

Judicial Communications Office

17 January 2025

COURT DISMISSES REFERENCE FROM THE CRIMINAL CASES REVIEW COMMISSION

Summary of Judgment

The Court of Appeal¹ today dismissed a reference brought by the Criminal Cases Review Commission (“CCRC”) in relation to George Kirkpatrick, Cyril Cullen and Eric Cullen (“the appellants”) who were convicted on 24 June 1981 of the murder, kidnapping and false imprisonment of Francis Rice on 18 May 1975. Two of the appellants died before the reference concluded (Cyril Cullen died in 2016, and George Kirkpatrick in 2021) but their next of kin were granted permission to pursue the appeals on their behalf.

Mr Rice’s body was discovered by the side of a road near Castlewellan having suffered 10 stab wounds. His brother gave evidence at the trial in 1981 that he saw George Kirkpatrick observing him and his brother the night before the killing. On the night of the murder, two men were witnessed following Francis Rice after leaving the Oak Grill bar in Castlewellan with a third man in a car parked with its sidelights on. The prosecution case was that the appellants had followed Francis Rice with the intention of killing him or causing serious injury to him because they believed he was a member of the Provisional IRA.

History of the CCRC reference

George Kirkpatrick first applied to the CCRC on 31 October 2000 claiming that he had been tricked into signing a confession document by the interviewing police officers. On 31 October 2003, the CCRC decided that there was no basis to refer the conviction as there was no real possibility that the Court of Appeal would be likely to regard his account as capable of belief. The Police Ombudsman also considered the case and raised no concerns after ESDA testing of George Kirkpatrick’s statement.

On 13 November 2018, all three appellants applied to the CCRC. Following this a referral was made to the Court of Appeal on 9 December 2022.

The primary basis for the referral was that key police officers who interviewed the appellants in 1980 were later the subject of significant criticism by the Court of Appeal in *R v Latimer and others*².

The trial of the appellants in 1981 had centred around disputed admissions to the offences, alleged to have been volunteered by them in the course of their interviews. George Kirkpatrick and Eric Cullen said the admissions had been concocted by the police and they had signed them not knowing what they contained. Cyril Cullen claimed that he had agreed to sign the confession statement owing to intimidation and threats which he had been subjected to during the police interview and disputed the contents of the statement were a true account of involvement in the offence. The trial judge heard medical evidence from three doctors who confirmed that each

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

² *R v Latimer, Hegan, Bell & Allen* [1992] 1 NIJB 89.

Judicial Communications Office

appellant had told them they understood their witness statement of admission and agreed with it and that no coercion was used in obtaining it with none making any allegation of ill-treatment.

Following a voir dire, the trial judge decided the dispute in favour of the police and ruled that the confession statements, which were the sole evidence in the case, would be admitted in evidence. The trial judge placed considerable emphasis on the medical evidence and that the appellants at trial had not only denied their written statements of confession but also the alleged statements made to the doctors. He found the appellants guilty and they were convicted of the three counts on the indictment (murder, false imprisonment and kidnapping). They were sentenced to life imprisonment on the murder charge and 10 years' imprisonment on the other two charges to run concurrently.

The CCRC submitted that the credibility of the interviewing officers was substantially weakened by them later being the subject of significant criticism and that if the trial judge had been aware of this it may have caused him to doubt the reliability of their accounts that the appellants had made voluntary admissions. The CCRC considered it likely that this would have led the trial judge to exclude the alleged admissions from the trial evidence or, if they were admitted into evidence, would have led the judge to conclude that their evidential weight was significantly reduced. It considered those matters would cause the Court of Appeal a significant sense of unease about the correctness of the verdict and that the convictions were unsafe.

All three appellants also sought leave to appeal on a ground not referred by the CCRC, namely that the trial judge had erred in not giving a good character direction in relation to each of them. A third ground raised on behalf of George Kirkpatrick related to alleged discrepancies in the evidence.

R v Latimer and others

The CCRC relied heavily on the decision in *R v Latimer* as three of the interviewing officers in the present case were criticised in it for being involved in concocted and fabricated statements. The officers' wrongdoing was exposed after ESDA testing of the statements exposed shortcomings and resulted in a quashing of the convictions of some of the appellants. In the present case, two officers were involved in the interviews where substantial admissions were alleged to have been made by George Kirkpatrick and Eric Cullen. One other was a member of the interviewing team albeit his involvement in three interviews with Eric Cullen did not result in any confessions. None of the police officers impugned in the *Latimer* case were involved in the interview process or in taking the statement from Cyril Cullen.

