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(subject to editorial corrections)**

ICOS No: 81/000069

Delivered: 17/01/2025

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

**GEORGE KIRKPATRICK
CYRIL CULLEN
ERIC CULLEN**

**Ciaran Murphy KC with Robin Steer KC (instructed by the Public Prosecution Service)
for the Crown**

**Tim Moloney KC with Damien Halleron (instructed by Madden & Finucane, Solicitors)
for Eric Cullen**

**Desmond Hutton KC with Lara Smyth (instructed by Madden & Finucane, Solicitors) for
Cyril Cullen**

**Paul Taylor KC and Michael Halleron (instructed by Madden & Finucane, Solicitors) for
George Kirkpatrick**

Before: Keegan LCJ, Fowler J and Kinney J

KEEGAN LCJ *(delivering the judgment of the court)*

Introduction

[1] This is a reference brought by the Criminal Cases Review Commission ("CCRC") in relation to three men George Kirkpatrick, Cyril Cullen and Eric Cullen who were convicted of the murder of Mr Francis Rice in Castlewellan in 1975 and related offences. The appellant Cyril Cullen died in 2016. On 7 May 2021 George Kirkpatrick also died.

Previous examinations of this case

[2] The history of CCRC involvement is important. On 31 October 2000, the appellant George Kirkpatrick first applied to the CCRC. On 7 January 2003 the CCRC decided that there was no basis to refer the conviction. Within the reasons given refusing this initial referral the following information is found as to Kirkpatrick's case:

- “9.3 In his application form Mr Kirkpatrick says that during the interviews, officers Hassan and McAteer pushed him backwards and forwards, talked and shouted into his face, banged the desk with their fists, pushed and nudged him with their elbows and told him that his family would be shot. He recalls being given a “paper which was loosely folded over with approximately two inches showing at the bottom.” Mr Kirkpatrick signed the strip after McAteer said, “sign that and you will get whatever belongings you have” and “your wife and father will be waiting outside the gate to take you home.” Before Mr Kirkpatrick signed the paper, McAteer apparently added, “George we know you are innocent, but somebody has to go down for it.” Both policemen walked out of the room and then officer Wilson came in and charged Mr Kirkpatrick with the murder of Mr Rice.
- 9.4 The Commission met with Mr Kirkpatrick at the offices of Fisher & Fisher on the 24th of April 2020. Mr Kirkpatrick maintained that he had been tricked into signing a document, which later turned out to be a confession that the police had drafted. He said, however, that the piece of paper that was handed to him by the police for signature was not folded but was substantially covered by a folder. He clarified that he had only put one signature to the document but might have added the date. Mr Kirkpatrick said that he signed the document, not knowing that it was a confession and that he only realised that it was a confession when the officers returned to charge him.
- 9.5 Mr Kirkpatrick described his memory of the interviews as “foggy” and said that he cannot remember what happened at all and that this was the case even immediately after the interviews. He could not discount the possibility of having said something to the police during the interviews that he cannot now remember.
- 9.6 Mr Kirkpatrick indicated that he had taken little interest in the press reports of the murder of Mr Rice at the time when it occurred. He recalled that the police told him that Mr Rice had been stabbed with

the bayonet of a gun and told him how many times. The police also said that a body had been found, but they did not indicate where.

- 9.7 Mr Kirkpatrick was then invited by the Commission to look at a photocopy of the original handwritten statement, which has two signatures on the first page and three on the second page. Mr Kirkpatrick looked at the document and concluded that he was suspicious of all the signatures on it, indicating that he did not think that they were his own signatures. He then went on to say that the paper that he was given to sign by the police was plain (i.e. with no lines, unlike this confession document) and yellow in colour. The Commission notes that Mr Kirkpatrick's dispute about the authenticity of the signatures must also extend to the authenticity of the sentence at the end of the document which begins "I have read the above statement ..." and which also appears to be in his handwriting.
- 9.8 The Commission invited Mr Cavan, Solicitor, to discuss the confession document with Mr Kirkpatrick. After doing so, Mr Cavan advised that Mr Kirkpatrick maintained that the document he was given to sign was not lined and was yellow. Mr Kirkpatrick was not sure whether the signatures on the confession document were his or not and had indicated that he did not remember seeing that document before."

[3] The CCRC formed the following view.

- "9.9 The Commission considers that it is inconceivable that Mr Kirkpatrick (and his legal representatives at the trial) did not see the confession document at the time of the trial and appeal, as it was the sole evidence against him. It is also remarkable, if what Mr Kirkpatrick now says about the doubtful origins of the signatures is true, that the essence of his case to date has focused on him being tricked into signing a document that he claims to be the confession document rather than on the authenticity of the signatures on that confession document.

- 9.10 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. If, indeed, Mr Kirkpatrick did sign a plain, yellow piece of paper, once, that cannot have been the confession document. By implication therefore, he must now be saying that the police obtained his signature by a trick and then used it to forge his signatures on the confession document.
- 9.11 If, as Mr Kirkpatrick alleges in his application form, McAteer did say “George we know you are innocent, but somebody has to go down for it” before Mr Kirkpatrick signed a paper, which was put before him substantially covered from his view, that would arguably have put Mr Kirkpatrick on notice of a potential ‘problem’ with the document that he was about to sign. It is arguable that this fact would be inconsistent with Mr Kirkpatrick’s claim that he did not know that he was signing a confession. Further, Mr Kirkpatrick told the Commission (seemingly for the first time) that he had been told by the police that Mr Rice had been stabbed with the bayonet of a gun. If this was what he was told, then it is not unreasonable to assume that the confession would have made reference to this alleged fact whereas, in fact, the confession refers to a knife.
- 9.12 The Commission is bound to observe that Mr Kirkpatrick has at various times put forward inconsistent and irreconcilable accounts surrounding the confession document. The Commission has found only one document with Mr Kirkpatrick’s signature on it, and that is the confession document. He has now substantially altered his factual position about the confession statement from what it was at trial, on appeal and in his initial written application to the Commission. There is no evidence other than from Mr Kirkpatrick himself to support his contention now that the document in the Commission’s possession is not the confession document exhibited at his trial, or by implication, that his signatures on

it are forged. In the Commission's view, there is no real possibility that the Court of Appeal would be likely to regard his current account as capable of belief. Accordingly, having regard to the terms of section 25 of the Criminal Appeal (Northern Ireland) Act 1980, there is no real possibility that the court would be prepared to receive evidence from Mr Kirkpatrick on this issue."

