Neutral Citation No: [2021] NICA 22	*Ref:*	McC11479
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	16/04/2021

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

THE QUEEN

V

TERENCE McCAFFERTY

_____

Before: Morgan LCJ, McCloskey LJ and McAlinden J

_____

Representation

Mr Lavery QC and Mr Mullan BL for the appellant.
Mr McDowell QC and Mr Henry BL for the prosecution.

_____

McCloskey LJ (delivering the judgment of the court)

Introduction

[1] Terence McCafferty ("*the appellant")* applies for leave to appeal against conviction in respect of one count of possession of explosives with intent to endanger life, together with an extension of time for appealing and leave to adduce fresh evidence.

[2] On 21 April 2004, the appellant pleaded not guilty to conspiracy to cause an explosion (count 1), possession of an explosive substance with intent to endanger life or cause serious injury to property contrary to section 3(1)(b) of the Explosive Substances Act 1883 (count 2) and possession of an explosive substance giving rise to reasonable suspicion that the explosive substance was not in his possession or control for a lawful object (count 3). On 20 May 2005, he was re-arraigned and he pleaded guilty to count 2. Counts 1 and 3 were left on the books. On 1 July 2005, he was sentenced to 12 years' imprisonment, divided equally between custody and licence periods. He was released on licence in March 2010 following an intervening revocation of his licence and re-incarceration. On 24 November 2005, the appellant lodged an appeal against his sentence which was dismissed by the Court of Appeal on 28 March 2006.

[3] On 19 February 2018, the appellant lodged the applications noted above. His challenge to his conviction is said to arise from information that has belatedly come to light. By the order of the single judge dated 2 November 2018, leave to appeal to this court was refused. The appellant renews his application to the plenary court.

[4] The further transaction of these appeal proceedings is outlined in [17] *infra.*

The Sentencing of the Appellant

[5] The sentencing judge stated *inter alia*:

> *"[1]… The circumstances giving rise to the charge are that on Sunday 24 November 2002 a combined surveillance operation involving members of the Army and the PSNI was carried out upon the movements of two motor cars, a blue Ford Orion driven by you McCafferty followed by a red Vauxhall Nova driven by you Donnelly which were observed as they made their way towards Belfast City Centre. Both your vehicles turned into Wellington Place and then into Upper Queen Street. The Orion car stopped outside the Motor Tax Office while the Nova car passed the, by then stationary, Orion and pulled over to the kerb some 15 metres ahead. You McCafferty were seen to reach over to the passenger seat for a period of seconds and then to leave the Orion car and run towards the Nova car and enter its passenger seat. You Donnelly then drove off in the Nova car until you were forced by a police vehicle to stop at the junction of Howard Street and Great Victoria Street. In the course of the arrest operation you Donnelly were shot by a police officer but fortunately you have recovered. When the Orion car was searched it was found to contain the components of an improvised explosive incendiary device involving a timer/power unit, two pipe bombs, three small gas cylinders and a quantity of petrol. In the opinion of Dr Murray, Forensic Scientist, the small gas canisters and petrol had been included with the intention of producing an incendiary effect when the pipe bombs disrupted the canisters and ignited the gas and petrol. Fortunately for both of you and for any members of the public who were in the vicinity at the time the prompt intervention of Army Technical Officers prevented the device from igniting, otherwise you might well both have been facing even more serious charges than that with which I am today concerned. I have been informed by Mr Magill for the prosecution that the nature of the device was such that it was unlikely to cause any serious damage to nearby buildings but it is evident from its nature that, had it exploded any persons passing nearby would have been liable to have been seriously injured.*

> *[2] During interview you McCafferty refused to speak whereas you Donnelly gave an account of your involvement in which you claim that you had been asked to drive your mother's car on this evening by other men but that you were not involved in any plan to plant the incendiary bomb and that you are not a member of any organisation. On behalf of the prosecution Mr Peter Magill indicated that this was a device which would have produced an explosion but not what might be described as a typical city centre car bomb. It was a serious offence intended to cause an explosion at about 6.00 pm on a Sunday evening in the centre of the city but not a case such as the Oxford Street bombing on what has been described as "Bloody Friday" or one of the massive English bombs. The Crown case was that this device, had it exploded, would have caused an incendiary effect but the device was relatively small in nature. While a number of devices had been found around the city of the same type around the time of this offence there was nothing to connect those other incidents with the present offence and the police view is that this crime was intended to advance the cause of dissident Republicans."*

