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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

JOHN McDEVITT

**Mr D Hutton KC with Mr G McGettigan (instructed by Harte Coyle Collins Solicitors) for
the Appellant**

**Mr C Murphy KC with Ms L Cheshire (instructed by the Public Prosecution Service) for
the Respondent**

Before: Keegan LCJ, Colton LJ and Fowler J

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

Introduction

[1] This appeal arises by way of a reference from the Criminal Cases Review Commission (“the CCRC”) under section 10 of the Criminal Appeal Act 1995 in respect of the appellant’s conviction for murder and associated firearms offences following a trial at Belfast Crown Court in December 1986 before MacDermott J (“the trial judge”), sitting as judge alone.

[2] The appellant, John McDevitt, was convicted of the murder of Private Neil Clark together with related offences arising out of a coordinated petrol bomb and firearms attack in Londonderry on 23 April 1984 on an army patrol. He was sentenced to life imprisonment in respect of the murder conviction, together with concurrent sentences totalling six years on the remaining counts. He served approximately ten years in custody and was released on life licence on 7 June 1996.

[3] The present appeal only concerns the murder conviction and offences relating to the use of a firearm. The appellant does not challenge the convictions relating to the petrol bomb offences, which were the subject of early admissions and which he continues to accept. These convictions are as follows;

- (i) Arson, contrary to Article 3(2) and (3) of the Criminal Damage (Northern Ireland) Order 1977 (Count 4 on Bill of Indictment).
- (ii) Possession of petrol bombs, contrary to section 2 of the Protection of the Person and Property Act (Northern Ireland) 1969 (Count 5 on Bill of Indictment).
- (iii) Production of petrol bombs, contrary to section 2 of the Protection of the Person and Property Act (Northern Ireland) 1969 (Count 5 on Bill of Indictment).
- (iv) Possession of petrol bombs, contrary to section 2 of the Protection of the Person and Property Act (Northern Ireland) 1969 (Count 15 on Bill of Indictment).
- (v) Production of petrol bombs, contrary to section 2 of the Protection of the Person and Property Act (Northern Ireland) 1969 (Count 16 on Bill of Indictment).
- (vi) Conspiracy to make petrol bombs, contrary to section 2 of the Protection of the Person and Property Act (Northern Ireland) 1969 and Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (Count 17 on Bill of Indictment).
- (vii) Conspiracy to throw petrol bombs, contrary to section 3 of the Protection of the Person and Property Act (Northern Ireland) 1969 and Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (Count 18 on Bill of Indictment).

[4] This is not the first appeal mounted by the appellant. He appealed against conviction at the time. The Court of Appeal dismissed the appeal on 30 September 1987.

[5] In addition the appellant first applied to the CCRC in February 2002. That application did not result in a reference as the CCRC was not satisfied that any safety issues arose in relation to the murder conviction. A further application was made in February 2019. On 30 October 2024, the CCRC referred the appellant's conviction for murder to the Court of Appeal

[6] Subsequently, following further representations, the CCRC exercised its powers under section 10(4) of the Criminal Appeal Act 1995 to extend the reference

to include additional convictions arising from the same indictment as the murder. Hence, in addition to the conviction for murder, the following convictions have now also been referred:

- (ii) Wounding with intent (shooting of Corporal Kenneth Jordan), contrary to Section 18 of the Offences Against the Person Act 1861 (Count 11 on Bill of Indictment).
- (iii) Wounding with intent (shooting of Private Graham Deans), contrary to Section 18 of the Offences Against the Person Act 1861 (Count 12 on Bill of Indictment).
- (iv) Attempting to cause GBH with intent (shots fired at soldiers), contrary to Section 18 of the Offences Against the Person Act 1861 and Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (Count 13 on Bill of Indictment).
- (v) Possession of firearms with intent (rifle and sub-machine gun), contrary to Article 17 of the Firearms (Northern Ireland) Order 1981 (Count 14 on Bill of Indictment).

The terms of this reference

[7] The CCRC has referred the case on one ground, namely there is a real possibility that, in light of subsequent findings made by the Court of Appeal in *R v Latimer, Hegan, Bell and Allen* [1992] 1 NIJB 89 concerning the credibility and conduct of certain interviewing officers, the court would conclude that the murder conviction is unsafe. The central issue for consideration is therefore whether the impact of those findings, which flow from the Latimer case viewed in the context of the trial evidence and the material now relied upon, affects the safety of the convictions under review.

[8] In summary, the CCRC concluded that there was a real possibility that the murder conviction would not be upheld. It identified as central to that assessment the fact that the prosecution case at trial was held by the judge to be based upon admissions said to have been made by the appellant during police interviews, and that those admissions constituted the only evidence linking him to knowledge of, or involvement with, firearms/gunmen in the attack upon the army patrol.

[9] The CCRC noted that the appellant had consistently denied knowledge of or involvement with gunmen throughout the majority of his interviews, before making admissions to that effect during a later interview. Those admissions were disputed at trial, where the appellant alleged that they had been obtained through threats, inducements and improper conduct.

[10] The CCRC recorded that there was a direct conflict of evidence at trial between the appellant and the interviewing officers as to the circumstances in which the admissions were made, and that the trial judge had resolved that conflict in favour of the police.

[11] The reference relies substantially on subsequent findings of the Court of Appeal in *Latimer*. In that case, certain police officers who had also interviewed the appellant in the present case, including Detective Constable ("DC") Orr and DC Walsh, were found to have acted improperly in relation to the recording of interview notes and to have given untruthful evidence at trial.

[12] In essence, the CCRC considered that the *Latimer* findings could affect the credibility of the officers as witnesses in the appellant's case, particularly in circumstances where the trial involved a conflict of evidence as to the making of admissions. It concluded that, if the trial judge had been aware of the matters identified in *Latimer*, this could have affected the assessment of the reliability of the appellant's admissions, either in relation to their admissibility or the weight to be attached to them.

Additional appeal grounds

[13] The appellant also seeks leave to rely upon additional factors not expressly relied upon by the CCRC which it is said support the identified concerns about the appellant's contested confessions and therefore support the conclusion that the appellant's convictions are unsafe. This aspect of the appeal is based upon reference to material which was either not before the trial judge or not relied upon before him. Additionally, the appellant seeks leave to add complaints on the issue of non-disclosure in the original trial process. The appellant has categorised these supporting/additional factors under the following headings:

- (a) Evidence of other doubtful conduct not relied upon by CCRC;
- (b) Fresh evidence indicating that a sub-machine gun was in Castlereagh at the relevant time;
- (c) The appellant's persistent denials regarding the contested confession and requests for his case to be investigated;
- (d) Evidence undermining the learned trial judge's view of the appellant;
- (e) Complaints and discipline files of relevant officers;
- (f) Expert evidence regarding the reliability of the interview process; and confession statements; and
- (g) Disclosure failings.

Summary of factual background

[14] The convictions arise out of an incident which took place on the evening of 23 April 1984 in the Bishop Street area of Londonderry. Two British Army Land Rovers were subjected to a coordinated attack involving petrol bombs followed by gunfire. 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.

[15] 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.

