the battery. Mr Cosslett's findings did not assist Mr Thompson's case.

(iv) Analysis of the findings of the Northern Ireland Court of Appeal in *R v Latimer, Hegan, Bell and Allen* [1992] 1 NIJB 89.

[36] A striking feature of this case is that the main ground on which this appeal is advanced – the *Latimer* point encompassed at (iv) above was not known to the appellant when he applied to the CCRC. Rather, it was in the course of their own review that the CCRC became aware that the decision in *Latimer* was of relevance to this appeal. On the basis of this fresh evidence, the CCRC made the decision to refer the appellant's case to this court to prevent a miscarriage of justice due to the relationship between *Latimer* and this case namely the involvement of DI Mitchell.

The fresh evidence

[37] At this stage, the court notes that both parties were content to admit the fresh evidence. A consensus on this issue is unusual and indicative of the fact that the CCRC issues are clearly worthy of examination. In addition, on 9 March 2023 the PPS provided a schedule of allegations of mistreatment made against police officers including at Bessbrook RUC Station and including DC Carlisle and DC Hassan. Mr Steer helpfully summarised this evidence in a format which was agreed by the appellant and admitted for our consideration.

[38] The question for the court is therefore whether, having reviewed all of this evidence, the conviction is unsafe.

[39] In examining this reference we must deal with the *Latimer* issue in some detail as follows. The *Latimer* appeal arose from a reference to the court by the Secretary of State for Northern Ireland pursuant to section 14 of the Criminal Appeal (Northern Ireland) Act 1980. The four appellants were convicted at Belfast Crown Court on 1 July 1986 for the murder of Aidan Carroll in Armagh on 8 November 1983. Their appeals were dismissed in May 1988. At the trial, the prosecution had relied on written confessions which the appellants maintained had been obtained improperly as detectives had not conducted the interviews in accordance with proper practice.

[40] These allegations were maintained after the original appeal, resulting in a request by the Secretary of State for the police to investigate the matter. An Electro-Static Document Analysis ("ESDA") examination revealed that the notes of the interviewing officers, as relied on in evidence, were not contemporaneous. In short, they had been altered. While the conviction of Latimer was upheld, Hegan, Bell and Allen each had their convictions quashed. The key passage of Hutton LCJ's judgment is this:

> "This court knows what the trial judge did not know, and that is that the interviewing police officers gave untruthful evidence to the trial judge when they said that none of Bell's notes had been rewritten. This court also

> knows what the trial judge did not know, and that is that Detective Superintendent Mitchell and Detective Inspector Mulligan appear to have appended false authentications to some of the interview notes. With that knowledge and having regard to the serious conflict of evidence between the police and Bell as to how his verbal confession and written statement were made, we have a reasonable doubt as to the reliability of his verbal and written confessions, which, together with the confrontations he later carried out, constitute the only evidence admissible against him, and we consider that it would be unsafe and unsatisfactory to rely on them to ground his convictions." (*Latimer* (unreported), page 56-57).

The above passage contains a strong statement by the then Lord Chief Justice as to the consequences of untruthful police evidence which ultimately led to the quashing of convictions in that case.

[41] The DI Mitchell referred to by Hutton LCJ is the same DI Mitchell who recorded the confession in Mr Thompson's investigation. As will become apparent in the discussion further below, that DI Mitchell was present in both cases will become material to the consideration of this referral.

[42] Elsewhere, the PPS disclosure lodged for this appeal taken from DPP complaint files reveals a large number of complaints had been made against not just DI Mitchell, but also against DCs Hassan and Carlisle, and DS McFarland. The review covers the period 1975-1981 and records 24 alleged incidents involving the four interviewing officers. All incidents of alleged abuse were reported to have taken place in Bessbrook and neighbouring RUC stations where the officers had been stationed. Against the individual officers, the following number of complaints were made:

(i) DC Kenneth Hassan: 15 incidents, of which five were recorded at Bessbrook RUC Station, four at Castlereagh, three at Armagh and then one incident each at Omagh, Cookstown and Lurgan.

(ii) DC Norman Carlisle: Four incidents, of which three were recorded at Bessbrook and one at Newry.

(iii) DS Robert McFarland: Three incidents, of which one occurred at Bessbrook, one during a home search and one involving an alleged incident of the accused being thrown out of a car, McFarland having left Newry Police Station.

