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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

JOHN CHRISTOPHER WALSH

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CARSWELL LCJ

Introduction

The appellant John Christopher Walsh was convicted at Belfast Crown Court on 7 December 1992 by His Honour Judge Petrie QC, sitting without a jury, on a charge of possession of an explosive substance, namely a coffee jar bomb, with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom or to enable any other person so to do, contrary to section 3(1)(*b*) of the Explosive Substances Act 1883. He was sentenced to 14 years' imprisonment.

The appellant appealed against his conviction to the Court of Appeal, which in a written judgment delivered on 7 January 1994 dismissed his appeal and affirmed the conviction. His solicitors applied on 10 March 1997 to the Secretary of State to review the conviction under section 14(1)(*a*) of the Criminal Appeal (Northern Ireland) Act 1980. When the Criminal Cases Review Commission was established on 1 April 1997, under the terms of the

Criminal Appeal Act 1995, the matter passed into the Commission's domain. By a reference dated 27 March 2000 the Commission referred the conviction to this court, and, as prescribed by section 10(2) of the 1995 Act, the reference has been treated for all purposes as an appeal by the appellant.

The appellant made two applications, pursuant to section 25 of the 1980 Act, for the reception of further evidence, and by orders dated respectively 9 February and 9 March 2001 the court gave him leave to call Conor Bradley, Liam Magill and Dr John Lloyd to attend and be examined before the court. When the appeal came on for hearing on 11 June 2001, Dr Lloyd and Conor Bradley were called and their evidence was put before the court, but Liam Magill was not in the event called to give evidence.

Factual Background

On 5 June 1991 at about 1.40 pm a patrol of four soldiers was proceeding in a spread-out formation along Suffolk Road, on the outskirts of Belfast, in a countrywards direction. As Corporal Blacklock, the lead member on the right hand side of the road, reached the mouth of an alleyway running from Suffolk Road to Kerrykeel Gardens he saw the appellant walking along the alleyway towards him. His hands were in the pockets of his jacket and the corporal required him to remove them. When he did so he was, according to the corporal's evidence, holding a glass jar in his right hand. Corporal Blacklock said that he directed the appellant to place the jar on a low wall forming the base of some railings at the mouth of the alleyway, which he did. The appellant's case was that he was never in

possession of the jar, that he did not have it in his pocket or place it on the wall. He maintained that it must have been on the wall when he arrived on the scene and that possession of the device was wrongly attributed to him.

The jar, which was undeniably on the wall when an ammunition technical officer arrived to make it safe, was an improvised explosive device of the type which came to be known as "coffee jar" bombs. It was fashioned from an empty glass jar with a screw top. It contained about half a pound of Semtex high explosive placed in a tube. The tube and an electrical firing circuit, which included a pressure release switch, were inserted into the jar and the lid closed, holding the switch in the open position. A detonator was attached to the jar, so arranged that when it was desired to prime the bomb the holder could push the detonator into the explosive substance through a hole in the lid. That had been done in respect of the jar in question and the device was ready for detonation, which would take place if the jar was thrown so that the glass broke and the pressure switch was released.

The Issues at Trial and on Appeal

At the trial a number of factual issues was debated. The first was the reliability of the soldiers' evidence and the consistency between their accounts. Corporal Blacklock and Private Boyce were on the right hand side of Suffolk Road, with Blacklock in the lead. Blacklock said in his evidence that as he turned into the alleyway he saw a male person, now known to have been the appellant, walking towards him, being then approximately half way down the alleyway. He saw no one else in the alleyway, nor did

anyone emerge from it as he approached. He had his hands in the pockets of his jacket, which the witness described as a purple bomber-type jacket. As he reached Blacklock's position a couple of paces inside the alleyway the corporal told him to stop and required him to take his hands out of his pockets. He saw a coffee jar in the appellant's right hand and told him to put it down, whereupon he placed it on the wall. Blacklock pushed the appellant up against the fence on the opposite side of the alleyway from the wall and called up the rest of his team. The appellant was searched and bags were placed on his hands. Police arrived a few minutes later and took charge of him.