[4] In addition, a complaint was lodged with the Police Ombudsman of Northern Ireland ("PONI") by BBC Northern Ireland on 10 February 2006 following investigative journalism and the obtaining of some expert advice from Professor Jack Crane and Dr Adrian East. To be clear the said expert reports were limited and brief opinions as they were not informed by full paperwork or analysis. They simply raised some queries as to whether the deceased had suffered any beating (Prof Crane) and whether the confessions were reliable (Dr East).

[5] Having investigated the complaint PONI found nothing of note. Specifically, in its response to the complaint PONI recorded the work it undertook including ESDA testing as follows.

"Regrettably, therefore, it has not been possible to submit the interview notes for ESDA testing. In the absence of these notes, Police Ombudsman investigators considered it important to submit your statement of confession for forensic analysis to test their integrity. ESDA tests conducted on these original documents found no irregularity nor evidence of overwriting or indentations."

[6] On 13 November 2018, all three appellants applied to the CCRC, and a referral was subsequently made. Permission was granted for the next of kin to pursue these appeals on behalf of the deceased.

CCRC reasons for the current referral

[7] On 9 December 2022 the CCRC referred appeals to the Court of Appeal in relation to all three men. The CCRC provided their main statement of reasons in respect of George Kirkpatrick with addendums provided in relation to Cyril Cullen and Eric Cullen.

[8] The primary basis for the referral is that key officers involved by implication or directly who interviewed the appellants in 1980 were later the subject of significant criticism by the Court of Appeal in *R v Latimer, Hegan, Bell & Allen* [1992] 1 NIJB 89.

[9] Specifically, the CCRC reasons for the current referral are summarised in the Executive Summary as follows:

- (i) On 24 June 1981, before Lord Justice O'Donnell at the Belfast City Commission, George Kirkpatrick, Eric Cullen and Cyril Cullen were convicted of the murder, kidnapping and false imprisonment of Francis Rice on 18 May 1975 near to Castlewellan in County Down.
- (ii) The trial had centred around disputed admissions to the offences, alleged to have been volunteered by the appellants in the course of their interviews by RUC officers. George Kirkpatrick and Eric Cullen stated that they had not volunteered admissions, which have been concocted by the police; nothing in the witness statements have been said by them; and they had signed the statements not knowing what they contained. Cyril Cullen stated that he had agreed to sign the confession statement owing to intimidation and threats which he had been subjected to in police interview. He disputed that the contents of the confession statement were a true account of involvement in the offence.
- (iii) There was a direct conflict of evidence at trial between the interviewing officers and the appellants regarding how the alleged verbal confessions and written statements came to be made. Having considered all of the available evidence in the course of a lengthy voir dire, the trial judge decided the dispute in favour of the police and ruled that the confession statements would be admitted in evidence.
- (iv) The CCRC understands that key officers who interviewed the appellants were later the subject of significant criticism in the Northern Ireland Court of Appeal's decision of *R v Latimer, Hegan, Bell and Allen* [1992] 1 NIJB 89. Having considered the court's findings in that case, the CCRC considers that the officers' credibility as witnesses of truth in criminal proceedings is substantially weakened.
- (v) If the trial judge had been aware of serious concerns regarding the officers' integrity, the CCRC considers that this would have been likely to cause him to doubt the reliability of the officers' accounts that the appellants had made voluntary admissions to the offences in question. The CCRC considers it likely that this would have led the 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 the evidential weight of the admissions was significantly reduced.
- (vi) The CCRC considers that those matters would cause the Court of Appeal in the words of Kerr LCJ at para 32(iv) of *R v Pollock* [2004] NICA 34: "a significant sense of unease about the correctness of the verdict" in this case. Accordingly, the CCRC concludes that there is a real possibility that, on the basis of the subsequent findings against the relevant officers in *R v Latimer* the

Northern Ireland of Appeal would conclude that Mr Kirkpatrick's conviction is unsafe.

[10] All three appellants rely on the CCRC's reasoning outlined above in support of their appeal. In addition, leave was sought by the appellants 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 the appellants. A third ground raised by Mr Taylor also asked the court to consider some alleged discrepancies in the evidence.

History of the trial in 1981

[11] On 24 June 1981 the appellants were convicted of the murder, kidnapping and false imprisonment of Francis Rice on 18 May 1975. It is common case that the prosecution case relied entirely on the admissions made by the appellants at police interview.

[12] The evidence may be summarised as follows. On the night of the murder in the early hours of 18 May 1975 at about ten past midnight, the deceased Francis Rice was seen walking on the Rathfriland Road, Castlewellan after leaving the Oak Grill. Two men were witnessed following him, a third man was seen in a car parked with its sidelights on.

[13] Later that morning the deceased's body was discovered by the side of a road having suffered 10 stab wounds. There was no sign of a struggle at the locus, leading police to initially believe that he had been killed elsewhere. James Damien Rice, the deceased's brother, gave evidence at trial that he saw Mr Kirkpatrick observing him and his brother on 16 May 1975, the night before the murder.