(iv) DI James Mitchell: Two further incidents, of which one was recorded at Bessbrook (at which DS Hassan also attended) with the other occurring during the same home search at which DS McFarland attended.

[43] Of these alleged incidents, only one, involving DC Carlisle, was taken forward by the DPP. The events of that incident are explained in the review paper ably compiled by Mr Steer:

- Complaint by Robin John Jackson of assault at interview at Bessbrook on 7 August 1975 by DC Norman Carlisle and one other officer. A complaint was also lodged against an Army Corporal.

- The complainant arrested 5 August 1975 at 6am and taken to Bessbrook, released without charge on 7 August at 9:30pm.

- The complainant then made verbal complaint at 9:45pm on 7 August. The complainant made a short witness statement the next day (8 August) and a third statement on 21 August. He was then interviewed on 2 September. The complainant said he was beaten about the head and stomach for fifteen minutes. Three other police officers came into the room. He was made to do press-ups, was lifted up by all five officers to chest height and then dropped fifteen times and was lifted up to head height where he was then rammed against the wall six times. Something was twisted around his neck.

- Gaoler Paterson noted that the complainant was removed from his cell by DC Carlisle and DC Buchanan at 10:15am on 7 August, and that at that time there was no visible injury to him. Paterson stated that Jackson was returned to the cell by the same officers at 11:35am, whereupon Jackson was crying, had a 3" bump on his head. His eyes were puffed, and his face was flushed. He asked for a doctor.

- Dr Ward examined him at 11:50am and found three bumps to the head, redness to the abdomen and superficial abrasions on both shoulders. There are two reports from Dr Ward dated 7 August 1975 as well as a prior report of 5 August 1975.

- DC Carlisle and DC Buchanan were convicted by the Magistrate of common assault. This conviction was overturned on appeal. Judge Brown's decision was reported in the press.

[44] The incident of assault involving DC Carlisle occurred before the trial of Mr Thompson. It was in play at the original trial and known to the trial judge. However, the trial judge was not aware of the remaining allegations. The question becomes whether the alleged incidents outlined above validates the appellant's claims of abuse on the basis of a pattern.

[45] What follows is a summary of the CCRC's reasons to refer this case to the Court of Appeal. The CCRC paid particular attention to the role that DI Mitchell played in the confession of Noel Bell in *Latimer*. In the course of Bell's sixth interview, Bell alleged that DI Mitchell simply suggested to him the matters which had happened based on what Latimer had told the police and that after this exercise, DS Clements (another interviewing officer) wrote down a 'confession' at the dictation of DI Mitchell. Bell then signed that statement. The CCRC noted that Bell's allegations are "strikingly similar" to what Mr Thompson alleges happened in his fourth interview, at which Mitchell (then Detective Inspector) was also present.

[46] It was also recorded that the Court of Appeal made significant findings against Mitchell, finding that he had recorded a false authentication which he backdated by five days (*Latimer* judgment, pages 17, 19 and 54). The CCRC considered that the findings in *Latimer* "do significant damage to DI Mitchell's credibility as a witness in criminal proceedings" to the extent that "where there is a 'direct conflict of evidence' between DI Mitchell and a defendant regarding how an alleged 'verbal confession and written statement' came to be made … DI Mitchell's credibility as a witness of truth is substantially weakened." DI Mitchell's presence in the fourth interview where the appellant signed a confession statement therefore amounts to such a direct conflict of evidence.

[47] Further, with regard to the alleged practice of the interviewing officers, the CCRC emphasised that a key aspect of admitting the confession evidence was the credibility of the police evidence. Therefore, the significant damage to DI Mitchell's credibility gives rise, in all the circumstances described at para [46] of the CCRC reasons as follows:

> "a new line of defence argument which does not relate to the alleged ill-treatment by the police – as was argued by the defence at trial – but instead strikes at the core of the honesty of the investigating officers, and their account of what Mr Thompson said in police interview."

[48] The CCRC next considered the conviction of DC Carlisle. While they recognised that Carlisle's conviction had been overturned on appeal, they observed that the alleged assault occurred at the same police station where Mr Thompson was interviewed, less than three weeks after the interviews in this case. This, they said, raised grounds for concern, and that while the similarities would not be enough to quash Mr Thompson's conviction in isolation, the CCRC considered it ought to be considered by the Court of Appeal when it considers the ground of appeal regarding DI Mitchell.