The judge added that the basis of the appellant's plea -

> *"… disavowed any suggestion that there were other men behind* [him] i*n the commission of this crime."*

Appeal

[6] The applications noted above are contained in a Notice of Appeal (Form 2) dated 16 February 2018. The grounds of appeal, state the following:

> "*In October 2016 the Applicant was made aware of the existence of a 7 page document described as 'debrief notes' which were found during a house search by police in July 2003. These 'debrief notes' related directly to the attempted bombing in November 2002 however they were never disclosed during his criminal proceedings at Belfast Crown Court. Following judicial review proceedings in April 2017 a copy of these 'debrief notes' was obtained. Accordingly an extension of time is sought to pursue this appeal against conviction.*"

The Notice of Appeal is accompanied by a formal application for the reception of evidence which is described as "*debrief notes and High Court bail application in the name*

of [XY]."[1] There is an associated assertion that none of this evidence was disclosed in the forum of the appellant's trial.

[7] Also accompanying the Notice of Appeal is an affidavit sworn by the appellant on 29 March 2018, containing the following salient averments:

> "*Since my release I have learned of a number of matters that I now know were not disclosed to my defence representatives during the criminal proceedings. As a result, I truly believe that the process was not fair and that for the grounds set out herein my conviction should be crossed …..*
>
> *Firstly, the PSNI and/or PPS failed to disclose a highly relevant document in their possession – the debriefing notes from the attempted bombing. Secondly, there are strong grounds to believe that state agents/informants were involved in the 2002 bombing operation for which I was convicted …..*
>
> *In and around September 2016 I was made aware of the existence of a 7 page document described as 'debrief notes' by* [XY] *during a chance conversation ….*
>
> *The 'debrief document' was found during a house search by police in North Belfast in July 2003 …. The existence of the debrief document was confirmed in ……. **Re Cunningham's Application** [2004] NIQB 7 …..* [in 2017] *judicial review proceedings had to be issued …… the PPS agreed to provide a copy of the 'debrief notes' …… on 28 June 2017 ……*
>
> *The document ….. demonstrates that* [XY] *had intimate knowledge of the bomb and it is apparent that both* [XY and YZ[2]] *had knowledge of the making of the bomb ….*
>
> *I can state categorically that had this information been provided to me and my legal team at the time of the criminal process it would have raised significant questions ….*
>
> *I now know that a number of individuals were linked to this 'debrief document' and which contained information directly relating to the attempted bombing incident …*

[1] The court has decided to anonymise this person.

[2] This person has also been anonymised by the court.

> [XY] *was charged by police but later all charges were withdrawn ….*
>
> *Whilst on remand in Maghaberry Prison* [YZ] *was removed from the Republican landings for his own safety. He was linked to three attempted bombings … all of which were intercepted or failed to detonate. Despite being linked to three attempted bombings he was released on bail. Charges were also later discontinued against him ……..*
>
> *I have now also learned that Republic operations at that time were being specifically targeted by state agents/informers. Indeed I have learned that a judgment of Girvan J in* ***R v Mullan and Others*** *[2004] showed that informers were working directly with the police and/or army at the time."*

[8] The appellant makes the following further averments:

> "*The PPS clearly had knowledge of the 'debrief notes' relating to my offence and yet these were never disclosed. I believe that these …… were held back from the defence during my criminal proceedings for fear that the disclosure of this document might raise difficult questions regarding state agents and/or informers involved in the November 2002 attempted bombing …..*
>
> *I believe that this was a fundamental failure by the prosecution in the criminal proceedings and as a direct result I did not receive a fair trial."*

The appellant particularises the materials allegedly withheld in these terms:

(a) The 'debrief notes'.

(b) Briefings from military or other non-police security forces.

(c) The forensic report of 19 March 2004 referred to in the High Court bail application (of XY).

(d) The PSNI log referred to in the Ombudsman's subsequent report generated by the police shooting and wounding of this offender's co-accused.

The Disclosure Application

[9] This is an application for an order requiring disclosure pursuant to section 8(2) of the Criminal Procedure and Investigations Act 1996 (the "*1996 Act*") and rule 7 of the Crown Court (Criminal Procedure and Investigations) Act 1996 (Disclosure) Rules (NI) 1997 (the "*1997 Rules*"). Section 8 of the 1996 Act provides:

"***Application by accused for disclosure***.