[16] In his 17th interview on 5 May 1984, 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. Those admissions were recorded in his fourth statement which is the focus of this appeal.

[17] 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 contains the confession which is impugned in this appeal.

[18] At trial, the appellant pleaded not guilty. He advanced an alibi defence. He gave oral evidence describing his movements on the night of the 23 April 1984 and called a witness, Michael Pritchard, to verify this account. The appellant accepted his involvement in the transportation of petrol bomb materials. That remains the case today. 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 and had been made as a result of threats, inducements, and other improper conduct during interview.

[19] The appellant's defence in relation to the police interviews – which he still maintains in his application to the CCRC – was that the admissions which appeared in his witness statements were true, except for those which relate to any knowledge of guns or gunmen at the incident in question. The appellant stated that those admissions were false and were induced by:

- (i) The interviewing officers preventing him from giving his own account of events, and instead repeatedly telling him what he had been involved in.
- (ii) The officers being verbally aggressive and threatening towards him, including threatening him with a "terrorist type interrogation."
- (iii) DC Orr bringing a small sub machine gun into the interview room and saying it had been in his car on the night in question.
- (iv) The officers stating that an admission regarding guns would make no difference to his case, and that he would get bail and a suspended sentence if he confessed.

[20] The prosecution case was that Mr McDevitt was guilty of murder as an aider and abettor, in that he drove the gunmen to and from the scene of the shooting. The case against Mr McDevitt was founded upon the admissions which he was alleged to have made to the police. All four police officers who interviewed the appellant gave evidence at trial. The interviewing officers gave evidence denying any threats, inducements or improper conduct and maintained that the statements accurately recorded what the appellant had said during interview.

[21] The trial judge rejected the appellant's account of the interviews and accepted the evidence of the interviewing officers. He found that the appellant had not been threatened or induced and that he had been fairly questioned during the course of the interviews. The trial judge also relied upon the evidence he heard from the responsible medical officer Dr Monro who confirmed that the appellant had made no complaints to him about his treatment at Castlereagh. The trial judge found that the statements made by the appellant, including those relating to the transportation of the gunmen, were true and could be relied upon. He recorded that the Crown case was "founded on admissions, verbal and written, alleged to have been made by the accused" and, having accepted those admissions, concluded that the appellant had driven the gunmen to and from the scene and convicted him of murder on that basis.

[22] The Northern Ireland Court of Appeal dismissed the appeal on 30 September 1987, stating in conclusion that:

"This court has given consideration to each and every submission that Mr Cahill has so forcefully presented. We find nothing of substance in any one of them. It is quite apparent that the evidence against the appellant at the trial constituted a very powerful case indeed. The Crown adduced verbal and written confessions which were challenged on the most slender of grounds as to admissibility and even more slender as to weight. It was a Crown case that was contested on the basis that the

accused was a self-admitted liar with the evidence of an alibi witness whose existence and testimony were unknown to the police and which was found to be unconvincing and unreliable.

What matters that could be urged for the defence were comprehensively and fairly considered by the trial judge and rejected by him on sensible grounds.

The court concludes there was nothing unsafe or unsatisfactory in this conviction and the appeal is dismissed."

The appellant's arguments

[23] Mr Hutton KC advanced the appellant's case by adopting the reasoning of the CCRC and supplementing it with additional material directed to the reliability of the admissions said to implicate the appellant in the transportation of the gunmen. He submitted that the convictions are unsafe because they depend upon contested confessions obtained during a series of police interviews, in circumstances where the integrity of certain interviewing officers has subsequently been called into question.

[24] Much reliance was placed on the findings in *Latimer*, with the submission made that those findings materially affect the credibility of officers who were involved in the appellant's interviews. The argument was advanced that the trial judge's acceptance of the officers' evidence, and his rejection of the appellant's account of threats, inducements and improper conduct, took place in the absence of matters which would have been directly relevant to that assessment.

[25] The submission was made that, had the material identified in *Latimer* been available at trial, it may have affected the admissibility of the confessions or the weight to be attached to them. He further submits that the court should apply the approach set out in *R v Pendleton* [2002] 1 WLR 72, wherein Lord Bingham stated that the question for the appellate court is whether the conviction is safe and that, in cases of fresh evidence, it will often be appropriate to consider whether the evidence "might reasonably have affected the decision of the trial jury to convict", in which event "the conviction must be thought to be unsafe."

[26] The appellant also raised complaints made at trial regarding the conduct of the interviews. The thrust of this argument is that the appellant gave evidence that, throughout the course of questioning, he was subjected to a range of improper practices. These included assertions that officers were verbally aggressive and threatening, including threats of a "terrorist type" interrogation and physical violence; that inducements were offered, including suggestions that admissions would make no difference to his case and could result in bail or a suspended sentence; and that he was prevented from giving his own account, instead being told

what he had done and pressed to adopt that version. He further alleged that he was misled as to the state of the evidence, including being informed that co-accused persons had implicated him in transporting gunmen. Within that context, he contends that a sub-machine gun was produced during interview and shown to him by an officer as part of the interrogation. He maintains that these matters were raised at the time, including in a statement made to his solicitor shortly after his remand, and were repeated in his evidence at trial.

[27] The appellant acknowledged that the trial judge rejected those allegations, indicating that he did not accept that the appellant had been threatened or induced and stated that he was satisfied that he had been questioned fairly. In relation to the specific allegation concerning the production of a firearm, the judge expressed doubt that such an occurrence would have taken place, observing that a weapon connected to the incident would be expected to be held elsewhere or undergoing forensic examination, and indicating that he very much doubted that a firearm would have been brought into an interview room.

[28] However, the appellant pointed to material obtained during a subsequent investigation indicating that firearms recovered in another case during the relevant period were taken from a forensic laboratory to Castlereagh and shown to detainees during interviews. This material is said to demonstrate that firearms were present within the interview environment at the time and is relied upon as supporting his account that a weapon was shown to him during questioning.

[29] Mr Hutton also contended that the sequence and outcome of the interviews is material in that the appellant consistently denied knowledge of firearms or gunmen during the earlier stages and that the admissions relied upon by the prosecution arose only at a later point.

[30] Reliance was also placed upon complaints and disciplinary material relating to the officers involved in the interviews. It is suggested that this material bears upon their credibility and on the manner in which interviews were conducted and recorded, and that it was not available at the time of trial.

[31] Allied to this the appellant sought to adduce fresh expert evidence addressing the reliability of confession evidence and the interview process, including matters such as the effects of prolonged questioning, the absence of legal representation, and the potential for suggestion or influence during interview.

[32] Finally, the appellant contended that there were failures in disclosure at the time of trial. The appellant maintains that relevant material, including information concerning the conduct of the interviewing officers in other cases, disciplinary matters, and materials bearing upon the circumstances of police interviews, was not provided to the defence. The argument was advanced that such material would have been capable of deployment in cross-examination and in submissions as to the admissibility and weight of the evidence.

[33] Thus, the appellant submitted that when the above points are considered cumulatively, they support the conclusion that the admissions said to implicate the appellant in the transportation of gunmen are unreliable and that the convictions which depend upon them are unsafe.