Private Boyce was on the same side of Suffolk Road as Blacklock. He described his position in evidence as having been twenty feet at the most behind the corporal, in or about the middle of the road, crossing towards the right. He said that he saw Blacklock stopped at the alleyway talking to some person, and that he was always within his sight. As he got closer he saw that the person was holding a coffee jar-like device in his right hand. He was told to put it on the wall, then Boyce searched him and put gloves on him. The description which Boyce gave in cross-examination of the patrol's route of approach varied from that given by the other members, and it did not appear possible to accept his evidence on that point. It was suggested by the appellant's counsel that he had done so in order to place himself in a position from which he could have seen Blacklock, with the object of giving corroborating evidence.

The next issue was the evidence given by and on behalf of the appellant and its relation to the evidence of the soldiers. The appellant said that he had left home at 1 Thomas Court, Broadway and was going to meet a friend at the Swillybrinn Inn on the Suffolk Road. He had only the sum of £2.05 in his possession, but averred that the friend he had arranged to meet was going to "carry" him for the cost of his drinking. That friend was unemployed, whereas the appellant was in employment. The appellant stated, however, that he had no funds because he had just spent £500 on a woodworking machine, while his friend had done a job at Lenadoon for another friend and was to be paid for it that day. He took a taxi to the shops at Lenadoon, and was proceeding on foot to Suffolk Road when he reached the area of Kerrykeel Gardens. He was not familiar with the area and thought that the alleyway appeared to provide a short cut, so turned into it (it was not in fact a short cut, but a slightly longer route to his destination). In the alleyway he met a soldier, who motioned to him to take his hands from his pockets, which he did. The soldier then asked him "What is that?", referring to the device which was on the nearby wall on his right. The appellant denied any knowledge of the object.

He also said that another man was walking through the alleyway in the same direction some fifteen feet in front of him, and that this man passed the soldier on the soldier's right hand side and went round the corner on to Suffolk Road before or just as the appellant was being stopped. The soldiers said that they did not see any such man.

The third issue was the effect of the forensic evidence. The relevant findings may be summarised as follows:

(a) the core of the bomb consisted of Semtex, which is formed of two explosive compounds RDX and PETN and a plasticiser;

(b) the outside of the jar was not examined for explosives residues;

(c) RDX was detected on the swab taken from the left hand of the appellant; a very minute trace can produce a positive reading, but there was no evidence how much it would have taken to produce that reading;

(d) no traces of RDX or PETN were found on the appellant's clothing;

(e) there were no fibre traces from the appellant's clothing on the bomb;

(f) no fingerprints were found on the device.

It was submitted on the appellant's behalf at trial that if he had been holding the device in his hand inside his jacket pocket one would have expected to find traces of explosives residues on the inside of his pocket and fibres from his pocket on the jar. The trial judge rejected these arguments, on the ground that (a) it would have been possible with care to load the explosive into the jar without contaminating the outside with residues, and those who prepared the device would have been likely to take particular care to avoid such contamination (b) if the appellant was holding the jar cradled in his hand inside his pocket the reception of fibres from the material of the

pocket could be minimised. He therefore said that he treated the forensic evidence as neutral.

The learned trial judge rejected the appellant's evidence in favour of the version given by the soldiers. He held that the appellant's version was unconvincing in several respects (a) his explanation of why he was in the alleyway was unconvincing, because it was not a short cut to his destination the Swillybrinn Inn (b) his account of going drinking with his friend when he had only £2.05 in his pocket was equally unconvincing (c) he failed to mention to the police in interview that there was another man in the alleyway. We shall return to this last point later in this judgment. The judge therefore held that he was satisfied that the soldiers' version of the incident was correct and convicted the appellant on the first count in the indictment.

The arguments on the forensic issues were expanded on appeal to the Court of Appeal, where they were the central focus of the case. MacDermott LJ, giving the judgment of the court, considered first the presence of explosives residues on the appellant's left hand. He rejected the explanation which the appellant had advanced in the course of his evidence that he might have placed his hand on the wall and come into contact with the place where the device had been sitting, as it might have been moved by one of the soldiers. The court rejected this explanation as unworthy of belief.

It then went on to accept the evidence given on behalf of the Crown by Dr Murray, a forensic scientist, that it would have been possible for a careful assembler to have put together the device without contaminating the

outside of the jar with explosives residues. MacDermott LJ concluded at page 9 of his judgment:

> "The fact that there was a residue on his left hand is a factor in this case: neither it, nor the absence of residues in either pocket or the absence of fibres from that pocket on the jar prove or sustain the case of the appellant. They are all factors in the case which the judge in the context of this case was entitled to describe as "neutral".