A summary of disciplinary findings in relation to some of the officers involved in this case was provided to the CCRC and the court. It noted that complaints had been recorded against five of the officers who were involved in interviews where admissions were made. Some of the personnel in *Latimer* also featured in *R v Thompson* [2024] NICA 30 where the Court of Appeal quashed a historic conviction based on contemporaneous allegations of police misconduct. In that case the trial judge was clear that if any of the allegations of mistreatment were made out, he would not admit the confession statement. Fresh evidence was admitted on appeal concerning the bad character evidence which the court found had potential relevance and held that if this had been disclosed at trial the trial judge may not have admitted the admissions into evidence.

Summary of interviews of the appellants in this case

Judicial Communications Office

George Kirkpatrick was arrested on 29 July 1980, more than five years after the murder of Francis Rice, and interviewed on eleven occasions over two days at Armagh Police station. In the first six interviews he denied knowing anything about the murder or knowing the deceased and denied having been in Castlewellan at all on the night of the murder. Thereafter he made admissions and implicated Eric Cullen and Cyril Cullen who were then arrested on 31 July 1980.

Kirkpatrick admitted in his seventh interview that he frequently parked outside the Oak Grill and watched men who he believed were connected with the Provisional IRA. In his next interview he made his first admission when he shouted out that "it was an accident" but made no further reply. In his ninth interview he admitted taking Mr Rice from the street with Eric Cullen and Cyril Cullen and to having been present when they killed him but that he remained in the car at all times. In his tenth interview, Kirkpatrick admitted that he and Eric Cullen and Cyril Cullen took Mr Rice intending to give him a beating, and that they all did so. He then said he saw Eric Cullen produce a knife and stab Mr Rice. Kirkpatrick then made a statement to that effect which he signed in various places. The written statements of the interviewing officers are both dated 19 January 1981, nearly six months after the interviews and both are identical. Kirkpatrick did not make any allegations of torture or inhuman treatment at any stage against police at the time of his detention.

Cyril Cullen's admission came on 1 August after George Kirkpatrick's confession was put to him. His case was that his confession arose due to intimidation and threats and that the account provided was not true. He did not make an allegation of concoction, and his interviews did not involve officers affected by *R v Latimer*. In his confession statement he was recorded as saying "It was just a bit of horse play that got out of hand."

Eric Cullen was interviewed on two occasions on 1 August 1980 and made a statement of admission in his second interview after he had been confronted with the admissions allegedly made by Cyril Cullen and George Kirkpatrick. In his statement he was recorded as saying he had a dagger with him which he pulled out to try and scare Mr Rice but he then stabbed him in the front of the body.

Court's conclusions

The court observed, at the outset, that cases of this nature are all highly fact specific. It does not follow that because some similarities arise with cases such as *Latimer* and *Thompson* 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 was 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. In addition, an appellate court must consider the entire history of the case including all previous legal and investigative steps including by the CCRC and the Police Ombudsman in order to form an accurate view.

The question for the court was whether the convictions were unsafe. The reference in this case was based on alleged concoction of confession statements by police officers who have since been discredited by another court. It was not a reference relying upon claims of physical ill-treatment. No complaints were made at the time save in Cyril Cullen's case who raised intimidation and threats, but the discredited officers were not involved in his case. The court said there was no evidence of vulnerability on the part of any of the appellants.

Judicial Communications Office

Further, whilst 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 the court said this was not evidence of any particular value on the facts of this case because the primary issue in the appeal was whether the confessions were concocted by police officers now known to be discredited.

The court said that it was bound to consider the material now available regarding relevant police witnesses, and whether it gives rise to the real possibility, that the trial judge may not have admitted the confessions. Regarding Cyril Cullen, whilst no impugned officer conducted his relevant interviews or recorded his confession, his confession followed after the confession of Kirkpatrick was put to him and was part of this series of admissions. On that basis it was argued that his case should be treated the same way as the others.

The court observed that the offences in this case took place almost 50 years ago and the trial was heard 44 years ago. The court noted that extensive enquiries had been undertaken in attempts to obtain the original trial and appellate solicitors' papers as well as the shorthand writers' notes. The position upon which the case proceeded was that other than the transcript of the trial judgment and the shorthand transcript relating to the judge's discussion with Kirkpatrick, no other transcripts were available. The only other contemporaneous record was from the Mourne Observer.

The police officers all gave sworn evidence at the *voir dire* and denied any suggestion that they had concocted statements, and the trial judge rejected any suggestion that they did. The court said the circumstances of these officers was now clearer as a result of the *Latimer* decision which was discussed in *Thompson*. The question for the court was whether this information would have led to a reasonable doubt as to the veracity of the statement taking process which may have resulted in the statements being not admitted. Similarly, the argument can viably be made that if they were admitted, the weight to be given to them would lessen. That was the heart of Kirkpatrick's appeal.

