

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

JOSEPH FITZPATRICK  
AND  
TERENCE SHIELS

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Before: Kerr LCJ, Girvan LJ and Coghlin LJ

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**KERR LCJ**

[1] These cases are appeals against conviction by way of referral to this court by the Criminal Cases Review Commission, exercising its powers under Part 2 of the Criminal Appeal Act 1995. The convictions under appeal do not concern related offences but the grounds of appeal are the same in both cases, namely that the appellants were detained and questioned by the police in circumstances which breached the legal rules prevailing at the time. Both appellants pleaded guilty at the trial, and the arguments made are substantially the same in both cases and reliance is placed on the same authorities.

[2] It is not necessary to rehearse the factual background to both appeals, because it is accepted on behalf of the Public Prosecution Service that there were breaches of the Judges' Rules in both cases. Both appellants were young men at the time of their arrest and detention. Neither was given access to legal advice; neither was accompanied by an appropriate adult, and it is quite clear that the circumstances of their detention (and, more specifically, the circumstances in which they came to make admissions) constituted a breach of the Judges' Rules.

[3] In those circumstances it has been correctly conceded by the Prosecution that there are *prima facie* grounds for considering that the convictions obtained on the basis of the admissions made by the appellants are unsafe. I should observe that the only evidence against both appellants was their admission of guilt of the offences. The conventional approach to the

safety of a conviction has been outlined in a series of cases in which it is stated that, where there are *prima facie* reasons to doubt the safety of the conviction, one examines the countervailing factors which may restore the conviction to a condition of safety. But in the present case the appellants submit that such an exercise is inapt for the reason that, if the confessions were wrongly admitted, then there can be no rescue from that situation and there cannot be any reinstatement of the safety of the conviction.

[4] We are inclined to the view that this submission must be correct although we leave for a future occasion a rather more extensive consideration of the issue. We do so because we are satisfied that in any event the countervailing factors in the present cases are of such slender significance that they could not operate to displace the view that we have formed that, *prima facie*, the convictions must be regarded as unsafe. We have reached that conclusion principally because we consider it to have been shown, at least to a high level of possibility, that the statements made by the appellants, either in the course of bail applications or on their behalf in pleas of mitigation, were culled from the original statements that they had made. If the 'countervailing' factors derive from material which was obtained by objectionable means, they cannot truly be regarded as countervailing at all. In those circumstances it is unnecessary for us to resolve the question of principle whether wrongly admitted confessions could ever be rescued by the consideration of countervailing factors. In this case this is simply not a feasible proposition even if it were in other circumstances theoretically possible.

[5] In all the circumstances, we are driven unmistakably to the conclusion that these convictions cannot be regarded as safe, and they are now quashed.

MR McDONALD: Your Lordships oblige us.

LCJ KERR: Now, legal aid, Mr Lyttle?

MR LYTTLE: Yes, there will be an application for the certification of the appellants' costs.

LCJ KERR: Well, you are plainly entitled to legal aid and we'll make the appropriate order. Anything else? Thank you very much.