

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

DANIEL MORRISON and OTHERS

Before Kerr LCJ, Higgins LJ and Coghlin LJ

KERR LCJ

[1] This matter was referred to the Court of Appeal by the Criminal Cases Review Commission under section 10 of the Criminal Appeal Act 1995. The report of the Commission contained what were described as 'confidential annexures'. We declined to read these materials until we had heard submissions from counsel for the appellants and the Crown. In the event, all counsel were unanimous in requesting the court to consider the materials. We concluded that each member of the court should read the annexures separately. Having done so, each of us came independently to the conclusion that the convictions of the appellants could not be regarded as safe and the court duly quashed the convictions.

[2] Having received submissions from the parties as to the nature of the judgment that should be given, we indicated that we were minded to deliver an 'open' decision since, in our view, there was nothing about the content of the annexures which on its face would infringe the public interest or the interests of justice if the information that had led us to quash the convictions was disclosed. At the request of the Crown, however, we agreed to hear an *ex parte* application that a 'closed' judgment (*i.e.* one in which the reasons for quashing the convictions are not explicitly stated) should be given. Two private hearings took place. As a consequence of material and information received by us in the course of those hearings, we have concluded that it is not possible for us to disclose all of the reasons that led to the quashing of the

convictions. The judgment which follows contains as much information as we feel able to give in light of the constraints that we now recognise ourselves to be under in consequence of the information that we have received in the course of the private hearings.

[3] It is now clear to us that there was directly relevant material on the question whether a trial of the appellants should take place which had not been made available to the Director of Public Prosecutions when he decided that they should be prosecuted for the offences of which they were subsequently convicted. He was therefore not in a position to give full and proper consideration to whether the appellants should stand trial on those charges.

[4] Because certain material and information was not provided to the Director, the extent of disclosure to the appellants that in fact took place was not sufficient. We are satisfied that if that material and information had been provided to the Director, he would have been bound to disclose it, if the trial was to proceed. He was therefore not in a position to perfect his duty of disclosure both before and during the trial.

[5] Because the material was withheld from the defence, the appellants were deprived of the opportunity of applying for a stay of the proceedings on the basis that their being continued would amount to an abuse of the process of the court. We consider that, if this material had been made available and if the trial had not been discontinued, it would have been open to the appellants to make such an application. We further consider that it is highly likely that it would have succeeded.

[6] In what we consider to be the unlikely event of the proceedings continuing and any abuse of process application being unsuccessful, had the material and information been provided, it is now clear that evidence which was not in fact produced during the trial could have been given which would have had a significant effect on its outcome. We are of the view that, had the trial continued, the giving of that evidence would almost certainly have led to the acquittal of the appellants on all charges.

[7] We wish to record that this court has been informed that, upon the conclusion of this appeal, the Director of Public Prosecutions will exercise his powers under section 35 (5) of the Justice (Northern Ireland) Act 2002 to request the Chief Constable of the Police Service for Northern Ireland to obtain and provide to the Director information relating to certain matters which arise from the report of the Criminal Cases Review Commission. In the estimation of the Director, these matters require to be investigated as they may involve the commission of offences contrary to the law of Northern Ireland.