8. - (1) This section applies where the accused has given a defence statement under section 5, 6 or 6B and the prosecutor has complied with section 7A(5) or has purported to comply with it or has failed to comply with it.

(2) If the accused has at any time reasonable cause to believe that there is prosecution material which is required by section 7A to be disclosed to him and has not been, he may apply to the court for an order requiring the prosecutor to disclose it to him.

(3) For the purposes of this section prosecution material is material-

(a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused,

(b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused, or

(c) which falls within subsection (4).

(4) Material falls within this subsection if in pursuance of a code operative under Part II the prosecutor must, if he asks for the material, be given a copy of it or be allowed to inspect it in connection with the case for the prosecution against the accused.

(5) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

(6) Material must not be disclosed under this section to the extent that-

(a) it is material the disclosure of which is prohibited by section 56 of the Investigatory Powers Act 2016, or

(b) it indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant. "

Rule 7 of the 1997 Rules provides:

"Disclosure: application by the accused and order of the court

7. - (1) This rule applies to an application by the accused under section 8(2).

(2) An application to which this rule applies shall be made by giving notice in writing to the chief clerk and shall specify-

(a) the material to which the application relates;

(b) that the material has not been disclosed to the accused;

(c) the reason why the material might be expected to assist the accused's defence as disclosed by the defence statement given under section 5; and

(d) the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3) below.

(3) The accused shall at the same time serve a copy of the notice referred to in paragraph (2) above on the prosecutor.

(4) On receipt of an application to which this rule applies, the chief clerk shall refer it-

(a) where the offence charged is a scheduled offence [non-jury], to such judge as may be designated by the Lord Chief Justice for the purposes of determining the application;

(b) in any other case-

(i) if the trial has started, to the trial judge; or

(ii) if the application is received before the start of the trial, to the judge who has been designated to conduct the trial, or if no judge has been designated for that purpose, to such judge as may be designated for the purposes of determining the application.

(5) The judge to whom an application to which this rule applies has been referred under paragraph (4) above shall consider whether the application may be determined without a hearing and, subject to paragraph (7) below, may so determine it if he thinks fit.

(6) The prosecutor shall give notice in writing to the chief clerk within 14 days of service of a notice under paragraph (3) above that-

(a) he wishes to make representations to the Court concerning the material to which the application relates; or

(b) if he does not so wish, that is willing to disclose that material;

and a notice under sub-paragraph (a) above shall specify the substance of the representations he wishes to make.

(7) No application to which this rule applies shall be determined without a hearing if-

(a) the prosecutor has given notice under paragraph (6)(a) above and the judge to whom the application has been referred considers that the representations should be made at a hearing; or

(b) that judge considers a hearing to be necessary in the interests of justice for the purposes of determining the application.

(8) Subject to paragraph (9) below, where a hearing is held in pursuance of this rule-

(a) the chief clerk shall give notice in writing to the prosecutor and the accused of the date and time when, and the place where, the hearing will take place;

(b) the hearing shall be inter-partes;

(c) the prosecutor and the accused shall be entitled to make representations to the Court.

(9) Where the prosecutor applies to the Court for leave to make representations in the absence of the accused, the Court may for that purpose sit in the absence of the accused and any legal representative of his.

(10) The chief clerk shall serve a copy of any order under section 8(2) on the prosecutor and the accused."

We shall address the applicability of these provisions *infra.*

[10] The appellant applies for disclosure of the following:

> "*(i) The security briefings to army and/or PSNI officers, contemporaneous records from those briefings and any other information held by the security services relating to the planning, preparation and execution of the attempted car bombing on 24 November 2002.*
>
> *(ii) Disclosure of the reasons why the PPS withdrew all charges against two individuals* [XY and YZ] *in connection with*
>
> *(a) this index offence …..*
>
> *(b) the attempted bombing of Laganside Court House (March 2003) and*
>
> *(c) the attempted bombing of Royston House (May 2003).*"

[11] The cornerstone of the disclosure application is the appellant's contention that his conviction is unsafe as he did not receive a fair trial due to the failure of the prosecution to disclose relevant materials and the related involvement of state agents/informants. A breach of his fair trial rights at common law and under Article 6 ECHR (contrary to section 6 of the Human Rights Act 1998) is asserted. The offender draws on *inter alia* his defence statement of 6 April 2004 (embodying an initial plea of guilty – later revoked), his section 8 application of 8 September 2004 and his amended section 8 application of 14 January 2005. It is contended that the materials pursued by the present application:

> "*… would reveal who was involved, what communications there were between the parties and who was giving the orders which fed down to the applicant.*"

With specific reference to the "*debrief notes*" it is contended that the timeous disclosure of these "*… would have alerted to the defence team that other protagonists and state agents were involved*".