The court had no difficulty in dismissing the argument that the absence of fingerprints on the jar was significant, pointing out that it had been handled and dealt with by the ammunition technical officer, who had gone through a procedure to make it safe. In the opinion of Mr Glass, a retired fingerprint examiner, it was highly improbable in these circumstances that fingerprints would have been retained on the surfaces of the jar. The court also accepted the judge's proposition that if the appellant had held the jar in his hand inside his pocket fibres would have been less likely to adhere to the outside. It accordingly concluded at pages 9-10 of the judgment:

> "The question for our consideration is whether or not this conviction is unsafe or unsatisfactory and Mr Mooney reminded us of the "lurking doubt" principle. If the appellant's case is right it means that a terrorist group (and the coffee jar bomb is an IRA favoured weapon) caused or permitted one of its new devices to be sitting on a wall alongside a busy street, in the middle of a June day and on a route that security forces would regularly take going to or coming from the Woodbourne base. This seems a wholly unlikely scenario. Turning back to the all important facts of this case we have no doubt that the judge was fully entitled to accept the evidence of the soldiers and conclude that the appellant had this bomb in his pocket, and we

share that conclusion. Accordingly the appeal is denied."

Fresh Evidence on Appeal

When the matter came before us the appellant called the forensic scientist Dr Lloyd and also Conor Bradley, but did not call Liam Magill. Dr Lloyd, an experienced forensic scientist, had not seen the bomb itself and gave his evidence by way of comment and review on the findings and conclusions expressed by Dr Murray in his evidence given at trial. He considered that it would be difficult to remove all traces of explosives residues from the outside of the coffee jar by cleaning, and that there was no evidence that any cleaning had taken place. He was prepared to accept, however, that a skilled and experienced bomb maker could have assembled the device without contaminating the outside of the jar with residues. He would have expected fibres to have been picked up from the inside of the appellant's jacket pocket and to have adhered to the outside of the jar, and traces of explosives to have been found on the inside of the pocket.

We considered that Dr Lloyd's evidence did not add anything to the matters which were before the trial judge and the court on the first appeal. All the issues which he canvassed were then debated, and we did not find anything in his evidence which caused us to doubt the validity of the conclusions reached on those earlier hearings.

Conor Bradley stated in his evidence before us that he had been walking up Suffolk Road towards the mouth of the alleyway with Liam Magill. He and Magill were on the same side of the road as the alleyway,

about 60 or 70 feet from its mouth. He saw a soldier standing on the footpath at the alleyway. When they were about 15 or 20 yards from the entry a fellow came out of it and turned down Suffolk Road in their direction. The soldier did not stop him, which made Bradley think that he and his companion were likely to be stopped. The soldier instead turned away into the entry. Bradley and Magill turned into the entry and saw there two soldiers and a fellow. One soldier was holding the man against the fence with a hand on his chest, while the other was across the entry on a "wee bit of grass" – he amended this in cross-examination to a "cement triangle". Bradley said that he and Magill walked through the middle of the group. The soldiers stared at them but did not stop them.

Bradley said that he heard on the radio about that time that a man had been arrested in possession of a coffee jar bomb on Suffolk Road and realised that he had seen him that day. He did not do anything about it, but in 1996 saw an article in the Irish News appealing for witnesses and recollected that he had been there on the day in question. He accordingly came forward and made a statement to the police.

We consider that a number of substantial difficulties exist in Bradley's account:

1. Neither the soldiers nor the appellant mention the two men walking through the group and along the alleyway, which they could not possibly have missed.

2. Bradley's account of hearing a broadcast about the arrest of a person with a coffee jar bomb was unconvincing and he shifted his ground a couple of times.
3. His account of reading the appeal in the Irish News and coming forward was even less credible.
4. If another man had come along the alleyway in front of the appellant, as he and Bradley averred, he could not have left the bomb on the wall, since they said that he went past Corporal Blackstock on the corporal's right, which is the side away from the wall where the bomb was placed.
5. The bomb would therefore have had to be left on the wall by some other person for anyone to see before the soldiers arrived on the scene. This suggestion seems to us extraordinarily unlikely.

