

Judicial Communications Office

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COURT QUASHES HISTORICAL CONVICTION FOLLOWING A SUCCESSFUL REFERENCE FROM THE CRIMINAL CASES REVIEW COMMISSION

Summary of Judgment

The Court of Appeal¹ today quashed the conviction of Patrick Thompson for murder following a reference by the Criminal Cases Review Commission.

The tragic circumstances of this case are that on 17 July 1975, four British Army officers were killed and one injured when a landmine exploded in a field near Tullydonnell, County Armagh. Just before the explosion, a soldier using the optical sight of his rifle, had spotted a man running from the scene. He identified the man as being in his twenties, well built with brown collar length curly hair. This account was backed up by four other officers. Fifteen minutes after the explosion, Patrick Thompson (“the appellant”) who bore the same features as the man seen by the officer through his rifle sight, was stopped by the army. He had fresh scratch marks on his forehead and wrist and his shoes were damp. The appellant was arrested and taken to Bessbrook RUC station. He was interviewed five times without a solicitor present. In the first three interviews he denied responsibility for the attack. In the fourth interview, the appellant gave a verbal account of his involvement in the attack and then signed a statement. He was also asked to prepare a sketch of the area which he maintained was from a sketch placed on the table by the police officers.

The appellant collapsed in pain two hours after the fifth interview. He made a complaint of assault against the police and was subsequently examined by three separate medical professionals. The first diagnosed the accused as suffering from a “hysterical fit” and arranged for him to be examined by another doctor who found no evidence of ill treatment but arranged for the attendance of a surgical registrar. This third doctor said there was no evidence of bruises except for two spots on his lower leg which were sustained prior to the alleged evidence. A fourth doctor examined the appellant on behalf of the defence six days after his collapse. This doctor found tenderness on various parts of the appellant’s body and said that “his spirit was broken by verbal and physical trauma.”

The Crown Court trial took place in March 1976. The allegation of ill treatment was raised but the trial judge deemed the confession admissible. He said he found the interviewing officers to be “most impressive” and that he considered their testimony to be “honest and truthful” and of “very substantial accuracy”. Further, he found that the medical evidence did not give “any reason to doubt ... the policemen.” The trial judge found the appellant guilty of four counts of murder and one count of membership of a proscribed organisation. He received a life sentence for the first four counts, with 30 years as the minimum period, and five years on count five. The appellant lodged an appeal against conviction on 9 April 1976 alleging bias in the conduct of the trial as the judge failed to exclude the confession evidence, obtained as a result of ill treatment and failed to give adequate consideration to the medical evidence. The appeal was dismissed on

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

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31 March 1977 and the appellant continued to serve his sentence until released from prison on 5 March 1992.

The appellant lodged an application with the Criminal Cases Review Commission (“CCRC”) on 27 February 2018 advancing the following grounds:

- That he was a victim of prolonged, intended violence to coerce a signed confession in which he falsely admitted to the offences under the oppression of the interviewing officers.
- Allegations were made against one of the four interviewing officers, Detective Inspector Mitchell, regarding “staged evidence” and that the confession statement was concocted by the police.
- The trial judge was biased in his conduct of the trial which resulted in the appellant not being allowed to access vital documents.

The CCRC made enquiries with the PSNI and PPS whether they held disciplinary files or complaint files for any of the four officers who interviewed the appellant. It also analysed the findings of the NI Court of Appeal in *R v Latimer, Hegan, Bell and Allen* [1992] 1 NIJB 89 in which three of the appellants had their convictions quashed on the basis that DI Mitchell and another officer appeared to have appended false authentications which had been backdated by five days to some of the interview notes. The Court of Appeal made significant findings against DI Mitchell. The CCRC considered the findings significantly weakened DI Mitchell’s credibility as a witness of truth.

The PPS provided the court with a schedule of allegations of mistreatment and complaints made against the four police officers at Bessbrook RUC Station who interviewed the appellant; 15 incidents of abuse were alleged against DC Kenneth Hassan; four against DC Norman Carlisle; three against DS Robert McFarland; and two against DI James Mitchell. Only one of these was taken forward by the DPP. This involved a complaint by Robin John Jackson of assault by DC Carlisle and one other officer. They were convicted of common assault but the conviction was overturned on appeal. This incident occurred before the trial of the appellant and was known to the trial judge, however the judge was not aware of the allegations against the other officers.

The Appeal

The appellant mounted two grounds of appeal: that the conviction was unsafe on grounds of ill-treatment, and that the conviction was unsafe on grounds of the unreliable recording of confession evidence.

On the first ground of appeal, counsel for the appellant reminded the court that although other circumstantial evidence existed, the trial judge made it clear that the prosecution case hinged on the confession evidence. He contended that the evidence of maltreatment must result in the Court of Appeal experiencing significant unease as to the safety of the conviction. As to the fresh evidence regarding DI Mitchell, the appellant urged the court to look on it as a form of bad character evidence. The central point was that the evidence admitted in the original trial that led directly to his conviction would be deemed inadmissible by today’s standards and this should contribute to the sense of unease that surrounds the conviction. Further, that when viewed with the other allegations made about conduct at the same RUC station, using the same interviewing process, with the same officers present, and at the same time, the court could find only one

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answer: that this conviction is unsafe. The appellant also submitted that the medical evidence must be read alongside the PPS disclosure regarding police ill-treatment of detainees at Bessbrook RUC station, arguing that there were striking similarities between the description of the ill-treatment described by the appellant to that of the allegations made in the PPS disclosure. In particular, he referred to the allegation made by Robin Jackson which occurred within weeks of the appellant's interview and that DC Carlisle was involved in both instances.