[14] It is common case that the trial centred on a direct conflict between the evidence of the interviewing police officers and the appellants. The admission of the confession statements was challenged in a voir dire hearing. We do not have a full record of this given the passage of time but from what we do have we can discern the following as the prosecution has helpfully confirmed in its skeleton argument. First, we can see that the trial commenced on 10 June 1981 and after a number of witnesses gave evidence (presumably agreed) the defence indicated that the admissibility of the statements was to be challenged, and a voir dire commenced. The voir dire proceeded between 10 - 15 June 1981.

[15] During the voir dire, and again when re-called for their evidence at trial, all three appellants disputed their admissions. Kirkpatrick and Eric Cullen made the case that they had not volunteered admissions at all but that these had been concocted by police and that they signed the statements not knowing what was in them. Cyril Cullen made the case that he had signed the statement of admission having been intimidated and threatened at police interview but denied that his admissions were true.

[16] The court heard medical evidence from the three doctors who gave evidence at the trial from their notes that each appellant confirmed to them that they understood their witness statement of admission and agreed with it and that no coercion was used in obtaining it, none made any allegations of ill-treatment to the doctors.

[17] On 10 June 1981 George Kirkpatrick gave evidence followed by interviewing officers DC McAteer and DC James Hasson, who had taken his written statement of admission, as well as several other officers including DSgt Thomas Clements.

[18] On 10-11 June 1981 Eric Cullen gave evidence. On 11 June 1981 DC Gerald Miller gave evidence followed by Dr David Wylie, DC Shiels, DC Robert Cunningham and DC John McAteer.

[19] On 12 June 1981 Cyril Cullen gave evidence, also Dr David Wylie. On 15 June 1981 his interviewing officers were called.

[20] On 15 June 1981 the Judge provided a ruling in respect of the admissibility of the statements and rejected the defence application that they should not be admitted. The trial therefore proceeded. The relevant officers were then recalled to give evidence of the statements and the Crown case closed. Kirkpatrick was also recalled on this date.

[21] On 16 June 1981 Eric Cullen was recalled and a number of defence witnesses. These were to support claims that the appellants had an alibi on the night in question.

[22] On 17 June 1981 Cyril Cullen was sworn and a number of defence witnesses.

[23] On 18 June 1981 submissions were made by the Crown and the defence.

[24] On day 8 of the trial, 24 June 1981, judgment was delivered, the appellants were convicted after trial by Lord Justice O'Donnell.

[25] At this point, we record in brief some extracts of the reports of the trial from the Mourne Observer which counsel has asked us to consider.

(i) The 11 June 1981 report refers to the opening of the trial:

“At the outset Crown counsel said it would be the Crown’s contention that the three accused had followed Rice out of Castlewellan on May 18, 1975, with the intention of killing him or causing serious injury to him because they believed he was a member of the Provisional IRA.

Counsel said that at 9.20am on May 18 1975, Rice’s body was found in a laneway at the side of the Castlewellan/Rathfriland Road. He had died as a result of

a total of 10 stab wounds to his body. Deceased had last been seen walking on the Castlewellan Road at 12:10am by a Mr Ward, who also saw two other men walking behind him.

It was stated that no one was made amenable for the crime for five years. The three defendants were arrested at the end of July 1980. They were interviewed at Gough Barracks, Armagh, and it was the content of alleged statements by the three that would be at issue.

It is the Crown case that the three followed Rice that evening when he left Castlewellan. They were all in Kirkpatrick's car. They bundled him into the car, and he was driven to the scene of his killing.

The Crown say he was stabbed by Eric Cullen while he was in the company of the other two. Their intention was to kill or seriously injure him.

All three believed him to be in the Provisional IRA."

- (ii) The report on 18 June 1981 contains a report of other trial evidence some of which has been referred to as follows:

"Thursday's and Friday's Evidence

Eric Cullen said he was asked at one stage to give a statement in writing but when he looked at what the policeman was putting down, he saw that it implied that he was in George Kirkpatrick's car on the night of the murder. He told the police then that it was wrong and that it was not the statement he wanted to make. He said the paper was then taken away.

Cullen was shown a statement and said that the first few lines were the same, as far as he could tell, as those written down by the police which he had objected to. Cullen said he had never seen the rest of the statement, but he had signed it because of the pressures put on him. He signed when he was at a stage when he did not care anymore and would have signed anything. But he added that he would not have signed a confession to murder if he had known the statement contained such an admission.

He told the judge, Lord Justice O'Donnell, that he did not admit to police that he had killed Rice. He said he did not even run about with George Kirkpatrick at the time and that he was at his girlfriend's house on the night of the murder.

Cullen agreed that he had told police that he was not really a Loyalist and that he was not a member of the Orange Order. But he denied that any conversation had taken place with the detectives about a Provo attempt to shoot his father some time previously, although it was, in fact, true. He said he did not tell police in Armagh about the incident in which someone fired through the doors and windows of the house. He told the court that the detectives might have got this information from the local police.

Cullen said that a detective had put his hands on his neck and told him to straighten up, that the detectives had kicked the chair and swore at him and threatened to bring in his girlfriend.

He also said that he had been very sick in his cell at Armagh and had been given tablets by a doctor.

Lord Justice O'Donnell asked him "You are saying that not one policeman but six of them have concocted these statements" and Cullen replied "Yes." Cullen said he had asked to see the statement.

A Detective Constable who interviewed Eric Cullen said that the accused had been cautioned and had behaved normally under such conditions, like any other person being interviewed. In one of the interviews attended by the witness, Cullen had made a number of verbal statements which were recorded in notes take by police during the questioning.