We conclude that Bradley's evidence was not worthy of belief. We are unable to say how he came to bring his account forward, but we reject it as being a false account of the incident and we do not believe that he was there at all. The fact that such clearly false evidence was called by the appellant removes support from his case rather than adding it. In particular, it confirms the judge's rejection of the appellant's averment that another man went along the entry in front of him and passed the soldiers.

The Issues on the Reference

At the commencement of his argument on the appeal before us Mr Treacy QC stated that there were six relevant areas bearing on the safety of the conviction:

1. The judge's drawing an adverse inference under Article 3 of the Criminal Evidence (Northern Ireland) Order 1988.
2. The lack of a good character direction.
3. The non-disclosure of relevant material.
4. The new forensic evidence.
5. The new civilian evidence.
6. The new statements from the military witnesses.

We shall deal with these in a somewhat different order.

Forensic Evidence

As we have stated, the new forensic evidence does not add significantly to the matters which were before the trial judge and the Court of Appeal and dealt with satisfactorily by them, and they do not cause us to feel any degree of doubt about the safety of the conviction. We have already expressed our opinion about the new civilian evidence, which had the effect only of reinforcing the judge's conclusion that the soldiers' account was much preferable to that of the appellant.

Good Character Direction

The judge did not expressly give himself a reminder akin to the good character direction which he would have been bound to give a jury. We have

said many times in this court that a trial judge in a non-jury trial is not bound to spell out in his judgment every legal proposition or review every fact or argument (see, eg, *R v Thompson* [1977] NI 74 at 83). We cannot suppose that an experienced trial judge would be unaware of the need to bear in mind that a defendant is entitled to have his good character taken into account when determining the likelihood that his evidence is truthful. We see no evidence that the judge overlooked such an elementary point (which was drawn to his attention by defence counsel in his closing speech) and we are not prepared to conclude that he did: cf our remarks in *R v Rules and Sheals* (1997, unreported).

The Soldiers' Evidence

The Criminal Cases Review Commission re-interviewed in depth the soldiers who gave evidence at trial and in their statement of reasons set out various respects in which their evidence was not consistent with that given at trial. We had no admissible evidence before us to ground this issue and we have disregarded the matters dealt with in the Commission's statement of reasons. There may be cases in which it is proper to bring before the Court of Appeal evidence which tends to show that witnesses in the court below gave false or mistaken evidence. That would, however, have to be established by admissible testimony brought before the court, with leave obtained under section 25 of the Criminal Appeal (Northern Ireland) Act 1980. Unless there is some positive ground to suppose that evidence given was so suspect, we could not regard it as a desirable practice for witnesses to be re-interviewed

after a trial by defendants' solicitors to see if their evidence has varied in any respect.

Non-Disclosure

It was suggested, somewhat faintly, that the modest inaccuracies in the forms sent with forensic exhibits to the Northern Ireland Forensic Science Laboratories would have formed significant material for cross-examination and should have been disclosed, with the result that the failure to do so makes the conviction unsafe. We are unable to accept that there is any substance in this point, and note that the Commission did not consider that the non-disclosure of the forms was a factor material to the safety of the conviction. The errors were trivial and readily explicable and we do not think that it would have impressed the judge in the slightest if counsel had based any cross-examination on them.

Article 3 Inference

This leaves the issue which Mr Treacy put in the forefront of his argument on behalf of the appellant, the judge's drawing of an adverse inference under Article 3 of the 1988 Order and the effect of Article 6 of the European Convention on Human Rights. At page 7 of his judgment the judge posed the issue as being whether he accepted the account given by the soldiers or that given by the appellant, bearing in mind the burden of proof upon the prosecution to prove its case beyond reasonable doubt. He examined the evidence of the soldiers and the criticisms of that evidence advanced by the appellant's counsel. He then turned to the appellant's

evidence and subjected it to critical scrutiny. He said at page 9 that he found his evidence unsatisfactory, then set out the respects in which he so found it. He found his account of why he was at the place where he was arrested unconvincing. He thought that his explanation of his movements revealed "a strange scenario", involving going out drinking with very little money.