[49] Regarding the handwritten letter discovered on Mr Thompson while on remand awaiting trial, the CCRC recognised that it contradicts the appellant's evidence that no part of the confession came from him. However, in the context of the case as a whole, they remained of the view that its statutory threshold for

referring a conviction had been met, and that notwithstanding the letter, "the post-trial information regarding DI Mitchell's credibility gives rise to a real possibility that the Court of Appeal will find Mr Thompson's conviction to be unsafe." Both parties approached this appeal on the same basis.

[50] The final consideration given by the CCRC concerned the contemporaneous medical evidence. They observed that bruises can take up to 48 hours to form following trauma and the fact that no bruising was observed upon the initial examinations "does not rule out that the ill-treatment took place as claimed by Mr Thompson." They further viewed as a "significant anomaly" the inconsistencies between police statements and the medical evidence regarding the existence or otherwise of scratch marks on the appellant's forearm and forehead. That Dr Ward and Mr Dane recorded no such marks casts, in the CCRC's opinion, doubt "upon whether the medical evidence can have been accurate."

Relevant legal principles

[51] At the outset, the court notes that the legal principles at play in this appeal are common case between the parties. It is, nevertheless, important to set them out in some detail given the issues at stake in this case.

[52] The test for an unsafe conviction is well known. It was set out by Kerr LCJ in *R v Pollock* [2004] NICA 34 and has been consistently followed since. The test, set out at para [32] of that case, stipulates:

> "1. The Court of Appeal should concentrate on the single and simple question 'does it think that the verdict is unsafe.'
>
> 2. This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.
>
> 3. The court should eschew speculation as to what may have influenced the jury to its verdict.
>
> 4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal."

[53] In addition, the court was referred its decision in *R v Brown* [2012] NICA 14, where Morgan LCJ set out the principles that govern the admissibility of confession

evidence. The same approach was followed in *R v Patricia Wilson* [2022] NICA 73 paras [6]-[19].

[54] Both parties also relied upon *R v Michael Devine* [2021] NICA 7. The case dealt expressly with the issue of police misconduct. The court followed the approach of the English Court of Appeal in *R v O'Toole* [2006] EWCA Crim 951. Given its specific relevance we set out the detail from the decision found in para [61] as follows:

> "[61] The issue of misconduct, or discreditable conduct, on the part of police officers was addressed in *R v O'Toole* [2006] EWCA Crim 951:
>
> > '38. We turn to the law. What approach does the law prescribe to the use of such material as this arising in other and, as it happens, much later cases, but which, if available at the time of trial, might have had some impact on the jury's verdict? The starting point is the decision of this court in *Edwards* (1991) 93 Cr App R 48. The court held that there was no hard and fast rule as to what cross-examination might be allowed, or, if later events were relied on, what notional cross-examination might be contemplated.
> >
> > > 'The objective must be to present to the jury as far as possible a fair, balanced picture of the witnesses' reliability ...' (see page 56)
> >
> > 39. Taking the matter shortly, the CCRC was, in our judgment, right (see the reasons in Murphy paragraph 33) in distilling from the decision in *Edwards* the following three categories in which the evidence of a police officer's conduct might be canvassed in another case:
> >
> > > '(i) Convictions for a relevant criminal offence;
> > >
> > > (ii) Disciplinary charges found proved against the officers;
> > >
> > > (iii) Cases where the only logical explanation for a defendant's

> acquittal (in a different case) was that the officer's evidence must have been disbelieved.'

40. In addition, however, the appellants draw attention to *Zomparelli No 2*, 23rd March 2000, in which Lord Bingham CJ strongly endorsed the approach in *Edwards* but stressed two additional points. This is what he said:

> 'The first is that the judge's overall and paramount duty is to ensure the fairness of the trial. The trial process must be fair to the prosecution; the scales of justice are not balanced if heavily over-weighted in favour of the defendant. But it must be fair also to the defendant. He is entitled to a fair trial as a matter of constitutional right. No rule of law can restrict the duty of the court to ensure a fair trial.
>
> 35. The second point we would make is this. The court in *R v Edwards* was at pains to make clear that it was not seeking to lay down any hard-edged rule of law to be applied inflexibly in any case of this kind. The court recognised that the discretion of the trial judge cannot be so circumscribed as to restrict his power to do whatever justice demands in the circumstances of the individual case.'