The constable said that he may have used the word "bloody" a few times, but he did not curse at the accused nor bang the table nor threaten to bring in Cullen's girlfriend.

Two doctors who saw Eric Cullen while in police custody said he had made no comment to them about mistreatment.

Tuesday Morning's Evidence

Tuesday morning's hearing began with the evidence of Eric Cullen – questioned by Mr Boal and cross-examined by Mr Creaney.

Cullen stated that he had first become aware of the murder at around dinnertime on the Sunday. An officer, who said he was conducting door-to-door enquiries, asked where he had been the previous night. Defendant replied that he had been with his girlfriend and added in court that he had given much the same explanation when he was questioned five years later.

Describing his movements on the night in question, Cullen said he had been working on a farm and returned home at around 8pm. After cleaning himself up he drove to the home of his girlfriend, Anne Priestley, about half a mile away.

They went to Dickson's Café in Ballynahinch and then to the Athletic Bar, also in Ballynahinch. They left the bar at 11:00-11:05pm and returned to Miss Priestley's home, arriving at 11:35-11:40pm.

'We sat and talked and courted', said Cullen. 'I spoke to her mother and father when they came back at about 12:30am.

We were all in the same room for about 15 minutes. Approaching 1:00am I went home. When I reached my own home my father let me in. My mother was in the living room. After speaking to her I went straight up to bed. Cyril did not come home in my time.'

Cullen said he rose the following morning at about 10:30-11:00am and decided to wash his car. It was while he was doing this that the police officer arrived. Cyril, he said, was not at home when the police were there but arrived home at about 1:00pm.

'I took it that he had been down at his girlfriend's house.'

Cullen stated that he had not spoken to anyone the previous night. He had not spoken to George Kirkpatrick.

Mr Boal – ‘Did you carry a knife at that time?’

Cullen – ‘No.’

Judge – Did you use a knife in your work as a decorator?’

Cullen – No. I had a knife when I was in the Boy Scouts. I left when I was 15 and never carried a knife after that.’”

[26] We will not record all of the other evidence contained in statements, including statements which were made for the inquest in 1976 save to confirm that we have read same. We also note that the judge heard evidence of the appellant’s alibis during the trial. Some emphasis on appeal was upon evidence as to Kirkpatrick’s presence in the area around the time of this murder. On that we note that the trial also heard evidence from other witnesses including James Damien Rice, the brother of the deceased, who said that he saw Kirkpatrick observing him and his brother on 16 May 1975 which was the night before the murder. Mr Taylor has raised inconsistencies in some of this evidence which we discuss later in the judgment.

[27] As counsel have noted in the written arguments, extensive inquiries have been undertaken in attempts to obtain the original trial and appellate papers from solicitors and from the court shorthand writers. It has not been possible to obtain all of the relevant records in this case. What we do have to work on is a summary of evidence found in the trial judgment and some press recording of the trial sourced from the Mourne Observer. As regards the latter there was no objection to us receiving it pursuant to section 25 of the Criminal Appeal (Northern Ireland) Act 1980 to be considered de bene esse.

The judgment of LJ O’Donnell

[28] We set out some critical parts of the trial judge’s ruling as follows. First, the basis of the objection to the admissibility of statements is set out in the following portion of his judgment:

“The defendants all objected to the admissibility of these statements, not on the grounds that they were ill-treated or subjected to torture, inhuman or degrading treatment, but on the basis that I should exclude the statements in the exercise of my discretion, because the manner of their taking was, it is alleged, unfair and their admission would therefore militate against a fair trial.”

[29] Of note is that the judge in his overall conclusion found as follows:

“I am satisfied, however, that no circumstances arise in the present case which call for the exercise of this discretion.

In the case of Kirkpatrick and Eric Cullen, both alleged the statements were concocted by the police and nothing contained in them had been said by them and they signed statements not knowing what they contained. This raised a totally different issue, unconnected with the issue of my discretion. Cyril Cullen alleged he made a statement after interrogation in which threats were made that his wife would have to be interrogated; and he was shouted at and cursed at, and eventually a statement was written out for him which he signed because he then did not care.

Dealing with Kirkpatrick and Eric Cullen first, the police denied any suggestion that they had concocted the statements signed by the defendants or that they had tricked or coerced them into signing the statements. Despite the fact that they were seen after making the statements by relatives and solicitors, no complaint was made at that time about the statements being unlawfully or unfairly obtained. If the allegations made against the police are true, it would represent a deplorable state of affairs. If they were true, then a large number of police had conspired together to wrongfully accuse, and wrongfully convict two totally innocent men. While it would be idle to believe that there are no bad policemen, if so, many are engaged in such a widespread and vicious conspiracy, then the law may be said to be totally discredited. Having seen the police give evidence and comparing them with Kirkpatrick and Eric Cullen, I have no doubt where the truth lies. I reject the allegations made by the two defendants and I accept the police evidence. I am fortified in this by the independent evidence of three doctors who were called in after the statements were made presumably to ensure that there had been no ill-treatment during the taking of the statements."

[30] The trial judge also discusses the medical evidence in his judgment. In particular, he refers to the fact that Kirkpatrick was seen on 31 July at 12:20 hours by Dr Adams, having signed his statement. Dr Adams asked if understood his statement, if he agreed to it and whether he was alleging that any force was used to procure it. The judge records as follows:

"Kirkpatrick's reply which was recorded was that he had made the statement, that he understood it, and agreed to it, that no coercion was used in obtaining the statement, and that he had no allegations of ill-treatment."