He went on at pages 11-12:

> "My main criticism of the defendant's case, however, relates to the fact that although at the hearing he alleged there was another man in the alleyway in front of him, he did not mention this at the time. I am not clear indeed at what time he did first mention this shadowy figure.
>
> He says that he mentioned it in the interview already referred to which was on the 7th June though there is no record of it in the police notes of the interview. Assuming he did mention it, it appears to me to be strange that he did not refer to the other person immediately when he was stopped …
>
> I think that I would be entitled to have regard to this sort of circumstances under the common law but certainly since the Criminal Evidence Order 1988. I am entitled to have regard to the fact that he did not even when he had received the written caution under article 3 of the order served on him on the 5th June did not then reveal the fact that he now seeks to rely on, namely, that there was another person at the scene at the time of the alleged offence.
>
> Mr McCrudden, in cross examination, put to the defendant that he ought to have referred to the fact that he had left his mother to go to meet his friend but I do not attach so much to these matters as to the fact that he did not say at best until the 7th June that there was another person present at the scene of the incident."

Article 3 of the Criminal Evidence (Northern Ireland) Order 1988, invoked by the judge, reads, so far as material:

> "3.-(1)Where, in any proceedings against a person for an offence, evidence is given that the accused –
>
> (a) at any time before he was charged with the offence, on being questioned by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings;
>
> …
>
> being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, paragraph (2) applies.
>
> (2) Where this paragraph applies –
>
> …
>
> (c) the court or jury, in determining whether the accused is guilty of the offence charged, may –
>
> (i) draw such inferences from the failure as appear proper …"

Mr Treacy's submissions concerning the judge's resort to Article 3 were twofold (a) Article 3 was not applicable at all, since the appellant did not rely in his defence on the fact that another man had been in the entry (b) the application of Article 3 in respect of a period when the appellant was denied access to legal advice was a breach of Article 6(1) of the European Convention on Human Rights.

In his evidence in chief (Transcript page 537) the appellant described seeing a man walking along the entry about 15 feet in front of him. He went

on to say, however (page 538), that he passed on the soldier's right hand side, so he could not have placed the bomb on the wall. The appellant said in cross-examination that he had told the interviewing officers about this man, but they had not recorded it. It is plain, however, that the judge rejected this when he invoked Article 3 of the 1988 Order.

Mr Treacy submitted that in mentioning the man in his evidence the appellant was not relying on a fact in his defence. There was no strong reason why he should have held back the fact during interview: he was not attributing the bomb to the man, which would have been a material fact in his defence and which he could reasonably have been expected to mention in interview, but it was more of an adventitious matter which emerged during the narrative of his evidence in chief. We consider that there is substance in this submission. As the English Court of Appeal observed in *R v Self* (1999, unreported), discrepancies between what is said in interview and a more complete account given in evidence will not necessarily justify the drawing of an adverse inference. The statutory provision is aimed at "ambush" defences, where a defendant deliberately holds back his defence in order to spring it on the prosecution at trial. We do not consider that this fact was a matter upon which he relied as an integral part of his defence or that it was something which he could reasonably have been expected to mention when questioned.

The judge accordingly was not justified in drawing an adverse inference under Article 3 of the 1988 Order. That does not end the matter,

however, for it is then necessary for us to consider whether his drawing the inference has the effect of making the conviction unsafe. He placed some emphasis on this point in reaching his conclusion that the appellant's account of the incident was untrue. If the evidence had remained as it was at the trial, we might have felt constrained to hold that we could not be satisfied that he must have reached the same conclusion about the appellant's account if he had not drawn the inference. We now have the evidence of Mr Bradley before us, which we have dismissed as a false account. We are satisfied that there was no other man in the entry, as described by him and by the appellant, and that forms a very strong reason for rejecting the appellant's account. Moreover, as we have said, the fact that false evidence is adduced to bolster an appeal in itself undermines the appellant's case. We have little doubt that if the judge had had Bradley's evidence before him he would have had no hesitation in rejecting the appellant's evidence. We consider that the Crown case is such that the conviction is safe, in spite of the judge's incorrect use of Article 3.

In putting forward his submission based on Article 6 of the Convention Mr Treacy relied on the decision of the European Court of Human Rights in *Murray v United Kingdom* (1996) 22 EHRR 29. The implication of that decision, if not the exact *ratio*, is that to draw an adverse inference under Article 3 from a defendant's failure to mention a fact during a period when access to legal advice was deferred would be a breach of Article 6(1) of the Convention. Mr Treacy submitted that such a breach,

constituting unfairness in the conduct of the trial, automatically made the conviction unsafe.