41. Next, we should notice the decision of this court in *Williams and Smith* [1995] 1 Cr App R 74, to the effect that where such matters are admissible, they are no less admissible on appeal merely because on the facts they involve events later in time than the events in question in the particular case. However, the length of time between the misconduct relied on and the convictions

sought to be impugned can be a relevant factor in assessing the impact of a putative attack on an officer's credibility and the safety of the conviction.

42. In *Deans* [2004] EWCA Crim 2123 this was said by Maurice Kay LJ at paragraph 37:

> 'We deprecate the subsequent misconduct of the officers, particularly Detective Constable Robotham. However, in the final analysis we are satisfied that the convictions were and are safe. We certainly accept that police misconduct after the events in issue and after the trial in question can render a conviction unsafe. We also accept that corruption and other reprehensible behaviour by one or more officers may infect a whole investigation notwithstanding the presence of officers against who nothing has been alleged or established. In the present case, however, we attach particular importance to the lapse of time between the events of 1988 and the trial in 1989 on the one hand and the appalling behaviour of Detective Constable Robotham, and to a lesser extent Detective Constable Davis, on the other hand. There is nothing to suggest that either of them acted otherwise than with propriety between 1988 and 1997. We consider it inappropriate to doubt convictions which occurred almost a decade before any known or alleged misbehaviour on the part of these officers.'

43. There is also authority for the proposition -- though, with great respect, we have some doubt whether it is really a point of law rather than one of good common sense --

> that misconduct by police officers may be fatal to a conviction even though their tainted evidence is supported by officers of whom there is no criticism whatever: see *Guney* [1998] 2 Cr App R 242, [1998] EWCA Crim 719. That is particularly relevant here because the Crown say that the evidence of Hornby of the interview of Murphy on 8th April 1977 was supported by that of the then DS Robinson, who eventually retired in the rank of detective chief inspector after over 32 years of service with a record of no less than 14 commendations or awards.
>
> 44. In the light of all this learning the officers Lloyd, Matthews, Hornby and McClelland in our judgment could, as the CCRC opined, properly have been cross-examined on the matters to their discredit which have emerged and which we have summarised.
>
> While *O'Toole* is not binding on this court, we propose to follow it."

[55] The CCRC further pointed to paragraph [72] of *Devine* in the following passage:

> "[72] There is yet another issue of substance of concern to the court. In [35]-[40] above we have summarised the post-conviction evidence relating to the professional conduct of Detective Sergeant Harper. It is no function of this court to make any finding adverse to Mr Harper. Indeed, as emphasised by Mr Simpson QC, none of the evidence upon which this ground of appeal is constructed contains any such finding. It is common case that in assessing the safety of the appellant's convictions this court may properly consider this evidence. We find it impossible to overlook the strong similarities between the conduct attributed by the appellant to Detective Sergeant Harper in compiling interview notes containing fabricated admissions and the conduct alleged against him in *R v Santus*. This gives rise to a concern which is aggravated by the other post-conviction evidence relating to the professional conduct of Mr Harper which we have summarised. Cumulatively these sources of evidence serve to lengthen the shadow over the reliability of the

> admissions attributed to the appellant and fortify our reservations about the safety of his convictions."

[56] Further, the CCRC pointed to dicta in the Court of Appeal in England and Wales as being relevant. First, there is the observation of Bedlam LJ in *R v Maxine Edwards* [1996] 2 Cr App R 345, that:

> "Once the suspicion of perjury starts to infect the evidence and permeate cases in which the witnesses have been involved, and which are closely similar, the evidence on which such convictions are based becomes as questionable as it was in the cases in which the appeals have already been allowed" (at page 350).

Second, in *R v Warren and Others* [2021] EWCA Crim 413 (itself a CCRC Referral), Fulford VP stated in relation to the treatment of trade unionists and the conduct of their trial: "[b]y the standards of today, what occurred was unfair to the extent that the verdicts cannot be upheld" (at para 87).

Consideration

[57] As indicated at para [2] above, the appellant mounts two grounds of appeal: that the conviction is unsafe on grounds of ill-treatment, and that the conviction is unsafe on grounds of the unreliable recording of confession evidence.