[31] The judge then turns to Eric Cullen who was seen after his alleged confession by Dr Wylie at 18:30 hours on 1 August. The judge records that Eric Cullen told Dr Wylie that he had made a statement that afternoon, that no force or coercion was used, that he was quite happy with what he had said in the statement, and he had no complaints as regards abuse or ill-treatment. The judge's conclusion on this is stated in trenchant terms as follows:

"It was inconceivable to me that these two independent witnesses, doctors were a party to a conspiracy. They gave their evidence honestly and produced the recorded notes of that interview. They corroborated the police evidence and confirmed the impression I had already formed that Kirkpatrick and Eric Cullen were not merely liars but were quite prepared to invent and smear in an effort to discredit statements freely made by them."

[32] The judge then deals with the position as it relates to Cyril Cullen. As to that, he states that nothing in his evidence raised any doubt in his mind regarding the statement made by him for the following reasons:

"At worst the police shouted at him and may occasionally have used bad language during some of the interviews, a fact admitted by them. While one would wish that all interviews should be conducted in a low key, with no bad language, I am not prepared to say that shouting or bad language or even a suggestion that his wife would be interviewed would make the statements inadmissible or compel me to exclude them in the exercise of my discretion. The degree, of course, of bad language and shouting would have to be considered from time to time in considering whether the discretion should be exercised."

[33] In a further part of the judgment the judge also says:

"In light of this medical evidence, it perhaps is indicative of the attitude of all the defendants towards the truth. Even the doctors were included in the category of liars, in that they all denied having made the alleged statements to the doctors."

[34] We summarise further relevant aspects of this judgment as follows:

- (i) The objection to admissibility was not on the grounds of ill-treatment but relied on the manner in which the statements were taken.

- (ii) George Kirkpatrick and Eric Cullen alleged that the statements were concocted by police, nothing had been said by them and they signed the statements not knowing what they contained. Cyril Cullen alleged the statements were made after interrogation in which threats were made against him and his wife, and he was verbally abused.
- (iii) No complaint was made by George Kirkpatrick or Eric Cullen at the time of the taking of the statements.
- (iv) If the allegations were true a large number of police had conspired to convict both men.
- (v) The judge expressly relied on a comparison between the evidence of the police officers and that of George Kirkpatrick and Eric Cullen. In doing so he rejected the appellants' allegations and accepted the police evidence.
- (vi) The judge also placed considerable weight on the evidence of Dr Adams and Dr Wylie who gave evidence that no complaint of ill-treatment was made by George Kirkpatrick and Eric Cullen and that they understood and agreed with their admissions and had no complaints.
- (vii) The judge, on the evidence available to him, inevitably concluded that George Kirkpatrick and Eric Cullen were not merely liars but were prepared to invent and smear in an attempt to discredit statements freely made by them.
- (viii) With regard to Cyril Cullen the judge accepted, as conceded by police that they had used bad language towards him. He noted that Cyril Cullen had alleged that they had shouted at him and suggested that his wife might be interviewed. The learned trial judge concluded that this would not render any statements inadmissible.
- (ix) The trial judge again relied on the fact that Cyril Cullen had advised Dr Wylie that he had no complaint of ill-treatment, that no threats were made and that he did not wish to change his statement.
- (x) The judge concluded by stating that the police did nothing improper or unfair in the interrogation of the defendants' or in the taking of their statements.
- (xi) No complaint was made to relatives or solicitors whom he saw after signing their statements of admission;
- (xii) That the doctors "gave their evidence honestly and produced the recorded notes of their interviews."

- (xiii) The judge placed considerable emphasis on the medical evidence and that the appellants not only denied their written statements of confession but also the alleged statements made to the doctors. The trial judge stating:

“In the light of this medical evidence, it is perhaps indicative of the attitude of all the defendants towards the truth. Even the doctors were included in the category of liars, in that they all denied having made the alleged statements to the doctors.”

Appeal to the Court of Appeal

[35] On 7 May 1982 the appeals against the murder conviction were dismissed by the Northern Ireland Court of Appeal. The grounds of appeal that were raised in each case are identical and appear to focus on the murder conviction and not the other convictions for kidnapping and false imprisonment as they read as follows:

“The verdict of guilty of murder was unsafe and unsatisfactory in the following respects:

- (i) The learned trial judge drew inferences from the written statements of the accused which were unwarranted in the circumstances; inferences being essential to a proper finding of murder.
- (ii) The learned trial judge drew an improper conclusion from the attitude adopted by the accused in his defence and allowed this to distort his interpretation of the accused’s statement.
- (iii) More particularly, the rejection by the learned trial judge of the accused’s contention that his statement had been improperly obtained led him wrongly to reject the truth of the contents of the statement.
- (iv) The learned trial judge on two occasions during the trial warned the accused Cyril Cullen of the consequences of repudiating this statement and by the terms of such warning showed that he was likely to draw unreasonable and illogical inferences from the failure to observe same, which in fact he did.”

[36] The three appellants were therefore convicted on three of the counts of indictment, namely murder, false imprisonment and kidnapping. One further charge of assault occasioning actual bodily harm was left on the record. They were sentenced

to life imprisonment on the murder charge and 10 years' imprisonment on the other two charges to run concurrently.

R v Latimer, Hegan Bell & Allen

[37] This decision is heavily relied on by the CCRC as DC McAteer, DC Shiels and DSgt Clements were all criticised in *Latimer* for being involved in concocted or fabricated statements. The interviews in *Latimer* were conducted between 29 November – 5 December 1983 being approximately three years after the interviews in the present case. The officers' wrongdoing was exposed after ESDA testing of the statements involved in the *Latimer* case as this forensically exposed the shortcomings and resulted in a quashing of the convictions of some of the appellants.