[12] The appellant claims to have become aware of the existence of "*debrief notes*" in September 2016. Reference is made to *Re Cunningham's Application* [2004] NIQB 7 which records that the "debrief notes" had been found during a planned search of the Mr Cunningham's home on 1 July 2003. Paragraph [14] of the judgment states:

> "*… In addition a seven page handwritten document described as debrief notes was seized, and this contained details of the planning, preparation and commission of a failed car bomb attack at premises in Belfast in November 2002.*"

The "debrief notes" were provided by the PPS on 28 June 2017. In his affidavit, the appellant avers that the "debrief notes" contain information relating to the lead up to and aftermath of the attempted bombing and he asserts he is able to identify individuals referred to in the document and the role they are alleged to have played. He claims that this new information raises significant questions and provides material upon which he would have instructed his defence team to act. He further adverts the asserted non-disclosure of a PSNI log.

[13] The central thrust of the prosecution riposte is that the offender is involved in a kite flying exercise (the court's paraphrase). This is apparent from the following excerpts from the written submissions of Mr David McDowell QC and Mr Philip Henry (of counsel):

> "*Given that the applicant accepts his involvement in the offending, the way that a state actor's involvement could theoretically satisfy the disclosure test in the present case is if it might reasonably be believed that such state actor encouraged the applicant to commit an offence he would not otherwise have committed i.e. entrapment ….*
>
> *In the Crown Court this applicant made the case that he was not operating on the instruction or with the encouragement of anyone else. He made the opposite case, from which he has not departed. His own basis of plea '… disavowed any suggestion that there were other men behind* [him] i*n the commission of this crime'* [per the sentencing judge] ….
>
> *The applicant is engaged in a tactical exercise of speculatively waiting to see if there is an inroad that might enable him to construct an entrapment case. It is striking that he has been repeatedly unable to tell the court how he was actually entrapped. The applicant knows what happened in November 2002. If he was entrapped, he would have been able by now to tell the court how. Eventually, following a direction of the court compelling him to do so, he has provided an affidavit in support of this application. It falls short of making a case that could be described as entrapment and it fails to provide any particulars of entrapment …*
>
> *Having had the opportunity to answer the case against him in the Crown Court and lost, he now wants to see if there is any scope for making a different case on appeal in the hope it might succeed on an alternative basis ….*
>
> *The applicant's own submissions, by reference to the 'possibility' that there 'might be' a defence of entrapment, reveal*

an inadequate basis upon which to require the prosecuting authorities to conduct a difficult enquiry 15 years after the subject proceedings have been concluded …

The applicant's own representations make it clear that this is a fishing expedition …

The hope appears to be that some of the briefing materials will refer to the involvement of a state actor. Even if those materials were examined and did contain such a reference, the test for disclosure would not be satisfied because the applicant has failed to provide any evidential basis for a realistic case of entrapment …

The second request relates to the reasons why two other named individuals were not ultimately prosecuted. The same submission applies …… [and] *… in any event ……. the applicant and* [his co-accused] *were caught red handed. Others were not.*"

Governing Principles

[14] While we have rehearsed in [9] above the provisions of primary legislation and Crown Court Rules on which the appellant bases his current disclosure application, these do not apply at the stage of appeal to this court. The leading authority governing post–conviction disclosure by the prosecution is *R (Nunn) v Chief Constable of Suffolk Constabulary* [2014] UKSC 37. There Lord Hughes JSC stated at [25]:

"*In the same way, while an appeal is pending, a limited common law duty of disclosure remains. Its extent has not been analysed in English cases, but plainly it extends in principle to any material which is relevant to an identified ground of appeal and which might assist the appellant. Ordinarily this will arise only in relation to material which comes into the possession of the Crown after trial, for anything else relevant should have been disclosed beforehand under the Act. But if there has been a failure, for whatever reason, of disclosure at trial then the duty after trial will extend to pre-existing material which is relevant to the appeal. This was the case, for example in R v Makin [2004] EWCA Crim 1607, to which Mr Southey referred the court, where the complaint was of a failure of disclosure at trial, and disclosure pending appeal was necessary to enable the complaint to be investigated by the court, albeit on examination the court rejected it. A similar result was reached in McDonald v HM Advocate [2008] UKPC 46; 2010 SC (PC) 1 in relation to Scottish law (where the content of the duty of*