[58] On the first ground of appeal, Mr O'Donoghue KC for the appellant reminded the court that although other circumstantial evidence existed, the trial judge made clear that the prosecution case hinged on the confession evidence. The evidence of maltreatment, then, must result in the Court of Appeal experiencing significant unease as to the safety of the conviction. As to the fresh evidence, the appellant urged the court to look on it as a form of bad character evidence.

[59] During oral argument Mr O'Donoghue took the court to the reforms as enacted by the Criminal Justice (Evidence) (Northern Ireland) Order 2004, making the case by analogy that were the interviewing officers to testify in a trial today, there would be evidence of propensity within the meaning of Part II of that Order. Mr O'Donoghue further took the court to the Supreme Court's decision in *R v Mitchell* [2016] UKSC 55. That was a case of non-conviction bad character where it was held that bad character must have relevance to the case. An obiter comment by Lord Kerr reveals the proper direction to the jury as being that:

> "if they are to take propensity into account, they should be sure that it has been proved. This does not require that each individual item of evidence said to show propensity must be proved beyond reasonable doubt. It means that all the material touching on the issue should be

> considered with a view to reaching a conclusion as to whether they are sure that the existence of a propensity has been established" (para 44, citing *R v Ngyuen* [2008] EWCA Crim 585).

[60] The appellant turned next to *Devine*, and pointed in particular to the formulation found in *Edwards* that the following three categories in which the evidence of a police officer's conduct might be canvassed in another case:

> "(i) Convictions for a relevant criminal offence;
>
> (ii) Disciplinary charges found proved against the officers;
>
> (iii) Cases where the only logical explanation for a defendant's acquittal (in a different case) was that the officer's evidence must have been disbelieved."

Owing to the findings made in *Latimer*, the appellant submitted that the present appeal falls within the third category.

[61] The central point of the appellant was therefore that the evidence admitted in the original trial that led directly to Mr Thompson's conviction would be deemed inadmissible by today's standards. This should, they say, raise questions as to the safety of the conviction; that when viewed with the other allegations made at the same place, using the same process, with the same officers present, and at the same time, the court can find only one answer: that this conviction is unsafe.

[62] As to the medical evidence, the appellant submitted that it must be read alongside the PPS disclosure regarding police ill-treatment of detainees at Bessbrook RUC station. It was argued that there are striking similarities between the description of the ill-treatment described by the appellant to that of the allegations made in the PPS disclosure. In particular, it was said that the allegation made by Robin Jackson reveals a marked overlap in treatment, that both incidents occurred within weeks of each other, and that DC Carlisle was involved in both instances. Thus, while the appellant accepted that DC Carlisle was acquitted on appeal of assaulting a detained person in custody, he submitted that this should be considered in the context of the allegations as a whole, both in respect of his version of events and the allegations made in the PPS disclosure.

[63] As a result, it was the case of the appellant that a combination of all of the above matters is sufficient to raise a valid question mark as to the treatment of the appellant during custody, which goes to the heart of how the confession came about and which ultimately undermines the safety of the conviction given that the trial judge regarded the confession as the most significant evidence in the case against the appellant.

[64] Regarding the second ground of appeal, the appellant succinctly outlined his position in the course of written submissions that "the initial verbal admissions were in response to ill-treatment. The sketches were copied from police copies. The written statement was dictated by DI Mitchell, and he was required to sign. The account was not his own." Therefore, under both the law at the time and the present law, it was said that the confession evidence should not have been admitted. Similarly, the appellant submitted that the reliance that the trial judge placed on the evidence of the police witnesses, and his description of them as "most impressive witnesses" should be undermined by the subsequent findings against DI Mitchell in particular, as per *Latimer*.

[65] In making this claim good, Mr O'Donoghue went through in some detail the alleged discrepancies in the various police officers' accounts. The court was taken to the statement of DI Mitchell and his retelling of the crucial fourth interview. The appellant pointed out that, by Mitchell's own admission, the confession was not immediately written down, but was rather presented in statement form in due course. This admission is exacerbated, the appellant says, by the fact that McFarland and Hassan were present in the room. Despite the lack of contemporaneous recording, in Mitchell's statement, Mr Thompson's confession appeared in quotation marks. The accuracy of these quotations was therefore questioned.

[66] The appellant, therefore, asked the court to view the discrepancies with the knowledge of the findings against DI Mitchell in respect of his willingness to falsify information about the interview process. Had the trial judge been aware of these issues, they said, then it would have cast Mitchell's evidence – as well as the evidence of his subordinate officers - in a different light and should have led to the trial judge concluding that the interviews be ruled inadmissible.

