

Neutral Citation No: [2025] NICA 41

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Ref: KEE12824

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**Delivered: 16/05/2025 (Closed)
17/09/2025 (Open)**

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

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

THE KING

v

DECLAN MURPHY, DECLAN MOEN and CONOR GILMORE

**Mr McDowell KC with Mr Steer KC (instructed by the PPS) for the Crown
Mr Skelt KC with Ms Cheshire (as Special Advocates representing the interests of the
Appellants)**

**Mr Macdonald KC with Ms Smyth (instructed by Phoenix Law Solicitors) for Murphy
Mr D Hutton KC with Mr T Madden (instructed by Phoenix Law Solicitors) for Moen
Mr Larkin KC with Mr O’Keeffe KC (instructed by Phoenix Law Solicitors) for Gilmore**

Before: Keegan LCJ, Treacy LJ and Colton J

OPEN RULING

KEEGAN LCJ (delivering the judgment of the court)

[1] This matter was referred to the Court of Appeal by the Criminal Cases Review Commission (“CCRC”) under section 10 of the Criminal Appeal Act 1995. We have now delivered our ruling in respect of the closed hearing, and having heard submissions from the parties, we provide this open ruling. It has not been possible to provide all of our reasons in this judgment given the confidential nature of the material we have considered.

[2] Each of the members of the court has read the closed documents that accompanied the reference by the CCRC which included a confidential annex. We

have also received comprehensive submissions from counsel for the Public Prosecution Service and counsel acting as Special Advocates. We have dealt with this case in stages as follows.

[3] First, based upon our consideration of the papers and the legal submissions filed we determined the issue as to whether the disclosure test is met in relation to the material included in the confidential annex. All members of this court determined that the disclosure test was not met in respect of one of the aspects of the CCRC reference.

[4] However, all members of this court considered that the disclosure test was met in other aspects as it may have supported an application on another aspect of the reference by the CCRC. The court having made this assessment determined that public interest immunity applied.

[5] Having been informed of the above decision, the Special Advocates and the prosecution submitted to us that the interests of the appellants could be protected by the Special Advocates arguing on their behalf on the basis that the material had met the test for disclosure. Thus, the court proceeded to hear arguments about the consequences of the material now considered disclosable and heard submissions on the abuse of process appeal ground advanced by the Special Advocates.

[6] Counsel all agreed the law to be applied in cases where a stay on the grounds of abuse of process is claimed derives from *R v Maxwell* [2011] 1 WLR 1837 and *Warren v Attorney General for Jersey* [2012] 1 AC 22 encapsulated in the following passage from *Maxwell*, para [13]:

“The court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court’s sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will “offend the court’s sense of justice and propriety” (per Lord Lowry in *R v Horseferry Road Magistrates Court Ex p Bennett*[1994] IAC 42,74G) or will undermine public confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in *R v Latif* [1996] 1 WLR 104, 112F).”

[7] Counsel agreed that this was a second category case where a balancing exercise is required.

[8] The Special Advocates argued that the failure of the police to disclose material in the original trial which would have revealed serious misconduct by the police merited allowing the appeals. The prosecution, whilst conceding that the misconduct was indefensible, argued that it had no impact on the fairness of the trial and that the convictions were safe as the misconduct fell short of the type of misconduct that would constitute abuse of process as described in *Horseferry Road Magistrates ex parte Bennett*.

[9] Having heard the arguments, two members of this court (Treacy LJ and Colton J) consider that the abuse of process issues that arise are of such a level of deliberate police misconduct to offend the court's sense of justice and propriety and undermine public confidence in the justice system. Therefore, in their assessment, the balancing exercise results in allowing these appeals.

[10] I have found on balance that given the particular facts of this case the trial was fair and that the convictions are safe. While the conduct of the police is reprehensible, in my view this is outweighed by the competing public interest in the prosecution of serious terrorist offences.

[11] Therefore, by a majority, the decision of this court is that the convictions are not safe on the abuse of process ground referred by the CCRC and argued by the Special Advocates.