The court found that Kirkpatrick's appeal could not succeed for the following reasons:

- First, he made no case of torture or inhuman treatment.
- Second, he gave an inconsistent and wholly unconvincing account when the CCRC first considered this case as set out above. As the CCRC itself said "the account that Mr Kirkpatrick has now given to the Commission about being tricked into signing some document and of only signing it once is wholly inconsistent with the confession document that is actually in existence."
- Third, PONI, having conducted ESDA testing found nothing of concern in the impugned statements.
- Fourth, the confession made by Kirkpatrick was partial in that he maintained this was an accident and implicated the Cullens.
- Fifth, and crucially, the police conspiracy argument is wholly undermined by the fact that the discredited police officers identified in *Latimer* had nothing to do with Cyril Cullens's statement:

Judicial Communications Office

“Finally, lest this point be unclear to appellants or the CCRC, the fact that issues arise from *Latimer* and 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. That will depend on a close and careful analysis of the facts of a particular case and application of the overarching consideration of whether a conviction is unsafe.”

The court also found that the trial judge was entitled to rely on the evidence of medical professionals in the way that he did. It said that while the doctors who treated each appellant were primarily concerned with establishing whether there was inhuman treatment or torture apparent during interview, they were clearly also alive to other issues and so whilst not determinative it was relevant that no complaints of concoction were made to them. Thus, it could not be satisfied that the judge in exercising his discretion to admit the statements, made an error.

The above argument made in Kirkpatrick’s case was also made by both of the Cullens. In the case of Cyril Cullen, the court found that it was of less weight because the officers were not involved in his interviews, but the point was made that this is all part of the one investigation, and so, if the interviews in relation to Kirkpatrick and Eric Cullen were so flawed, Cyril Cullen’s was also flawed. The court said this argument could not hold water and the proper way of looking at this case was that the conspiracy argument failed given that the discredited police officers were not involved in all three cases.

In addition, the court said it was trite law to say that it cannot rehear a case 44 years later. It said the trial judge weighed up the counter claims of the appellants as to accident and alibi and found against them: “Unsurprisingly these factual findings were not disturbed on appeal in 1982.” The court said it was also material that the appeal in 1982 was focussed on the murder conviction rather than the false imprisonment and kidnapping convictions. Accordingly, the court dismissed ground one of appeal.

Ground two of appeal was in relation to the good character of the appellants. The court said it was accepted that the appellants were of ‘good character’ and it was inconceivable that the evidence of this would not have been before the court. Furthermore, the matter would have been in the mind of the trial judge who was a highly experienced criminal judge. The court said the absence of specific reference to this in the judgment did not permit the conclusion that it was not considered. The law in this area states that a judge giving judgment in a criminal trial without a jury does not have to recite every applicable legal issue or mention every matter on which he might, in other circumstances, give a jury specific direction.

The court said that whilst not expressly contained in the partial papers it had before it, it was not prepared to conclude that the trial judge did not direct himself on this matter as an experienced trial judge well versed in this area of law would do. It was also noteworthy that this ground did not feature in the appeal taken to the Court of Appeal in 1982 or in the CCRC referrals. The court took from these omissions that the point did not weigh heavily with the appellants or with a number of sets of legal advisors they had. It said it would be wrong to rely upon it now after 44 years on the basis that it did not expressly feature in paperwork which is itself incomplete. Accordingly, it refused leave and dismissed this ground of appeal.

The third ground of appeal which was relied upon by counsel on behalf of George Kirkpatrick was that some additional factors should cause the court to question the correctness of the verdict

Judicial Communications Office

in that there were significant differences between the statements provided by the deceased's brother for the coroner's inquest in 1976 and those provided for the trial of Mr Kirkpatrick in 1980. Specifically, he did not refer to seeing Mr Kirkpatrick in his 1976 statement and only did so when he provided a further statement in January 1981. Also, it was alleged there was evidence that the killing was linked to paramilitary activity and that the Protestant Action Force telephoned the Sunday News Newspaper on 20 May 1975 using a recognised code claiming responsibility for the murder. However, Mr Kirkpatrick was of previous good character and had no known connections to paramilitary organisations. When imprisoned he was detained on a mixed wing and at no point was he claimed as a member of any paramilitary organisation.

The court was not convinced that these arguments undermined the safety of the conviction. It said that while some discrepancies arise, this was all before the trial judge who assessed the evidence as a whole. It said it would be wholly wrong for an appellate court to effectively rehear the case by analysing these matters. In addition, as with ground two of appeal, the CCRC had not raised these issues. The court refused leave and dismissed this ground of appeal.

Overall Conclusion

Accordingly, the court was not satisfied that the safety of these convictions is undermined by any of the arguments raised by this CCRC reference or on appeal. It dismissed the appeal on all grounds.

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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