[67] In all the circumstances, then, the appellant submitted that the *Pollock* criteria had been met and asked the court to overturn the conviction.

[68] The prosecution, for their part, relied considerably on the expertise of the trial judge (hearing 19 days of evidence) and the value of the contemporaneous medical evidence. As already stated, they did not dispute the admission of the fresh evidence, nor did they dispute the legal principles at hand. Their case was rather that the task of this court is to balance this new evidence with the strength and merit of the independent analysis of the three prosecution medical witnesses – evidence that the original trial judge found striking and convincing. As such, it was said, the allegations of ill-treatment can be seriously queried, and that the appellant's case has not been borne out. The prosecution further refuted the assertion regarding a lack of disclosure pointing to the release of prison medical records for the trial.

[69] As to the conduct of DI Mitchell, the prosecution contended that the reliance on the misconduct must be contextualised by the fact that the only finding of misconduct against him, in *Latimer*, took place some eight years after the appellant's

case. The prosecution also noted that there was no allegation by the appellant that the witness statements and sketches obtained from the appellant were tampered with, as was the allegation in *Latimer*. It was further noteworthy that DI Mitchell did not take part in the interviews where the alleged physical misconduct took place.

[70] The prosecution readily accepted that Mitchell's behaviour was "appalling." However, prosecution counsel stressed that in any case the entire context requires analysis prior to any decision as to whether the conviction is unsafe. That is why, the prosecution said, it is important to evaluate the medical evidence in its entirety.

[71] The prosecution further suggested that the conduct of the other police officers should not be given undue weight as the trial judge was made aware of the conviction and subsequent acquittal of DC Carlisle, and that no other evidence could have been brought about other allegations brought against police which would have allowed the judge to decide if they were genuine or not.

[72] The prosecution concluded their case by submitting that the findings against DI Mitchell in *Latimer* do not result in a sense that the conviction of the appellant was unsafe; that the evidence should be taken together, and that it should be remembered the Court of Appeal originally found an "overwhelming" case against Thompson.

[73] In truth the case boils down to a very simple fact that DI Mitchell who took the confession was not a man of truth or integrity as illustrated by the *Latimer* case. We do not think that the fact DI Mitchell's dishonest actions were discovered in another case which concerned behaviour eight years later can win the day. That is because we are of the view that if the trial judge had known that DI Mitchell had the potential to falsify a confession as he was subsequently found to have done, he may have felt compelled to rule the confession inadmissible. Without the confession as he said himself the prosecution must fail.

[74] It is of course highly significant that the confession was taken at the fourth interview by DI Mitchell who was not present at the preceding interviews. He is a dishonest witness who would not have withstood scrutiny by the courts in 1975 or now due to his being found to falsify evidence. In addition, there were some obvious procedural failings as to how this confession was taken which make us question its veracity. As the appellant pointed out by Mitchell's own admission, the confession was not immediately written down, but was rather presented in statement form in due course. This admission is exacerbated by the fact that DS McFarland and DC Hassan were present in the room. Despite the lack of contemporaneous recording, in Mitchell's statement, Mr Thompson's confession appeared in quotation marks. There is therefore a valid criticism raised as to how the statement was delivered and recorded which calls into question its veracity.

[75] In addition, there is now cogent evidence of ill treatment allegations made against other police officers who were present at the appellant's interviews

comprised in the PPS summary of complaints taken from DPP files and introduced as fresh evidence. This is akin to non-defendant bad character evidence. Mr O'Donoghue rightly conceded that on its own this evidence could not lead to a successful appeal. However, given the factual matrix of this case which is distinct from many of the other cases this court has considered in this general area, such evidence has potential relevance as an additional factor in support of the appeal. That is because very similar allegations of bad character by way of ill treatment were made by persons other than the appellant against two police officers DC Carlisle and DC Hassan and of a very similar nature (including standing against a wall and press ups) as what the appellant said happened at Bessbrook RUC Station.

[76] We can understand why the prosecution seek to divert from this core consideration by reliance on the medical evidence and the trial judge's assessment of it. True it is that the judge preferred the prosecution medical evidence. However, we think that the entire case takes on a different complexion once the admissibility of the confession is called into question. In addition, Jones LJ was quite clear that if any of the allegations of mistreatment were made out, he would not admit the confession statement.