Regarding the second ground of appeal, the appellant outlined that "the initial verbal admissions were in response to ill-treatment. The sketches were copied from police copies. The written statement was dictated by DI Mitchell, and he was required to sign. The account was not his own." Therefore, the confession evidence should not have been admitted. Similarly, the appellant submitted that the reliance that the trial judge placed on the evidence of the police witnesses, and his description of them as "most impressive witnesses" should be undermined by the subsequent findings against DI Mitchell as per *Latimer*. In making this claim, counsel for the appellant went through the alleged discrepancies in the various police officers' accounts in particular that by DI Mitchell's own admission, the confession was not immediately written down, but was presented in statement form in due course. The appellant said that despite the lack of contemporaneous recording, in DI Mitchell's statement, his confession appeared in quotation marks and the accuracy of these quotations must therefore be questioned.

The court said the case boiled down to a very simple fact that DI Mitchell who took the confession was not a man of truth or integrity as illustrated by the *Latimer* case. It was highly significant that the confession was taken at the fourth interview by DI Mitchell who was not present at the preceding interviews:

"He is a dishonest witness who would not have withstood scrutiny by the courts in 1975 or now due to his being found to falsify evidence. In addition, there were some obvious procedural failings as to how this confession was taken which make us question its veracity. As the appellant pointed out by Mitchell's own admission, the confession was not immediately written down, but was rather presented in statement form in due course. This admission is exacerbated by the fact that DS McFarland and DC Hassan were present in the room. Despite the lack of contemporaneous recording, in Mitchell's statement, [the appellant's] confession appeared in quotation marks. There is therefore a valid criticism raised as to how the statement was delivered and recorded which calls into question its veracity."

The court added that there was now cogent evidence of ill treatment allegations made against other police officers who were present at the appellant's interviews. It said this was akin to non-defendant bad character evidence. While this on its own this could not lead to a successful appeal, the court considered that, given the factual matrix of this case which is distinct from many of the other cases it had considered in this general area, such evidence had potential relevance as an additional factor in support of the appeal. That is because very similar allegations of bad character by way of ill treatment were made by persons other than the appellant against two police officers DC Carlisle and DC Hassan and of a very similar nature (including standing against a wall and press ups) as what the appellant said happened at Bessbrook RUC Station. The court said it could understand why the prosecution sought to divert from this core consideration by reliance on the medical evidence and the trial judge's assessment of it, however, it considered that the entire case took on a different complexion once the admissibility of the

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confession was called into question. In addition, the trial judge was quite clear that if any of the allegations of mistreatment were made out, he would not admit the statement.

The court said there was another element to this case which was interconnected namely the veracity of the confession given the unreliability of DI Mitchell. This case featured objective and cogent evidence which discredited DI Mitchell who took the alleged confession and this was highly significant:

“We feel sure that any judge faced with evidence of an officer who falsified confessions would look again at the case. That is because the trial judge’s conclusions that the police witnesses were “honest and truthful” is undermined. The fact remains that in order to be satisfied beyond reasonable doubt that the appellant had not been illtreated, as well as considering the medical evidence, the judge had necessarily to rely heavily on his assessment of the police witnesses as being truthful and reliable.”

Drawing all of the above together, the court summarised the position as follows:

- If the information 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 was, therefore, a real possibility that the trial judge may have been persuaded that DI Mitchell was not as honest and truthful witness as he thought.
- In addition, the now disclosed complaint files raise the real possibility that there was potentially a culture of oppressive behaviour 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 was a real possibility that they would have enabled the defence to undermine the credibility of those witnesses by way of bad character.
- 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 was, therefore, a real possibility that if these documents had been disclosed the trial judge may not have admitted into evidence the admissions.
- Alternatively, if the statements had been admitted it would have been open to the appellant’s counsel to explore these issues of bad character before the judge. It followed that there was a real possibility that this material might reasonably have led the trial judge to conclude that it was unsafe to rely upon the alleged confession a reasonable doubt having arisen.
- The medical evidence alone cannot avail the prosecution in seeking to uphold this conviction. The appeal must succeed on the second ground relating to the potential reliability and associated admissibility of the confession.

Conclusion

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The court said that the outcome in this case was fact specific. It also said that this was a serious case involving horrific murders in which we have tremendous sympathy for the bereaved families:

“Nothing we say detracts from society’s condemnation of such crimes committed in our past. However, the awfulness of the crime does not absolve this court of performing its function. In satisfaction of our judicial obligations, we have to decide whether this historic conviction is safe according to law however difficult the outcome may be. To that end we have anxiously and carefully considered all of the evidence and arguments in order to reach our final view.”

The court concluded that the fresh evidence might have led to a different result in the case given a key aspect of admitting the confession evidence was the credibility of the police witnesses.

The outcome reached by the Court of Appeal accorded with the CCRC view as follows:

“If the trial judge had been aware of serious concerns regarding Mitchell’s integrity the CCRC considers that this would have been likely to cause him to doubt the reliability of DI Mitchell’s account that Mr Thompson had made voluntary admissions to the offences in question. ... the CCRC considers it likely that this would have led the Judge to exclude Mr Thompson’s alleged admissions from the trial evidence or, if they were admitted into evidence, would have led the judge to conclude that the evidential weight of the admissions was significantly reduced.”

Accordingly, the Court could not be satisfied as to the safety of the convictions and therefore the court quashed the convictions.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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