> *disclosure was then in a transitional state). The Judicial Committee of the Privy Council accepted that if there had been a failure of disclosure at trial, the duty on appeal was to make available what should have been provided at trial as well as material relevant to existing grounds of appeal. However, it roundly rejected the contention that at the appellate stage there arose a duty on the prosecution to re-perform the entire disclosure exercise, so that the appellant could see whether anything might emerge which could be used to devise some additional ground of appeal."*

Having reviewed a range of Commonwealth authorities, Lord Hughes added, at [29]:

> **"***There is thus no basis for saying that the common law ever recognised a duty of disclosure/inspection after conviction which was identical to that prevailing prior to and during the trial, and no case, whether in this jurisdiction or any other, has been found to suggest it."*

[15] Turning to the Attorney General's Guidelines, Lord Hughes continued, at [30]:

> *"When it comes to the position after the [criminal justice] process is complete, the Attorney General's guidelines deal specifically with disclosure of something affecting the safety of that conviction. The relevant paragraph in the most recent edition (2013), echoing the same principle in earlier editions, says this:*
>
> *"Post conviction.*
>
> *72. Where, after the conclusion of proceedings, material comes to light that might cast doubt upon the safety of the conviction, the prosecutor must consider disclosure of such material."*
>
> *The guideline must mean that not only should disclosure of such material be considered, but that it should be made unless there is good reason why not. Thus read, it is entirely consistent with the principle reflected in the position set out in the paragraphs above in relation to the pre-Crown Court stage, to the pending sentence stage and to the pending appeal stage."*

Lord Hughes elaborated at [32]:

> "*The position of a convicted defendant is different in kind from that of a defendant on trial. The latter is presumed innocent*

> *until he is proved guilty, as he may never be. The former has been proved guilty. He is presumed guilty, not innocent, unless and until it be demonstrated not necessarily that he is innocent, but that his conviction is unsafe. The defendant on trial must have the right to defend himself in any proper way he wishes, and to make full answer to the charge. The convicted defendant has had this opportunity. The public interest until conviction is in the trial process being as full and fair as it properly can be made to be. After conviction, there is of course an important public interest in exposing any flaw in the conviction which renders it unsafe and in quashing any unsafe conviction, but there is also a powerful public interest in finality of proceedings. All concerned, including witnesses, complainants, the relatives of the deceased and others, have a legitimate interest in knowing that the legal process is at an end, unless there be demonstrated to be good reason for re-opening it."*

[16] The important distinction between cases with a concrete basis for post-conviction disclosure by the prosecution and those based on mere speculation emerges in later passages in the judgment. First, at [35]:

> *"There can be no doubt that if the police or prosecution come into possession, after the appellate process is exhausted, of something new which might afford arguable grounds for contending that the conviction was unsafe, it is their duty to disclose it to the convicted defendant. Simple examples might include a new (and credible) confession by someone else, or the discovery, incidentally to a different investigation, of a pattern, or of evidence, which throws doubt on the original conviction. Sometimes such material may appear unexpectedly and adventitiously; in other cases it may be the result of a re-opening by the police of the enquiry. In either case, the new material is likely to be unknown to the convicted defendant unless disclosed to him. In all such cases, there is a clear obligation to disclose it. Para 72 of the Attorney General's guidelines, quoted above, correctly recognises this."*

And more emphatically at [38]:

> *"It does not, however, follow from cases such as this that the law ought to impose a general duty on police forces holding archived investigation material to respond to every request for further enquiry which may be made of them on behalf of those who dispute the correctness of their convictions. Indeed, the potential for disruption and for waste of limited public resources would be enormous if that duty were to be accepted. The claimant's initial requests in the present case for investigation of the finances of the deceased, as well as his*

> *earlier applications for sight of the entire investigation files, afford good illustrations of the kind of speculative enquiry which such a rule would encourage. There is no such duty. If the duty of disclosure pending appeal is limited, as it plainly is, to material which can be demonstrated to be relevant to the safety of the conviction, it is all the clearer that after the appellate rights which the system affords are exhausted the continuing obligation cannot be greater than that stated in the Attorney General's guidelines, read as explained in para 30 above."*

Lord Hughes added at [42] there must be a "*real prospect*" that the post – conviction enquiry pursued "*… may reveal something affecting the safety of the conviction.*" Ultimately, the Supreme Court agreed with the Divisional Court's conclusion that the convicted defendant's quest did not "*… go beyond the simply speculative …*": see [43].