[77] We cannot rewrite the judge's findings on the medical evidence. However, there is another element to this case which is interconnected namely the veracity of the confession given the unreliability of DI Mitchell. This case features objective and cogent evidence which discredits the police officer who took the alleged confession. That fact is obviously highly significant. We feel sure that any judge faced with evidence of an officer who falsified confessions would look again at the case. That is because the trial judge's conclusions that the police witnesses were "honest and truthful" is undermined. The fact remains that in order to be satisfied beyond reasonable doubt that the appellant had not been illtreated, as well as considering the medical evidence, the judge had necessarily to rely heavily on his assessment of the police witnesses as being truthful and reliable.

[78] Drawing all of the above together, we summarise the position of this court as follows. If the information we have examined in this appeal had been available at the trial, it would have enabled defence counsel to contend that the taking and recording of the confession by DI Mitchell was unlawful in that it may have been falsified. There is, therefore, a real possibility that the trial judge may have been persuaded that DI Mitchell was not an honest and truthful witness as he thought.

[79] In addition, the now disclosed complaint files raise the possibility that there was potentially a culture of oppressive behaviour including at Bessbrook RUC practised by two of the officers, DC Hassan and DC Carlisle, who are alleged to have subjected the appellant to ill treatment. If all of the disclosed documents had been available to the defence at the time and not just the one record of complaint from Jackson that they had, there is a real possibility that they would have enabled the defence to undermine the credibility of those witnesses by way of bad character.

[80] If the defence had succeeded in undermining the credibility of two of the police witnesses who were at the appellant's first three interviews and who are alleged to have perpetrated ill treatment upon him that would have affected the admissibility of the subsequent confession statement made to the police since on the appellant's account that statement was made because of fear induced while he was in the custody of the police. There is, therefore, a real possibility that if these documents had been disclosed the trial judge may not have admitted into evidence the admissions.

[81] Alternatively, if the statements had been admitted it would, have been open to the appellant's counsel to explore these issues of bad character before the judge. It follows that for the reasons set out above we consider that there is a real possibility that this material might reasonably have led the trial judge to conclude that it was unsafe to rely upon the alleged confession a reasonable doubt having arisen.

[82] Thus, it will be apparent that the medical evidence alone cannot avail the prosecution in seeking to uphold this conviction. That is because to our mind the appeal must succeed on the second ground relating to the potential reliability and associated admissibility of the confession.

[83] Mr Murphy KC for the prosecution in closing his submissions accepted that this case involved a "fine balance." We commend him for this frank assessment which was undoubtedly proffered because there were obviously some strong factors pointing in favour of the appellant which the prosecution recognised. We also commend the CCRC for drawing the *Latimer* issue to the attention of the court.

[84] We have recited the competing arguments in some detail above in this judgment in order to explain the key points at issue in this appeal. This is obviously a serious case involving horrific murders in which we have tremendous sympathy for the bereaved families. Nothing we say detracts from society's condemnation of such crimes committed in our past. However, the awfulness of the crime does not absolve this court of performing its function. In satisfaction of our judicial obligations, we have to decide whether this historic conviction is safe according to law however difficult the outcome may be. To that end we have anxiously and carefully considered all of the evidence and arguments in order to reach our final view.

Conclusion

[85] As will be apparent from the foregoing, the outcome we have reached in this case is highly fact specific. Considering the highly significant import of *R v Latimer* and having considered the fresh evidence the balance falls in favour of the appellant. It follows that in agreement with the CCRC assessment we consider that the fresh evidence might have led to a different result in the case given a key aspect of admitting the confession evidence was the credibility of the police witnesses. The CCRC summarised the effect of unreliable police evidence in this way:

> "If the trial judge had been aware of serious concerns regarding Mitchell's integrity the CCRC considers that this would have been likely to cause him to doubt the reliability of DI Mitchell's account that Mr Thompson had made voluntary admissions to the offences in question. … the CCRC considers it likely that this would have led the judge to exclude Mr Thompson's alleged admissions from the trial evidence or, if they were admitted into evidence, would have led the judge to conclude that the evidential weight of the admissions was significantly reduced."

[86] Accordingly, we cannot regard the convictions as safe applying the test set out in *R v Pollock*. The convictions will therefore be quashed.