Applications to adduce fresh evidence

[34] It is unnecessary to catalogue the voluminous contents of the fifteen notices of motions which ground the applications for fresh evidence save to record that we have considered each application and summarise the thrust of the proposed fresh evidence as follows.

[35] The first application concerns material relating to the presence of a firearm at Castlereagh. This consists of extracts from a previous CCRC Statement of Reasons addressing the appellant's allegation that a sub-machine gun was produced during interview. The material includes findings that a firearm of a similar type was present at Castlereagh during the period of the appellant's detention.

[36] A second category comprises material relating to the possibility that the appellant's interviews were audio-recorded and to steps taken to investigate that issue. This includes solicitor correspondence with the CCRC, extracts from published material, an affidavit from a journalist, and a statement from a former police officer. No such recordings have been identified.

[37] A further category concerns the existence and treatment of police interview notes. The appellant seeks to introduce solicitor correspondence demonstrating efforts to obtain the original interview notes and to have them subjected to ESDA testing. The material indicates that the original notes, although referred to at trial, have not been located and were not available to the CCRC.

[38] The appellant also seeks to adduce material from other criminal proceedings involving one of the interviewing officers. This includes witness statements, trial notes, correspondence and a judgment arising from the case of *R v Nash*. The material contains allegations of ill-treatment and complaints made against that officer and others in the course of police interviews in different cases.

[39] Evidence is further sought to be introduced by way of a statement from the appellant's mother. This includes information that the appellant consistently denied involvement in transporting gunmen and that his vehicle, which the prosecution alleged was used in the offence, was never seized or subjected to forensic examination by police.

[40] In addition, the appellant relies on statements from former teachers. These address his educational ability and personal characteristics during his youth, including descriptions of him as of limited academic ability and of a timid

disposition. In addition, the appellant sought to introduce expert medical evidence which it said supports the contention that the challenged admissions were unreliable.

[41] The appellant also seeks to introduce prison and post-conviction records, including reports, medical records, Life Sentence Review Board material and licence documentation. These records are said to record the appellant's position during his period of imprisonment.

[42] The appellant seeks to adduce the documentary materials generated during his earlier applications to the CCRC, including correspondence, submissions, witness statements and Statements of Reasons. These materials reflect the history and development of the issues raised in support of the present appeal. Finally, the appellant seeks to introduce complaint file evidence in relation to officers who were criticised in the *Latimer* case.

The respondent's arguments

[43] The respondent resists the appeal and submits that the convictions remain safe. It is contended that the issue identified by the CCRC, namely the potential effect of the decision in *R v Latimer* on the credibility of certain interviewing officers, does not undermine the safety of the verdict. The respondent emphasises that only two of the four interviewing officers were subject to criticism in *Latimer*, and that the remaining officers were not so affected. It is submitted that the evidence of those officers, together with the contemporaneous records of interview and the appellant's signed statements, provide a reliable account of what occurred during questioning.

[44] In advancing his case, Mr Murphy KC relied upon the findings of the trial judge, who rejected the appellant's allegations of threats, inducements and impropriety and found that the interviews were conducted in a patient and fair manner. It is emphasised that the appellant's accounts were inconsistent, that he accepted making the statements attributed to him, and that he admitted to multiple falsehoods during both interview and trial. The respondent submits that the trial judge carried out a detailed assessment of credibility, including the appellant's demeanour, and that those findings should not be disturbed on appeal.

[45] He further submitted that there was no contemporaneous complaint of ill-treatment during the period of detention. The appellant was examined by medical professionals and did not raise complaints at the time. The trial judge found that the appellant's later assertions of complaint were untrue, including his claim to have raised matters with the medical officer. The respondent contends that this finding bears directly on the reliability of the appellant's account of oppression.

[46] The respondent maintained that the appellant's admissions were properly obtained and accurately recorded. Reliance was placed upon the fact that the interview notes were signed by the appellant and accepted by him as reflecting his

words. The case is advanced on the basis that the appellant initially provided a series of untrue accounts during interview, which were rejected by the interviewing officers, and that his eventual admission regarding the transportation of gunmen followed a process of questioning in which his earlier version could no longer be maintained.

[47] In relation to the matters arising from *Latimer*, the respondent submitted that the criticisms in that case do not materially affect the present convictions. It was argued that the appellant's own conduct, including admitted dishonesty, significantly weakens reliance upon the credibility challenge advanced. The respondent contended that there is no independent evidence of impropriety in the appellant's case and that the trial judge's findings were grounded in the evidence before him.

[48] The respondent also emphasised the seriousness of the offending and the context in which the appellant's liability arose. It was submitted that he knowingly participated in a coordinated attack involving petrol bombs and firearms, and that his admissions established his role in transporting the gunmen both to and from the scene. In those circumstances, the respondent submitted that the convictions are supported by the totality of the evidence and should not be disturbed.

[49] The respondent addressed the appellant's application to adduce further evidence by reference to the statutory test under section 25 of the Criminal Appeal (Northern Ireland) Act 1980. The respondent does not object to the court receiving the material advanced by way of the lodged notices of motion and is content that it be considered *de bene esse*. It was, however, submitted that the material does not satisfy the requirements for admission as fresh evidence and, in any event, cannot affect the safety of the convictions.

[50] In relation to the material concerning the alleged production of a firearm during interview, the respondent contended that this issue was raised and fully adjudicated upon at trial. Reliance was placed upon the trial judge's rejection of the allegation, and the additional material now relied upon was said by the prosecution to amount to commentary rather than evidence which would materially advance the appellant's position.

[51] Replying to the suggestion that interviews may have been audio-recorded, the respondent pointed out that no recordings have been identified, and the material relied upon consists of correspondence and secondary sources which do not establish that recordings existed or have any relevance to the issues in the appeal. Thus, Mr Murphy described this argument as speculative.

[52] The respondent further contended that the material relating to the absence of original interview notes is neutral. While it is accepted that such notes have not been located, it was submitted that there is no evidential basis to suggest that their

absence undermines the reliability of the admissions, particularly where the appellant accepted that the statements accurately recorded his words.

[53] In respect of material from other cases (*McDaid & Nash*), including allegations made against police officers in unrelated proceedings, the respondent submitted that this material is collateral and lacks any direct connection to the appellant's case. It was argued that such material does not have probative value and should not be admitted.

[54] The respondent also opposed the admission of witness statements relating to the appellant's character, including evidence from family members and former teachers, on the basis that such material was either available at the time of trial, remote in time, or not probative of the issues relevant to the appeal. Similarly, post-conviction material, including prison records and repeated assertions of innocence, was said to be self-serving and incapable of constituting fresh evidence.

[55] In relation to the expert evidence, the respondent submitted that the reports relied upon by the appellant are methodologically flawed and should be treated with caution. It was contended that such evidence risks encroaching upon the role of the trial court in assessing credibility and that it cannot undermine the findings made at trial. The respondent further relied upon contrary expert evidence and submits that no weight should be placed on the appellant's reports.

[56] Overall, the respondent's position was that the material advanced by way of notices of motion, whether considered individually or cumulatively, does not meet the threshold for admission as fresh evidence and does not affect the safety of the convictions. Accordingly, it was the prosecution submission that the applications should be refused and that the appeal should be dismissed.