The Appeal Process

[17] On the occasion of the main listing before this court, a conventional *inter-partes* substantive hearing was held. On the same date and on three subsequent dates, there were '*ex parte* on notice' hearings in chambers. All of these were directed to the issue of further prosecution disclosure. While throughout the prosecution were firm in their stance that there was nothing to be disclosed, the court required further steps and enquiries to be undertaken. This gave rise to the court receiving certain sensitive materials. In this way, the court formed the clear view that [a] none of these materials satisfied the disclosure principles and [b] no further disclosure enquiries/searches by the PPS/PSNI were necessary. The court, by intensive questioning, further satisfied itself that the prosecution and police had been assiduous in complying with its directions and acquitting their disclosure obligations.

Conclusions

[18] **Disclosure**. The affidavit sworn by the appellant in support of his applications invites careful consideration. It focuses heavily on two matters. First, the suggestion of a connection between the debrief document and the wider circumstances of his offending. Second, the associated suggestion that two other persons can be linked to involvement in the offending. The appellant specifically suggests that the two others concerned had knowledge of the making of the bomb. He deposes to "*speculation*" regarding the motivation of the others concerned. The key averment in his affidavit is the following:

> *"Material relating to the involvement of state agents/informers and material relating to the actual planning, direction and execution of the events for which I was convicted was not*

disclosed to my defence representatives. I believe that this was a fundamental failure by the prosecution in the criminal proceedings and as a direct result I did not receive a fair trial."

[19] The appellant's affidavit is silent on the issue of his acceptance of guilt at his trial. There is no indication of why or on what basis he accepted guilt. Nor is there any engagement whatsoever with a series of salient aspects of his sentencing, in particular: the judge's summary of the events immediately preceding and at the time of his arrest, especially the description of the appellant being the driver of the "bomb vehicle", stopping the vehicle, running from it and proceeding in the direction of the second, parked vehicle; the immediate discovery of an explosive device in the vehicle driven by him; his failure to proffer any account or explanation when interviewed by police; the police view that this offending was intended to advance the cause of dissident Republicans; the emphasis in the plea in mitigation upon his public acceptance of his guilt; the related acceptance by his senior counsel that the appellant *"would not have had much of a contest"*; the express disavowment by his counsel that are there were others "behind" him in the commission of this crime; and the judge's express allocation of credit for his guilty plea.

[20] The test to be satisfied at this stage is that of a real prospect that the materials pursued at this remove may reveal something affecting the safety of the offender's conviction. As the decision in *Nunn* makes clear, there is a threshold to be overcome in applications of this nature. As the foregoing analysis indicates, the hallmark of this application is its vague and evasive nature. It lacks substance and particularity. It fails to engage with key facts and issues. It fails to establish any remotely sustainable case of entrapment or comparable contaminant. It ultimately resolves to nothing more than bare, subjective assertion or belief that the materials pursued might have some bearing on the safety of the appellant's conviction. It is further confounded by the steps taken by this court detailed above. The application manifestly fails to satisfy the applicable test and must be dismissed in consequence.

[21] **Conviction.** We repeat [19] above. Fundamentally, there is nothing in the evidence laid before this court engaging in any serious way with the crucial issue of the safety of the appellant's conviction. This unavoidable analysis is made in circumstances where the appellant was literally caught red-handed, clearly had no defence to the charges, pleaded guilty in a context of representation by experienced solicitor and counsel, has disclosed to this court nothing in his affidavit evidence about his involvement in the offending and, finally, raises no question concerning the voluntariness of his guilty plea.

[22] **Extending time.** The principles governing the exercise of this court's discretion to extend time are enshrined in R v Brownlee [2015] NICA 39 at paragraphs [2] – [8]. Given the foregoing conclusions, there is no basis for exercising our discretion to extend time.

[23] All of the applications are refused accordingly.