[38] The relevance of this judgment to the present appeal is said to be as follows:

- (i) DC McAteer was involved in the re-writing of one interview in respect of the appellant Bell and was complicit in obtaining a false authentication of that interview from a senior officer.
- (ii) DC McAteer was also involved in the re-writing of two interviews in respect of the appellant Allen, in one instance this probably included the re-writing of an interview after it had concluded, and which had been described by the court as a crucial interview. Again, a false authentication of this interview was obtained from a senior officer.
- (iii) In the present appeal DC McAteer was the lead investigator and was the lead interviewer in the interviews where substantial admissions were alleged to have been made by George Kirkpatrick. DC McAteer was also the lead interviewer in the interview where Eric Cullen made substantial admissions and was also the officer who recorded his written statement of admission.
- (iv) DSgt Clements and DC Shiels were both involved in the re-writing of an interview in respect of the appellant Bell which was described by the court as being a vital interview and which caused the court grave concern.
- (v) In the present appeal DSgt Clements was the senior investigating officer, he was involved in the interview with George Kirkpatrick where he was alleged to have made an initial admission. DC Shiels was also a member of the interviewing team albeit his involvement in three interviews with Eric Cullen did not result in any confessions.

[39] At this point it is important to state that none of the police officers impugned in the *Latimer* case were involved in the interview process or in taking the statement from Cyril Cullen.

Complaint files

[40] In addition, for the purpose of this appeal a Summary of Disciplinary Findings in relation to some of the police officers involved in this case was provided to the CCRC and this court. There are a total of thirteen complaint files. In summary, eleven of the complaints relate to assaults on detainees during interview at Gough Barracks, Castlereagh, Armagh or Portadown stations.

[41] It is not necessary to outline the entire detail of this material which we have read and considered. In summary the police misconduct material shows as follows:

- (i) DC Hassan who was involved in taking Kirkpatrick's statement had sixteen complaints recorded against him during this period. DC Philips, who was the second officer involved with DSgt Clements, had two complaints recorded.
- (ii) DC Shiels and DSgt Clements had several disciplinary findings against them during the relevant period.
- (iii) DC Shiels, also involved in interviews but not involving admissions was criticised in *Latimer* and had disciplinary findings. Other officers such as DC Davison and DC Phillips were not involved in taking statements but had complaints recorded against them.

[42] The prosecution did not take issue with the court receiving police complaints or disciplinary findings or the newspaper articles; by way of fresh evidence to be considered de bene esse.

R v Thompson

[43] Some of the personnel in *Latimer* also featured in *R v Thompson* [2024] NICA 30. This was a case where the Court of Appeal quashed a historic conviction due to a constellation of factors. To be clear it was a case based on contemporaneous allegations of police misconduct by the appellant which the court found were subsequently validated by misconduct records and the *Latimer* decision. In that case the trial judge Jones LJ was quite clear that if any of the allegations of mistreatment were made out, he would not admit the confession statement.

[44] In *Thompson* fresh evidence was admitted, concerning in effect, bad character evidence which the court found had potential relevance as bad character evidence and concerned similar allegations made by other detainees against the same officers. The complaint files raised a possibility of a culture of oppressive behaviour at Bessbrook Police station practised by two officers who had been alleged to have subjected the appellant to ill-treatment. The Court of Appeal found that if this had been disclosed at trial the trial judge may not have admitted into evidence the admissions.

[45] As the veracity of the confession in *Thompson* was affected by the unreliability of the police officers and there was objective and cogent evidence discrediting the officer who took the false confession, the Court of Appeal considered that the trial judge may have been persuaded that the police officer was not the honest and truthful witness that the trial judge had thought he was which was relevant to the key issue as in order to be satisfied that the appellant had not been ill-treated, the court had to rely heavily on his assessment of the police witnesses as being truthful and reliable.

[46] The core findings in *Thompson* at paras [73]-[80] highlight the fact sensitive nature of this decision as follows:

“[73] In truth the case boils 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. We do not think that the fact DI Mitchell’s dishonest actions were discovered in another case which concerned behaviour eight years later can win the day. That is because we are of the view that if the trial judge had known that DI Mitchell had the potential to falsify a confession as he was subsequently found to have done, he may have felt compelled to rule the confession inadmissible. Without the confession as he said himself the prosecution must fail.

[74] It is of course 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, Mr Thompson’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.

[75] In addition, there is now cogent evidence of ill treatment allegations made against other police officers who were present at the appellant’s interviews comprised in the PPS summary of complaints taken from DPP files

and introduced as fresh evidence. This is akin to non-defendant bad character evidence. Mr O'Donoghue rightly conceded that on its own this evidence could not lead to a successful appeal. However, given the factual matrix of this case which is distinct from many of the other cases this court has considered in this general area, such evidence has 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.

[76] We can understand why the prosecution seek to divert from this core consideration by reliance on the medical evidence and the trial judge's assessment of it. True it is that the judge preferred the prosecution medical evidence. However, we think that the entire case takes on a different complexion once the admissibility of the confession is called into question. In addition, Jones LJ was quite clear that if any of the allegations of mistreatment were made out, he would not admit the confession statement.

[77] We cannot rewrite the judge's findings on the medical evidence. However, there is another element to this case which is interconnected namely the veracity of the confession given the unreliability of DI Mitchell. This case features objective and cogent evidence which discredits the police officer who took the alleged confession. That fact is obviously 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 ill-treated, 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.

[78] Drawing all of the above together, we summarise the position of this court as follows. If the information we have examined in this appeal 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 is, therefore, a real possibility that the trial judge may have been persuaded that DI Mitchell was not an honest and truthful witness as he thought.

[79] In addition, the now disclosed complaint files raise the possibility that there was potentially a culture of oppressive behaviour including 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 is a real possibility that they would have enabled the defence to undermine the credibility of those witnesses by way of bad character.

[80] 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 is, therefore, a real possibility that if these documents had been disclosed the trial judge may not have admitted into evidence the admissions."