Relevant legal principles

[57] The simple question for us is whether the convictions are unsafe. This was emphasised by Kerr LCJ in *R v Pollock* [2004] NICA 34 at para [32] as follows:

"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.”

[58] The statutory regime governing the admissibility of statements of admission at the time of the appellant’s trial was section 6 of the Northern Ireland (Emergency Provisions) Act 1973 (“the 1973 Act”):

“6 Admissions by persons charged with scheduled offences

(1) In any criminal proceedings for a scheduled offence a statement made by the accused may be given in evidence by the prosecution in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of subsection (2) below.

(2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, prima facie evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies them that the statement was not so obtained, exclude the statement or, if it has been received in evidence, shall either continue the trial disregarding the statement or direct that the trial shall be restarted before a differently constituted court (before whom the statement in question shall be inadmissible).”

[59] In addition, there existed a common law discretion to exclude any confession which was not given freely and voluntarily. It follows that where there is a direct conflict of evidence as to the circumstances in which a confession was obtained, the resolution of that conflict is central to admissibility. Under the statutory framework then in force, if the account advanced by an accused of ill-treatment or improper pressure were accepted, the resulting confession would fall to be excluded. This reflects a strict approach to voluntariness under the 1973 Act, and the position would apply with equal, if not greater, force under the modern legislative framework.

[60] In cases involving post-conviction material bearing upon police conduct, the Court of Appeal has recognised that such material may be capable of affecting both the admissibility and the weight of confession evidence. In *R v Michael Devine*, the court endorsed the approach derived from *R v O’Toole* [2006] EWCA Crim 951, recognising that evidence of misconduct or discreditable conduct by police officers

in other cases may be relevant to the assessment of the reliability of admissions where it bears upon the credibility of those officers. The overarching objective is to ensure that the court is presented with a fair and balanced picture of the reliability of the evidence upon which the conviction rests.

[61] The decision in *Latimer* is of central importance in this context. That case established that where it emerges that police officers gave untruthful evidence concerning interview practices, including the authenticity of interview notes, such findings may fundamentally undermine the reliability of confession evidence and render a conviction unsafe. The principle extends beyond the particular facts of that case and reflects a broader recognition that subsequent revelations concerning the integrity of investigating officers may bear directly upon the safety of convictions founded upon their evidence.

[62] The interviews in *Latimer* were conducted between 29 November-5 December 1983, approximately three years after the interviews in the present case. The officers' wrongdoing was exposed after ESDA testing of the statements involved in the *Latimer* case as this forensically exposed the shortcomings and resulted in a quashing of the convictions of some of the appellants.

[63] Some of the personnel in *Latimer* also featured in *R v Thompson* [2024] NICA 30. This was a case where the Court of Appeal quashed a historic conviction due to a constellation of factors. To be clear the *Thompson* case is fact specific as it was based on contemporaneous allegations of police misconduct by the appellant which the court found were subsequently validated by misconduct records and the *Latimer* decision. In that case the trial judge Jones LJ was quite clear that if any of the allegations of mistreatment were made out, he would not admit the confession statement.

[64] In *Thompson* fresh evidence was admitted, concerning in effect, bad character evidence which the court found had potential relevance as bad character evidence and concerned similar allegations made by other detainees against the same officers. The complaint files raised a possibility of a culture of oppressive behaviour at Bessbrook Police station practised by two officers who had been alleged to have subjected the appellant to ill-treatment. The Court of Appeal found that if this had been disclosed at trial the trial judge may not have admitted the admissions into evidence.

[65] As the veracity of the confession in *Thompson* was affected by the unreliability of the police officers and there was objective and cogent evidence discrediting the officer who took the contested confession the appeal was successful. The Court of Appeal considered that the trial judge may have been persuaded that the police officer was not the honest and truthful witness that the trial judge had thought he was. This was relevant to the key issue as in order to be satisfied that the appellant had not been ill-treated, the first instance assessment of the police witnesses as being truthful and reliable was key.

[66] The core findings in *Thompson* at paras [73]–[80] highlight the fact sensitive nature of this decision. The decision to quash the relevant convictions was also based on a combination of factors as the court explained as follows:

“[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.”

[67] A similar fact-sensitive approach is evident in *R v Kirkpatrick, Cullen and Cullen* [2025] NICA 5. The court reiterated that subsequent findings affecting the credibility of interviewing officers may, depending on the circumstances, undermine the reliability of admissions and engage the question of whether the verdict can safely stand. At the same time, it was emphasised that such cases require careful evaluation on their own facts and that the mere existence of similarities with *Latimer* or *Thompson* does not, of itself, render a conviction unsafe.

[68] In the following extracts from the aforementioned decision the court explained the following approach:

“[66] At the outset we observe that cases of this nature are all highly fact specific. Thus, it does not follow that because some similarities arise with cases such as *Latimer* and *Thompson* that a conviction is automatically unsafe. Rather, the appellate court must conduct a careful analysis in each case in order to reach a decision. As this is a historic conviction case a high degree of caution must also be exercised by any appellate court in judging a case after such a remove of time, see the discussion in *R v Gallagher* [2024] NICA 63 paras [30]–[36]. In addition, an appellate court must consider the entire history of the case including all previous legal and investigative steps in order to form an accurate view.

[69] This reference is based on an alleged concoction of confession statements by police officers who have since been discredited by another court. It is not a reference relying upon claims of ill-treatment or of physical ill-treatment as defined in *R v O’Halloran* as cited in *R v Brown & others* [2012] NICA 14 at para [14]. That is unsurprising given that no complaints were made at the time save in Cyril Cullen’s case who raised intimidation and threats. Of course, the discredited officers were not involved in his case. There is no evidence of vulnerability on the part of any of the appellants as was apparent in *Gallagher* which led to the quashing of a conviction due to psychological pressure of a person with learning disability.

[70] Further, whilst we recognise that there were a number of police officers conducting the interviews at Armagh Police station who had either misconducted themselves, or that there was evidence of allegations of similar misconduct giving rise to a suspicion of a culture of oppressive behaviour, this is not evidence of any particular value on the facts of the instant case. That is because the primary issue in this appeal, is whether the confessions were concocted by police officers we now know to be discredited.”

[69] Also, at para [75] the Court of Appeal said:

“[75] Finally, lest this point be unclear to appellants or the CCRC, the fact that issues arise from *Latimer* as to the conduct of certain police officers, is not a freestanding ground of appeal. Although a valid question is raised, it is not a given that a historic conviction is unsafe because some discredited police officers may have been involved. The outcome of appeals will depend on a close and careful analysis of the facts of a particular case and consideration of the overarching consideration of whether a conviction is unsafe.”

