

Judicial Communications Office

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COURT DISMISSES APPEAL AGAINST HISTORIC CONVICTION

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal brought by way of a reference by the Criminal Cases Review Commission (“CCRC”). John McDevitt (“the appellant”) was convicted in 1986 following a non-jury trial of the murder of Private Neil Clark and related firearms offences.

Background

On 23 April 1984, two British Army Land Rovers came under an attack involving petrol bombs followed by gunfire in the Bishop Street area of Londonderry. One vehicle was struck and engulfed in flames and, as the soldiers exited, a number of shots were fired. Private Neil Clark was shot and killed and two other soldiers sustained gunshot injuries. The appellant was not alleged to have discharged any firearm. Rather, the prosecution case was that he was involved in the petrol bombing aspect of the attack and that he drove the IRA terrorists including those carrying firearms, to and from the scene.

The appellant was arrested on 2 May 1984 and detained at Castlereagh Holding Centre. He was 19 years of age at the time and was interviewed on 23 occasions over a period of five days. During his interviews, the appellant made four statements and signed them at the time. In the earlier interviews he admitted involvement in transporting materials used in the petrol bomb attack. He denied any involvement with, or knowledge of, firearms or gunmen during the first 16 interviews. In his 17th interview, the appellant was recorded as having admitted that he had transported men carrying a black case to and from the scene and that he realised that firearms were involved. No solicitor was present during the interviews although a solicitor was available to the appellant and gave advice prior to the making of his fourth and final statement which contained the confession which is impugned in this appeal.

At trial, the appellant accepted his involvement in the transportation of petrol bomb materials, however, he denied that he had knowingly transported gunmen or had knowledge of firearms. He gave evidence that the admissions to that effect were untrue. The appellant’s defence in relation to the police interviews, which he maintained in his application to the CCRC, was that the admissions which relate to any knowledge of guns or gunmen at the incident in question were false and induced by threats, inducements or improper conduct by the interviewing officers.

The trial judge rejected the appellant’s account of the interviews and accepted the evidence of the interviewing officers. He concluded that the appellant had driven the gunmen to and from the scene and convicted him of murder on that basis. The appellant was

¹ The panel was Keegan LCJ, Colton LJ and Fowler J. Keegan LCJ delivered the judgment of the court.

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sentenced to life imprisonment in respect of the murder conviction, together with concurrent sentences totalling six years on the firearms offences. He served approximately 10 years in custody and was released on life licence on 7 June 1996.

The Court of Appeal dismissed an appeal on 30 September 1987, concluding that the evidence against the appellant at the trial constituted a very powerful case. The court concluded there was nothing unsafe or unsatisfactory in his conviction and the appeal was dismissed.

Grounds of appeal

The CCRC referred the case on one ground, namely that there was a real possibility that had the court had the material identified in *R v Latimer, Hegan, Bell and Allen*² available at trial this “might reasonably have affected the decision of the trial judge to convict” or the weight to be attached to the confessions, in which event “the conviction must be thought to be unsafe³.”

The appellant also sought to rely on additional matters including alleged non-disclosure; complaint and disciplinary material relating to the police officers who interviewed him; evidence concerning the presence of a firearm in the interview room in Castlereagh; and proposed expert evidence relating to confession reliability.

Consideration

The court reviewed the trial evidence and the findings of the trial judge. It also considered the appellant’s evidence at trial, including numerous admitted false accounts concerning relevant events and his acceptance that the interview notes accurately recorded what he had said and were voluntarily signed. A number of uncontroversial facts emerged including that the appellant had admitted false accounts concerning relevant events.

Crucially the appellant accepted that, on 2 May 1984, he wrote in his own handwriting that he had absolutely no complaint to make about the way he had been treated in the building or at the station. There was therefore no claim made that the inculpatory statements were concocted by police or doctored in some way. The court commented:

“What is clear from the foregoing is that the appellant provided repeated and detailed false accounts without any pressure being applied to him, of his own volition. This also accords with the trial judge’s assessment and is a significant credibility finding against the appellant which frames this case. ... These findings demonstrate that the conviction depended to a very large extent upon the judge’s confidence in the credibility and reliability of the interviewing officers. Based on the contemporaneous materials, we have examined this assessment is entirely rational.”