Summary of the interviews of the appellants in this case

(i) George Kirkpatrick

[47] George Kirkpatrick was arrested more than five years after the murder on 29 July 1980 and taken to Armagh Police station. He was interviewed on eleven occasions over two days. 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.

[48] Following from this Eric Cullen and Cyril Cullen were then arrested on the morning of 31 July 1980 and also taken to Armagh Police station. Both later made written confessions on 1 August 1980 which corresponded with Kirkpatrick's. The relevant portions of the interviews are summarised as follows.

[49] In Kirkpatrick's seventh interview on 30 July 1980 at 14:00-16:05 hours involving DC McAteer and DC Hassan he admitted that he frequently parked his car outside the Oak Grill and watched Roman Catholics going in and out because he believed that they were all connected with PIRA.

[50] In Kirkpatrick's eighth interview on 30 July at 16:10-18:00 hours involving DS Thomas Clements and DC Oliver Philips, he made his first admission when he spontaneously shouted out that "it was an accident" but made no further reply.

[51] In Kirkpatrick's ninth interview on 30 July at 19:10-22:35 involving DC McAteer and DC Hassan Kirkpatrick 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.

[52] In Kirkpatrick's tenth interview on 31 July at 09:45 involving DC McAteer and DC Hassan Kirkpatrick admitted that he and Eric and Cyril Cullen took Mr Rice, had intended to give him a beating and that they all did so. He then said that he saw Eric Cullen produce a knife and stab Mr Rice.

[53] Kirkpatrick then made a witness statement to DC Hassan to that effect between 10:30-11:15 hours in the presence of DC McAteer which he signed in various places.

[54] The written statements which record the above of DC John McAteer and DC Kenneth Hassan are both dated 19 January 1981 nearly six months after the interviews and both are identical (save for when they referred to themselves).

[55] DSgt Clements was present at two interviews one on 29 July and the second on 30 July. The interview on 30 July from 16:10-18:00 is when Kirkpatrick was alleged to have made a partial admission that it was "an accident." The following interview involved DC McAteer from 19:10 hours and resulted in the substantive admissions. Again, DSgt Clements provided his witness statement on 19 January 1981.

[56] Kirkpatrick did not allege torture or inhuman treatment at any stage against police at the time of his detention. In addition, we have been referred to a signed handwritten statement which is witnessed by Kirkpatrick's solicitor, John Minnis, dated 9 June 1981 and which reads as follows:

"I, George Stanley Kirkpatrick, despite being advised by Mr Boal QC that it would be in my best interest to admit the statement signed by me in this case and to avail myself of the possible defence raised therein and understanding that refusing to do this is liable to result in a conviction for murder and a life sentence, insist that Mr Boal contests and challenges the statement which I deny making."

(ii) Cyril Cullen

[57] Cyril Cullen was interviewed on 31 July 1980 and at 14:00 hours by DC McCabe and DC Davison. George Kirkpatrick's confession was put to him on 31 July and 1 August 1980.

[58] On 1 August 1980 at 14:05 when interviewed by DC McCabe and DC Morwood Cyril Cullen signed a statement of admission. This was taken by DC McCabe and witnessed by DC Morwood between 15:10–15:50 hours.

[59] Cyril Cullen's case was that his confession arose due to intimidation and threats and that the account provided was not true. Whilst the allegation of concoction was not made by him and his interviews did not involve officers affected by *R v Latimer* the CCRC refer to *R v McCartney & MacDermott* in which the court noted that the other officers were part of the same investigation team, and that material deployed against those officers could also have been used to discredit the other officers. The CCRC therefore maintain that the credibility of the confession obtained in this case was infected by that in respect of the other officers.

(iii) Eric Cullen

[60] Eric Cullen was interviewed on two occasions on 1 August 1980 by DC McAteer.

[61] In the second interview on 1 August 1980 from 16:00–17:18 hours Eric Cullen confessed and made a statement of admission. This was after he had been confronted with the admissions allegedly made by Cyril Cullen and George Kirkpatrick, see CCRC Statement of Reasons paras 2–3. The statement of admission was taken by DC McAteer in the presence of DSgt McKimm between 16:45 and 17:15 hours.

[62] DC Shiels was also involved in three interviews with Eric Cullen, however, these took place on 31 July 1980 prior to any admissions being made.

The impugned confession statements

[63] Kirkpatrick's two-page confession statement was taken by DC Hassan on 31 July 1980 in the presence of DC McAteer and reads as follows:

“On Saturday night the 17th May 1975, I left home in my car, a red Cortina 2000 cc GXL, Reg. No. AIB 1519. I brought my father and mother into Castlewellan and took them to the “Old Tom” pub. This was about twenty past nine. I then went and I think I had a drink in Ross's pub and eventually ended up parked in the middle of Castlewellan town, opposite the Oak Grill. This was in the Upper Square, Castlewellan. I sat for sometime on my own

before Eric and Cyril came and got in the car. We drove around the town a few times to see who was about. Eventually we ended up back in the Upper Square sometime between half eleven and twelve. We sat for a while and then we saw a young fella leave the Oak Grill. One of the Cullen's said that he was a fella called Rice, and he was a Provo. Some of them suggested picking him up and giving him a bit of a thumping. We waited until he walked out the Kilcoo Road and I drove out after him. He was just out past the filling station on the right when we overtook him. The boys bundled him into the car and told me to drive on out the road. I drove on out to Cabra and turned right down a road and stopped beside a gate into a field. We got out and started to give the boy a bit of a thumping. During this a knife appeared and I think it was Eric who had the knife. Rice was stabbed, am not sure how often. We panicked and got back into the car and drove back into Castlewellan and I dropped the two boys off. We left Rice lying at the hedge. I went home and went to bed. The next morning, I checked the inside of my car and everything was all right. I don't know where the knife went. As far as I am concerned this was an accident."