[70] The approach in *R v Pendleton* (2002) 1 WLR 77 articulated by Lord Bingham at para [19] recommends itself to us:

“19. ... I am not persuaded that the House laid down any incorrect principle in *Stafford*, so long as the Court of Appeal bears very clearly in mind that the question for its consideration is whether the conviction is safe and not whether the accused is guilty. But the test advocated by counsel in *Stafford* and by Mr Mansfield in this appeal does have a dual virtue to which the speeches I have quoted perhaps gave somewhat inadequate recognition. First, it reminds the Court of Appeal that it is not and should never become the primary decision-maker. Secondly, it reminds the Court of Appeal that it has an imperfect and incomplete understanding of the full processes which led the jury to convict. The Court of Appeal can make its assessment of the fresh evidence it has heard but save in a clear case it is at a disadvantage in seeking to relate that evidence to the rest of the evidence which the jury heard. For these reasons it will usually be wise for the Court of Appeal, in a case of any difficulty, to test their own provisional view by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe.”

[71] As to fresh evidence, the statutory test is that contained in section 25 of the Criminal Appeal (Northern Ireland) Act 1980 (“the 1980 Act”) and reads as follows:

“25 Evidence.

(1) For the purposes of an appeal, or an application for leave to appeal, under this Part of this Act, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice –

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the court necessary for the determination of the case;
- (b) order any witness to attend and be examined before the court (whether or not he was called at the trial); and
- (c) receive any evidence which was not adduced at the trial."

[72] Section 25(2) of the 1980 Act contains four considerations from (a)-(d) that the court must have regard to when deciding whether the interests of justice test is satisfied. The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to:

- "(a) whether the evidence appears to the Court to be capable of belief;
- (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings."

[73] In *The King v James Alexander Smith* [2023] NICA 86, this court set out the guiding principles on when the test will be met in paras [25]-[30]. We remind ourselves of what this court said at para [30] from *Smith* on the question of fresh evidence as follows:

"We have also been referred to a helpful synopsis of the approach to fresh evidence in appellate proceedings from *Valentine's Criminal Practice and Procedure* which reads as follows:

'If it finds the new evidence conclusive in favour of the appellant it simply quashes the conviction. If after considering the new evidence plus the original trial evidence, it

finds that a reasonable court of trial might have a reasonable doubt as to guilt, it quashes the conviction and then considers whether to order a new trial. If on all the evidence now available there is no reasonable doubt, the conviction should be affirmed. These principles have to be applied where the new evidence on both sides consists of expert opinion. If the original conviction was therefore based on a premise now shown to be unfounded and the evidence as a whole is such that a reasonable court of trial may resolve the conflict of fact and opinion in such a way as to find a reasonable doubt, the conviction must be quashed. The sole test is whether the conviction is unsafe, and this usually means that the court thinks that the evidence might have reasonably affected the jury's decision to convict: *Pendleton; O'Doherty* [2002] NILR 263 per Nicholson LJ at 273c-275b, e.'"

[74] Further guidance is found in *R v Pendleton* when the House of Lords considered the circumstances in which fresh evidence should be admitted. Lord Bingham said at para [10]:

"The Court of Appeal will always pay close attention to the explanation advanced for failing to adduce the evidence at the trial, since it is the clear duty of a criminal defendant to advance any defence and call any evidence on which he wishes to rely at the trial. It is not permissible to keep any available defence or any available evidence in reserve for deployment in the Court of Appeal. Thus, the practice of the court is to require a full explanation of the reasons for not adducing the evidence at the trial: *R v Trevor* [1998] Crim LR 652. It is, however, clear that while the court must, when considering whether to receive fresh evidence, have regard in particular to the matters listed in section 23(2)(a) to (d), and while in practice it is most unlikely to receive the evidence if the requirements of (a), (b) and (c) are not met, the court has an overriding discretion to receive fresh evidence if it thinks it necessary or expedient in the interests of justice to do so."

[75] In a subsequent case of *R v Erskine* [2009] 2 Cr App R 29, Lord Judge CJ said at para [39]:

“Virtually by definition, the decision whether to admit fresh evidence is case and fact specific. The discretion to receive fresh evidence is a wide one focusing on the interests of justice. The considerations listed in subs (2)(a) (d) are neither exhaustive nor conclusive, but they require specific attention. The fact that the issue to which the fresh evidence relates was not raised at trial does not automatically preclude its reception. However, it is well understood that, save exceptionally, if the defendant is allowed to advance on appeal a defence and/or evidence which could and should have been but were not put before the jury, our trial process would be subverted. Therefore, if they were not deployed when they were available to be deployed, or the issues could have been but were not raised at trial, it is clear from the statutory structure, as explained in the authorities, that unless a reasonable and persuasive explanation for one or other of these omissions is offered, it is highly unlikely that the “interests of justice” test will be satisfied.”

Consideration

[76] We take the starting point for the court’s consideration as the approach articulated in *Pendleton* and refined in *Pollock* in this jurisdiction. Applying that approach to the fresh information derived from *Latimer*, the appellant submits that the referred convictions can, without more, be considered unsafe for the reasons outlined by the CCRC. This argument is advanced on the basis that if the *Latimer* information had been known at the time of trial it cannot be said that it might not have affected the decisions of the trial judge to either admit the confession evidence or rely upon in it. In addition, the appellant submits that there are other materials to which regard may be had which serves to support this conclusion.

[77] We have the benefit of written judgments and transcripts of the evidence at trial. The relevant context is both the trial judgment and the decision of the Court of Appeal.

[78] From these materials we can see that the prosecution case on the murder and firearms charges against the appellant rested solely on the appellant’s confessions in his fourth statement in relation to involvement with the gunmen. The trial traversed this over numerous days of evidence. The trial judge heard from the police officers but also the appellant at length. That is a considerable benefit which we do not have as an appellate court as we are confined to the transcripts of evidence.

[79] Mr Murphy KC has skilfully taken us through the record of the evidence and highlighted the inconsistencies and lies told by the appellant with little riposte from

Mr Hutton which was unsurprising given the content of the transcript of the appellant's evidence.

[80] Specifically the following uncontroversial facts emerge;

- (i) In his evidence at trial, the appellant accepted that he had driven a family member, Winkie Meenan, around the area to collect sweetie jars to be used as petrol bombs. He further accepted that he had transported people from Rossville Flats to Quarry Street sometime before the attack on the Army. He accepted making all the statements but claimed that he had lied about knowingly transporting gunmen to or from the attack. He claimed that he made that aspect of his confession to satisfy the interviewing police officers and that the truth was that he fled as soon as the attack on the first Army Land Rover commenced.
- (ii) As evidenced by cross-examination the appellant lied about how the jars were obtained. He lied when he said that Meenan was not with him. In fact, on his evidence, the two of them were together, with Meenan acting as the organiser. He did not mention the involvement of Pritchard and McMenamin until he gave evidence. He suggested that most of his statements were true save in respect of the guns and gunmen. It was demonstrated that this was not the case.
- (iii) The appellant's account of going to the Cash and Carry was a lie. His suggestion that he merely had "an idea" of what the jars were to be used for was clearly not credible. He lied about closing the shop. His account of going to Rossville Flats and giving the containers for petrol to two boys was also a lie. His account of remaining in the shop until 19:00 hrs was a lie. His account of going home at 19:00 hrs was a lie. His account of returning to the shop to get cigarettes was a lie. His account of a couple of boys asking him to transport petrol bombs from Rossville Flats to the Brandywell was a lie. In evidence, he said that the truth was that Meenan asked him to do this. His explanation was that he kept making "stories" up in the hope that they would be believed. His account of two boys waving him down was a lie because he knew who they were. He said that the account of there being ten others present was untrue. His account of meeting youths at the Gas Yard was a lie. It was put to him that, in his evidence, he was seeking to place the blame on Meenan, whose whereabouts were then unknown.
- (iv) In his second statement, the appellant admitted involvement in a previous incident three or four weeks earlier. He accepted that he had no difficulty making the statement. He accepted that Meenan had asked him on that occasion also. In his third statement, he likewise said that the account was true. He recounted moving empty milk bottles a week previously.