The court noted, however, that the trial judge’s evaluation occurred in the absence of material which later came to light in *Latimer* and later authorities. Two of the interviewing officers in this case were subsequently found to have acted improperly and led to the

² [1982] 1 NIJB 89

³ *R v Pendleton* [2002] 1 WLR 72

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conviction of Mr Hegan in *Latimer* being overturned. In assessing the potential impact of *Latimer*, the court said it was necessary to examine closely the nature and extent of the findings made by the Court of Appeal in that case to decide what impact they have upon the facts of this case. The court accepted that the findings in the *Latimer* case damaged the credibility of two of the interviewing officers as witnesses in criminal proceedings, however, whether this undermined the safety of the convictions in this case depended on an overall view of the case:

“Thus, the CCRC goes too far in suggesting that in any case where there is a direct conflict of evidence between either of those officers and a defendant regarding how an alleged oral confession and/or written statement came to be made, their credibility as witnesses of truth is fatally weakened. The test is more nuanced. Whilst a suspicion is raised whether the practices identified in *Latimer*, including the rewriting of notes and the presentation of those notes as contemporaneous, potentially reflect a broader interview culture within Castlereagh at the material time each case must turn on its own facts.”

The court concluded that the appellant’s case was materially different to *Latimer*. The appellant did not contend that his statements had been fabricated, altered or falsely attributed to him. He accepted that the impugned statements accurately recorded his words and that he signed them voluntarily. Accordingly, the central feature of *Latimer*, namely falsification or reconstruction of interview records, was absent.

The court further concluded that allegations of threats, verbal aggression and inducements had been fully explored at trial and rejected by the trial judge. Having considered the subsequent findings affecting certain officers, the court was not persuaded that those matters undermined the safety of the convictions when viewed alongside the appellant’s admissions, his failure to make contemporaneous complaints, his admitted falsehoods, and the overall evidence in the case.

“Properly analysed, the reliance on *Latimer* does not avail the appellant given the circumstances of this case and so we reject this aspect of the appeal. In doing so, we repeat the point already made by this court that the presence of officers who were criticised in *Latimer* in a historic case does not automatically result in a conviction being quashed.”

The court also rejected the appellant’s further arguments. It found that complaint and disciplinary material added nothing of significance on the facts.

The court considered the fresh evidence application concerning the presence of a gun in Castlereagh. This point was initially dismissed by the CCRC but new information was obtained which verified that four men named by the appellant were detained at Castlereagh over the same period and that four weapons recovered in the house where they were arrested were taken to Castlereagh and showed to each of the men during the course of their interviews. The showing of the guns was recorded in the witness statements of the officers concerned. The CCRC considered that this new information contradicted the view of the trial judge that a gun would not have been brought into an interview room in Castlereagh. The court, however, said the argument now advanced by the appellant was based upon an interpretation on his evidence that he may have been

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confused about dates. It said this was not strong enough for the court to make a positive assessment in the appellant's favour:

"Now many years later an argument is made which is essentially based upon assumption and inference and is a different case from that put at trial by counsel. That is not a basis upon which the safety of these convictions can be called into question. Therefore, this appeal point must again fail."

The court also rejected the arguments based on expert evidence concerning confession reliability and its admissibility. It said expert evidence did not lead it to question the safety of the conviction as it was not persuasive that the appellant was forced into his confession in relation to the gunmen. In any event, the court said it was not necessary or in the interests of justice to admit the fresh expert evidence as, in its view, it cannot establish a valid ground of appeal based on the facts of this case. The court, therefore, refused to admit all of the expert evidence now relied upon.

In conclusion the court acknowledged that the appellant may feel aggrieved with its conclusion that there was no merit in the point raised by the CCRC because he was caught up in terrorist activity as a young man during the Troubles and his co-accused were convicted of lesser offences such as manslaughter after guilty pleas. However, the appellant chose to proceed to trial. The court noted there was no complaint with how the trial judge applied the law in relation to aiding and abetting. The appellant was also by his own admission involved in a serious and planned attack on army personnel. The court considered that the CCRC analysis underpinning this reference, whilst comprehensive, went too far in suggesting that after many years the appellant's role can be relegated into the background. Furthermore, the reliance on *Latimer* was not persuasive on the facts of this case.

Conclusion

The court held that the appeal must fail on its facts. It said the CCRC reference taken alone did not satisfy it that any safety issues arose with the convictions under scrutiny:

"As this court has said before, a *Latimer* issue is not a freestanding ground of appeal. The additional arguments in combination with the *Latimer* point do not persuade us for the reasons we have given. In our view, the previous CCRC refusal can be admitted as fresh evidence and assessed, however, the appeal point based upon it cannot succeed."

In addition, none of the remaining categories of fresh evidence meet the test for admission as they did not touch upon the safety of the convictions.

Accordingly, the appeal was dismissed.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The

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full judgment will be available shortly on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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