We do not consider that this argument can be sustained. The breach of the Convention, if such it be, took place before the Human Rights Act 1998 came into force, and the effect of the decision of the House of Lords in *R v Lambert* [2001] 3 All ER 579 is that a person appealing against a pre-Act conviction cannot invoke section 7(1) of the 1998 Act and claim that the judge's act in drawing the inference was unlawful. In *R v Kansal* [2001] UKHL 62 some members of the House of Lords expressed doubts about the correctness of the decision in *R v Lambert*, but the majority decided to uphold it.

In any event, for the reasons which we have expressed above, we consider that neither was the trial unfair nor was the conviction unsafe. The evidence given by Mr Bradley demonstrates the falsity of the appellant's evidence that there was another man there and in our view the judge's drawing of an inference that the appellant was lying on the subject did not have the effect of making the trial unfair. As Lord Bingham pointed out in *R v Forbes* [2001] 1 All ER 686 at 697, it is always necessary to consider all the facts and the whole history of the proceedings in a particular case to judge whether a defendant's right to a fair trial has been infringed or not.

If we are wrong in this conclusion, and there was, contrary to our opinion, a breach of Article 6(1) of the Convention, we consider that conviction was nevertheless not unsafe. Although Lord Woolf CJ stated in

R v Togher [2001] 1 Cr App R 457 at 468 that if a defendant has been denied a fair trial it will almost be inevitable that the conviction will be regarded as unsafe, the present case in our view constitutes an exception to the general rule. We respectfully agree with and adopt the remarks of Latham LJ in *R v Craven* [2001] 2 Cr App R 181 at 196-7, where he said in a case of non-disclosure of documents:

> "We take the view that this Court, empowered as it is under section 23 of the Criminal Appeal Act 1968 to consider the jury's verdict in the light of fresh evidence, should do so in the light of all the fresh evidence that is available to it. We are entitled, as it seems to us, to consider whether the material which was withheld could have affected the jury's verdict in the light of all the facts now known to this Court. If it could have done, the conviction would be unsafe. If, on the other hand, the material that has been withheld has not, on a proper analysis of the facts known to this Court, undermined in any way the verdict of the jury, then the conviction will be safe. In evaluating the significance of the evidence that has been withheld in the context of all the information now available, we consider that we properly secure the rights of the defence for the purposes of Article 6 of the Convention and serve the interest of justice. We acknowledge that in carrying out this exercise we are trespassing upon what at trial would be the function of the jury. But that is the inevitable consequence in any case involving fresh evidence. It seems to us that if on a proper analysis of the information available to this Court, the only reasonable conclusion is that the conviction is safe, in that the jury's verdict in the light of all the relevant material was correct, this Court would not be carrying out its statutory obligation if it did not give effect to that conclusion."

We note also that in *R v Lambert* [2001] 3 All ER 577 at 594 Lord Steyn, although dissenting from the majority on the issue for which we have cited

the decision, agreed with the majority in dismissing the defendant's appeal on the ground that even if the judge had directed the jury in accordance with the law as he had held it to be, the conviction would have been a foregone conclusion. We are conscious that in *Condron v United Kingdom* [2001] EHRR 1 the European Court of Human Rights held in paragraph 66 of its judgment that there was a breach of Article 6(1) once it was shown that the jury had been misdirected on the question of drawing adverse inferences. As Latham LJ said in *R v Craven* [2001] 2 Cr App R 181 at 197, it was making the point that the Court of Appeal was not entitled to substitute its own view for that of the jury in such a case. We would observe, however, that the Court of Appeal is in a different position in an appeal from a judge sitting without a jury, who sets out his reasoning from which it may be seen what reliance he had placed on the adverse inference. It is also able to assess the strength of all the evidence and the overall safety of the conviction, as in *Edwards v United Kingdom* (1993) 15 EHRR 417. We therefore consider that the conviction is to be regarded as safe, even if a breach of Article 6(1) were held to occurred in the present case.

Conclusion

For the reasons we have given we consider that the appellant has not made out any of the grounds on which he relied and we dismiss the appeal.

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

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J U D G M E N T O F

CARSWELL LCJ