[81] It was put to the appellant that his lies were designed to detract from his responsibility in relation to the gunmen and to avoid admitting that his was the only car present. Mr Murphy also referred to the fact that the first thing the appellant did when police put to him that there was a silver car was to say that the car had been hijacked. This was a significant lie which he explained on the basis that he was protecting Pritchard.

[82] In addition, as Mr Murphy stressed, the appellant accepted in his interviews and in evidence that the police correctly recorded what had happened and that he was not under pressure to sign the interview notes. He agreed that his account in interview about receiving a note directing him to a derelict house and seeing four hooded men wearing white gloves was a fiction. He accepted that he lied about a man with a plastic bag waving him down. The account was a lie because, at that time, he was in McMenamin's house.

[83] Also of note is that in his interviews, the appellant lied about skinheads being involved and lied regarding Hegarty's involvement. He decided to "fix" Hegarty. He also says he lied about O'Reilly. He further admitted lying about the people whom he had picked up. He accepted that he lied about those individuals and had used the phrase "I swear" to lend emphasis to the account. He gave a detailed but false description of how a girl emptied a jar in the shop.

[84] Thus, a compelling submission was made by Mr Murphy that the police were properly putting to the appellant that he was lying, and he said that he simply made up "stories", hoping that eventually one would satisfy them.

[85] Crucially the appellant also 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. Furthermore, he agreed that he made the statements about the men with the case; that they were his words; and that the terminology used was his own, albeit untrue. There was therefore no claim made that the inculpatory statements were concocted by police or doctored in some way.

[86] 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.

[87] Having heard the evidence the trial judge also preferred the account of the police officers, finding that the appellant:

"... was patiently, persistently and fairly questioned throughout his interviews and that what is recorded is what he chose freely to say."

[88] The trial judge also rejected the allegations of threats and inducements in strong terms, stating that he had “no doubt at all” that no such impropriety had occurred. This assessment of the police witnesses was reinforced by the judge’s adverse view of the defence evidence. He concluded that “neither McDevitt nor Pritchard appeared to me to be a convincing or reliable witness,” and ultimately accepted the confession as “substantially the truth” which could “safely and properly be acted upon.” 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.

[89] However, that is not the end of the matter as the trial judge’s evaluation occurred in the absence of material which later came to light in *Latimer* and subsequent authorities. The trial judge did not have the benefit of findings which called into question the integrity of certain officers in relation to interview practices. Two of the officers who were found to have acted improperly in the *Latimer* case were DC Orr and DC Walsh. Their involvement in that case led to the conviction of Mr Hegan being overturned.

[90] In assessing the potential impact of *Latimer*, it is 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 exercise is comparative in nature. In *Latimer*, the court accepted, based on ESDA examination, that there were eighteen instances in which interview notes had been rewritten and were not contemporaneous as had been asserted at trial. More significantly, it was accepted on behalf of the Crown that the interviewing officers had given untruthful evidence in maintaining that the notes were contemporaneously recorded and had not been rewritten. The court further noted that, in some instances, authenticating signatures were appended by senior officers so as to create a false appearance of compliance with proper recording practices.

[91] Furthermore, in *Latimer*, the court attributed a dual significance to the ESDA findings. First, they were capable, in an appropriate case, of supporting an inference of fabrication or reconstruction of admissions. Secondly, and more broadly, they demonstrated that officers had given false evidence concerning the process by which interview records were created. That latter finding is of particular importance in cases, such as *Latimer* itself, where the determination of guilt depended upon resolving a conflict between the account of the accused and that of police officers. The court recognised that where a conviction rests upon alleged confessional evidence, and the tribunal of fact has preferred police testimony, subsequent proof that those same officers gave untruthful evidence may bear upon the safety of the conviction.

[92] The Court of Appeal in *Latimer* explained the fabrication of interviews in the following terms:

“It is also clearly apparent from the present case that there was a complete failure by senior officers to ensure that the procedure for the authentication of interview notes laid down in the Force Order of 22nd May 1961 was observed, and that that procedure was quite ineffective, and it appears that some senior officers were themselves parties to the appending of false authentications.”

[93] The CCRC considers that the Court of Appeal’s findings in the *Latimer* case damages the credibility of DC Orr and DC Walsh as witnesses in criminal proceedings. We accept that proposition. However, whether this undermines the safety of the convictions in this case depends 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.

[94] In this case, the evidence discloses that the principal interviewing officers were DCs Woods and Walsh, who jointly conducted the core interviews and took the first, second and fourth statements, including the critical statement of 5 May upon which the Crown case depends. DC Orr, together with DS Ross, were responsible for taking the third statement on 3 May. Therefore, the primary activity lay with DC Woods and DC Walsh. It is significant as the CCRC recognised that DC Orr and DC Walsh did not interview together as a pair. It must also be remembered that two other interviewing officers namely DC Woods and Detective Sergeant (“DS”) Ross were not the subject of subsequent criticism in *Latimer*.

[95] In addition, of key importance is the fact that the appellant does not dispute what he said at interview or that he freely signed the impugned statements. There is therefore no question of falsification or fabrication as in *Latimer*. That aspect which was a central feature of the *Latimer* case falls away.

[96] What is left is the appellant’s claims of misconduct during the course of the interviews. These are set out in the judgment of the trial judge. The appellant made the case that DC Woods said to him “I’m going to kick your f... c... in if you don’t start telling the truth.” He said that DC Woods told him he was a victim of circumstances and if he agreed to make a statement about driving the gunmen it would make absolutely no difference, that he would get bail, that he would speak up firm at his trial and he would get a suspended sentence. DC Woods is also alleged to have said that there was an easy way and a hard way of doing things. The easy way was that he should make a statement regarding the gunman voluntarily. The hard way meant a terrorist type of interrogation, and he would not last two hours.

[97] He further alleged that when he told DC Walsh that he did not know what was going to happen when he was driving the men to Quarry Street, he, DC Walsh, threw his pen down and told the appellant that he had to say he realised that there was going to be a shooting as well as a petrol bomb attack.

[98] These matters were fully ventilated at the trial, and the trial judge dismissed the claims as inherently improbable. It is noted that the primary allegations were made against DC Woods, who has not been discredited subsequently. The question arising is – given the subsequent discrediting of DC Walsh in *Latimer*, who was present when these alleged threats/inducements were made – would the trial judge have been less likely to believe DC Woods over the appellant and either rule the fourth statement inadmissible or give it little weight.

[99] We understand the point made. However, it must be assessed in context. The reality is that the appellant admitted his role in the petrol bombing which was serious enough in itself. Also, the appellant was not rushed into the fourth statement as the interviews were paused overnight and he obtained legal advice. We find no merit in the argument that the appellant was swayed by inducements given the seriousness of this offending. The alleged verbal aggression and threats is arguably a stronger argument but not in our view, even with the caveat as to DC Walsh's integrity, enough to question the safety of the convictions. The evidence of DC Woods (and, indeed, that of DS Ross) cannot be tainted by association with either DC Woods or DC Orr.

[100] We reach our conclusion having considered the overall circumstances of this case, the appellant's admissions, his failure to raise contemporaneous complaint, his series of lies at trial and how the case was presented at trial by experienced counsel. As a result, there is no basis upon which to overrule the trial judge's conclusions.

[101] 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.

[102] The existence of complaint files does not add substantively to this case. As the Court of Appeal stressed in *Thompson* this type of evidence could not lead to a successful appeal on its own. Given the factual matrix of that case the court held that the complaint file evidence had potential relevance as an additional factor in support of the appeal. Such material may be relevant to the assessment of reliability of interviewing officers, particularly where a confession was the cornerstone of the prosecution case. This was the situation in *Thompson*, when the Court of Appeal had regard to complaint and disciplinary material which demonstrated a pattern of allegations of mistreatment involving the same officers and location. The said material was not treated as determinative in its own right but it was regarded as

capable of supporting the appellant's account and informing the assessment of police credibility in circumstances where contemporaneous complaints of police ill-treatment had been made. In this case given the weakness of the *Latimer* point the complaint files are of no assistance to the appellant. It follows that no sustainable case has been put before us that there was a failure to disclose relevant material which could have been deployed by the appellant at trial to his advantage.

[103] We have also considered the fresh evidence application concerning previous CCRC reasons regarding the presence of a gun in Castlereagh. Mr McDevitt's solicitors first raised the issue of the sub-machine gun in a letter to the CCRC on 28 April 2005. It was submitted that there may be new evidence to support Mr McDevitt's account that he had been shown a sub-machine gun during interview.

[104] The CCRC sought clarification from Mr McDevitt's solicitors in relation to this issue and in particular the following matters:

- (i) While on remand Mr McDevitt became aware that four men (who were also on remand in the same prison) had been detained and questioned at Castlereagh (having been arrested as a result of a completely separate operation) during the same time period as him. These men had been found in possession of a number of firearms, including a Beretta sub-machine gun.
- (ii) The trial judge had considered Mr McDevitt's claim to have been shown a machine gun during interview to lack credibility. However, if the Commission were able independently to verify the presence of these four men at Castlereagh and if a Beretta sub-machine gun was in fact, in Castlereagh at the time then this would be new evidence relevant to both to Mr McDevitt's credibility and his claim to have been intimidated during his interviews.
- (iii) Mr McDevitt had informed his solicitor prior to his trial that these four men may have been at Castlereagh at the same time as him and that they had been arrested in possession of a machine gun.

[105] The CCRC then decided to conduct its own enquiries. The results of the investigations were as follows:

- (i) The Commission was able to verify that the four men named by Mr McDevitt were detained at

Castlereagh over a period that overlapped with Mr McDevitt's detention.

(ii) On 29th April 1984 the following weapons were recovered from the house where the four men were arrested:

- a Beretta sub-machine gun
- a magazine containing 26 live rounds
- a Smith and Wesson .45 revolver with 6 live rounds
- a Smith and Wesson .45 revolver with 6 live rounds
- a Smith and Wesson .45 revolver with 6 live rounds
- a Cott .38 revolver with 6 live rounds

(iii) The Commission was able to trace the continuity of these four exhibits and established that following their seizure they were all sent to the forensic science laboratory for tests on 30th April 1984. All four items were signed out of the laboratory on 3rd May 1984 by an officer in the case. They were taken to Castlereagh where they were shown to each of the four men arrested during the course of their interviews. The showing of the guns (which were later exhibited at the trial) to the suspects was recorded in the witness statements of the officers concerned. All four items were then signed back into the forensic science laboratory on 3rd May 1984 where they appear to have remained until shortly before the trial the following year. They were later destroyed.

[106] Further submissions were made by the appellant's solicitors on this issue which also form part of this appeal and relates to the fact that a gun was in Castlereagh at the relevant time. The CCRC dealt with this and acknowledged that the new information contradicts the view of the trial judge that a gun would not have been brought into Castlereagh at all or, more particularly, into an interview room.

[107] However, the CCRC concluded that this not new evidence capable of raising a real possibility that the Court of Appeal would quash Mr McDevitt's conviction. The reasons given were as follows:

“(i) The Commission has noted the examples in the trial transcript, (pointed out by Mr McDevitt's

solicitors). However, the Commission also notes that Mr McDevitt stated in evidence that his recollection was good (p.26 line 1-3 of his evidence in chief). In respect of when the gun was shown to him, the Commission considers that Mr McDevitt was very clear in his evidence that this had occurred during his second interview at Castlereagh which was on 2nd May. The relevant extract of his evidence in this regard is reproduced below (page 27-28 of his evidence in chief):

Mr McDevitt: ... that's all I can remember about the first interview.

Mr Cahill: Yes. What about the next interview ... or next interviews?

Mr McDevitt: The next interviews was with Detectives Ross and Orr. I think that that interview was on the outside, in the afternoon of the first day.

Mr Cahill: What do you mean was "on the outside?"

Mr McDevitt: Castlereagh, there's interviews upstairs in the one building and the other interview rooms you have to leave that building go through a small yard to buildings outside where there's interview rooms.

Mr Cahill: Can you remember anything about the second interview?

Mr McDevitt: Yes.

Mr Cahill: What can you remember about It?

Mr McDevitt: Detective Orr Insisting that I had driven the gunmen ... He had left the room and left me with Detective Ross. When he came back he was carrying a small

machine gun. Set down at the desk, started to point the gun over the table at me stating that that was the gun was in my car that night. After that he left ... Basically that's all I can remember about that interview.

The Commission notes in particular that Mr McDevitt appears to recall the exact circumstances surrounding this interview in that it was "outside" and that it was in the afternoon of the first day. The continuity documentation for the sub-machine gun seized on 29th April indicates clearly that it was not at Castlereagh on 2nd May.

- (ii) The Commission notes that the submissions made on behalf of Mr McDevitt (received on 21st June 2005) erroneously suggest that he had been "threatened" with the gun (see paragraph 98(i)v above). However, it is clear that Mr McDevitt did not expressly say in evidence that he had been threatened with the gun; rather that it had been pointed across the table at him. Furthermore, in his written statement (the one he gave to his solicitor within a week of his remand) Mr McDevitt also stated that he had been "shown" the gun and had been asked whether he had seen it before. He did not state that the gun had been used to threaten him. The Commission further notes that Mr McDevitt did not complain to his solicitor at the time he saw him that he had been shown a gun and repeated in his evidence that he had not been mistreated.
- (iii) The four men named by Mr McDevitt were shown the machine gun (and the other guns seized) during their interviews as a legitimate part of the police questioning. Furthermore, the fact that they had been shown them was properly recorded. Had the police wished to behave in the way alleged by Mr McDevitt, they could have done so by introducing the gun into interview as a potential exhibit and properly recording the event (this would of course not have prevented them from behaving inappropriately with it once it was there).

- (iv) Mr McDevitt's confession to carrying the gunmen took place in a much later Interview and after he had seen his solicitor. Therefore, even if it could be confirmed that Mr McDevitt had been shown a gun during the earlier interview, there appears to be no causal link between this and Mr McDevitt's confession.
- (v) Had MacDermott J been aware at the time of Mr McDevitt's trial that guns had in fact been shown to suspects during interview at Castlereagh, the Commission does not consider that this would have significantly impacted upon his view as to whether or not Mr McDevitt had been shown a gun illicitly and with the intention of Intimidating him. This is particularly so as he would no doubt have taken into account the information (which would have been easily obtainable at the time) about the guns in question being at the forensic laboratory on the relevant date.
- (vi) Although the allegation of being shown a gun was commented on by the trial judge in relation to Mr McDevitt's credibility, the Commission considers that it is clear from his judgment that there were other, arguably more significant, matters that influenced the judge's view of Mr McDevitt's credibility. For example, Mr McDevitt's account of telling Dr Munro that he had made an untrue statement, a claim which was refuted by the doctor, and Mr McDevitt's "propensity to lying" in particular to the police, which was admitted by both Mr McDevitt and his defence team."

[108] Mr Hutton has critiqued the CCRC position set out above. We have considered his submissions carefully. When broken down his argument is based upon an interpretation of the appellant's evidence that he may have been confused about dates. That is not strong enough for us 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.

[109] Next, we turn to the arguments based upon the fresh expert reports from Professors Shepherd and Coulthard and the response from Professor Flowe. We

have had regard to the matters specified in section 25(2)(a)-(d) of the 1980 Act and to our overriding discretion to receive fresh evidence if we think it necessary or expedient in the interests of justice to do so. We accept that evidence of the kind may be admissible. However, the core question is whether if given at trial, this evidence could reasonably have affected the decision of the trial judge to convict.

[110] On a general level, the questioning and conditions at the time at Castlereagh are open to criticism in various respects. This is not a new argument in an historic appeal. However, it is not an argument that can automatically upset an historic conviction of itself without a proper evidential basis. The appellant relies heavily on Professor Sheperd's report that the interview note process involved fabrication and/or reverse engineering by police officers and the confession constituted a coerced false confession.

[111] There is no reliable evidential support for either of the above propositions. The appellant made a series of admissions at interview in relation to involvement with petrol bombing which are not impugned. He did not challenge the voluntariness of his statements at trial when he was represented by experienced counsel and solicitor. Specifically, he always accepted his role in transporting petrol bombers. He lied about background events. He had the benefit of solicitor's advice before the final statement regarding the gunmen was taken. He made no contemporaneous complaint to Dr Munro.

[112] The judge's assessment of this issue is hard to fault. It reads as follows:

"The accused maintained that he told a doctor at Strand Road that he had made an untrue statement. He identified Dr Munro as that doctor, and with his trim beard the doctor had a distinctive appearance. Doctor Munro stated that if McDevitt had told him that the statement he had made in Castlereagh was untrue, he would have taken a full history and passed it to the complaints and discipline branch of the police. The doctor was satisfied that McDevitt did not make such a claim and on the doctor's evidence, which I readily accept, I find that no such complaint was made. This episode is significant generally and it shows that McDevitt was prepared to lie when giving evidence and in regard to the particular issue undermines McDevitt's claim that he made an untrue statement because of threats and inducement."

[113] The principal reason why this expert evidence does not lead us to question the safety of the conviction is that it does not persuade us upon the appellant's core contention that he was forced into his confession in relation to the gunmen. We also note the substantial criticism of Professor Shepherd by Professor Flowe. We find

some merit in the criticisms as to methodology adopted by Professor Shepherd and his failure to record a pre-interview with the appellant. However, as we are not a court of trial, we are not equipped to resolve issues of substance. In any event, it is not necessary or in the interests of justice to admit the fresh evidence from Professor Shepherd as, in our view, it cannot establish a valid ground of appeal based on the facts of this case.

[114] We are similarly unpersuaded by the reports of Professor Coulthard which rely heavily on Professor Shepherd, and which do not engage at all with the appellant's own evidence. In addition, in relation to this category of expert evidence, we query whether a "linguistics expert", ie Professor Coulthard has any relevance at all as this is not a fabrication case. Therefore, we refuse to admit all of the expert evidence now relied upon.

[115] Mr Hutton did not press the remaining applications in as much detail and for good reason. The other categories of material sought to be admitted are even more limited in their utility. The potential for contemporaneous audio of which there is now no record, while notable by modern standards, is of limited probative value in the absence of evidence linking that absence to any impropriety. Similarly, the absence of original interview notes and the possibility of ESDA analysis reflect a lost forensic opportunity rather than providing any substantial degree of affirmative support for the appellant's case. These arguments are highly generic and not specific to this case hence their frailty.

[116] Evidence from the appellant's mother and from prison records may demonstrate a consistent assertion of innocence, but such material adds little to what was already known at trial. It is common case that the appellant has been consistent in his denials from a period very shortly after his police interviews.

[117] Statements from former teachers as to the appellant's abilities are provided at a considerable remove in time and have no bearing on this appeal. Reliance on a statement of a co-accused Fergal McDaid cannot avail the appellant. As the CCRC found, Fergal McDaid's assertion that the car being used to transport petrol bombs and the gunmen was red, as opposed to silver does not outweigh the probative value of Mr McDevitt's own admissions that his was parked at the back of Rossville Flats and used to transport petrol bombs to the scene of the shooting. Furthermore, at his trial Mr McDevitt did not seek to dispute his admissions that his car had been loaded with crates of petrol bombs at the back of Rossville Flats. Neither Mr McDevitt nor Mr McDaid suggested that there were two cars in use that evening. The involvement of other vehicles in transporting petrol bombs is irrelevant in circumstances where the appellant has admitted his involvement in this aspect.

[118] In addition, material from the trial of *R v Nash* is general in nature and has no relevance to this case.

[119] Accordingly, we find no merit in the point referred by the CCRC or the additional arguments made by the appellant. We understand that the appellant may feel aggrieved because he was caught up in terrorist activity as a young man during the Troubles and that the co accused were convicted of lesser offences such as manslaughter after guilty pleas. However, he chose to proceed to trial. There is 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, planned attack on army personnel. The CCRC analysis underpinning this reference whilst comprehensive goes too far in suggesting that after many years the appellant's role can be relegated into the background. Furthermore, the reliance on *Latimer* is not persuasive on the facts of this case.

Conclusion

[120] This appeal has been comprehensively researched and well presented by counsel for the appellant who have been assisted by his instructing solicitor. We commend all of them for their industry. However, the appeal must fail on its facts. The CCRC reference taken alone does not satisfy us that any safety issues arise 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 points based upon it cannot succeed. None of the remaining categories of fresh evidence meet the test for admission as they do not touch upon the safety of the convictions.

[121] Accordingly, we dismiss the reference for the reasons we have given.