[64] Eric Cullen's two page confession statement was taken on 1 August 1980 by DC McAteer in the presence of DSgt McKimm and reads as follows.

"On Saturday 17th May 1975, I was out with my girlfriend until about 10:00pm. I left her home at that time, and I then went up to Upper Square, Castlewellan, where I met up with my brother Cyril and George Kirkpatrick at King's shop. The three of us got into Kirkpatrick's car which was a red coloured Ford Cortina with a black roof. The car was parked in the car park in the middle of the Square. I sat in the front and Cyril was in the back. We drove around the town a few times and then parked in the Square opposite the Oak Grill. At about 11.40pm I saw a young fellow who I know to be called Rice coming from the back of the Oak Grill. I told my brother and Kirkpatrick that the talk was that Rice was a Provo. Rice walked down the Main Street and out the road towards Kilcoo. We all decided to follow him and as we caught up with him at the Dublin Road just past the factory, Kirkpatrick stopped the car and Cyril and myself got out and walked behind Rice. Kirkpatrick drove down the road towards Kilcoo and stopped about a hundred yards in front of Rice. As we approached the car Cyril and me caught up with Rice. We caught hold of him

and forced him into the back seat of the car and we got in beside him. We both held Rice and Kirkpatrick drove on out the road towards Rathfriland. He turned into a side road and stopped at a gateway at the entrance to a field. We took Rice out of the car and all three of us started to punch and kick him. At this time Rice tried to escape and I had a dagger with me which I pulled out to try and scare him. I stabbed at Rice with the knife a number of times and stabbed him in the front of the body. I don't know how many times I stabbed him, but I remember he fell down on the ground. We then all jumped into Kirkpatrick's car and drove back to Castlewellan. I cannot remember what I did with the knife. Kirkpatrick dropped Cyril and me off in the Upper Square and we went home. I never meant to kill Rice at any time only to beat him up."

[65] Cyril Cullen's two page confession statement was taken by DC McCabe in the presence of 1 August 1980 in the presence of DC Morwood and reads as follows:

"On Saturday night the 17th May 1975, I was in Castlewellan along with a few boys. At around 10:30pm I met Eric my brother. Earlier that night I had been in Dundrum at a pub drinking. Eric had been in a pub in Castlewellan. I saw George Kirkpatrick drive into the square in his car it's a Ford Cortina, red coloured with a black vinyl roof. Both of us went over and got into the car with George. I am not sure if I sat in the front or back seat. George drove around the town for a while with him, he came back and parked in the Upper Square. By this time it was shortly after 11pm. We sat in the car and talked for a while. Half an hour later a fellow came out of the Oak Grill, I didn't know him but one of the other two said that it was Rice and that he was a Provo. We watched him walking down the Main Street and then he walked on towards Kilcoo. The three of us decided to lift him and give him a bit of a beating. We followed him out the road, to the dip in the road, just at the old houses on the left. George stopped the car and Eric and I got out and started to walk behind Rice. George drove on up the road a bit past Rice. When Rice reached the car, Eric and I bundled him in the back seat and got in beside him. George drove on out the road on the Burren Bridge and along a side road. I didn't know where we were when George stopped the car and we took Rice out, all three of us were beating him. Somebody took out a knife and stabbed repeatedly. The three of us got into the car again and George drove Eric and I home. I

want to say now that at no time was it our intention to kill Rice. It was just a bit of horse play that got out of hand.”

Our conclusions

[66] At the outset we observe that cases of this nature are all highly fact specific. Thus, it does not follow that because some similarities arise with cases such as *Latimer* and *Thompson* that 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 is 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, see the discussion in *R v Gallagher* [2024] NICA 63 paras [30]–[36]. In addition, an appellate court must consider the entire history of the case including all previous legal and investigative steps in order to form an accurate view.

[67] The simple question for us is whether the convictions are unsafe. This was emphasised by Kerr LCJ in *R v Pollock* [2004] NICA 34 at para [32] as follows:

“1. The Court of Appeal should concentrate on the single and simple question ‘does it think that the verdict is unsafe.’

2. This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.

3. The court should eschew speculation as to what may have influenced the jury to its verdict.

4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal.”

[68] This reference is based on an alleged concoction of confession statements by police officers who have since been discredited by another court. It is not a reference relying upon claims of ill-treatment or of physical ill-treatment as defined in *R v O’Halloran* as cited in *R v Brown & others* [2012] NICA 14 at paragraph 14. That is unsurprising given that no complaints were made at the time save in Cyril Cullen’s case who raised intimidation and threats. Of course, the discredited officers were not involved in his case. There is no evidence of vulnerability on the part of any of the appellants as was apparent in *Gallagher* which led to the quashing of a conviction due to psychological pressure of a person with learning disability.

[69] Further, whilst we recognise that 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, this is not evidence of any particular value on the facts of the instant case. That is because the primary issue in this appeal, is whether the confessions were concocted by police officers we now know to be discredited.

[70] The trial judge's assessment of the case stands "while one would wish that all interviews should be conducted in a low key, with no bad language, ... shouting or bad language or even a suggestion that his wife would be interviewed would make the statements inadmissible or compel [me] to exclude them in the exercise of my discretion." On this the judge also correctly said that "the degree, of course, of bad language and shouting would have to be considered from time to time in considering whether the discretion should be exercised."

[71] All of the above said, given the specificity of the CCRC reference, the court is 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 is argued that his case should be treated the same way as the others.

[72] We remind ourselves that the offences in this case took place almost 50 years ago and the trial was heard 44 years ago. We note at the outset that extensive enquiries have been undertaken in attempts to obtain the original trial and appellate solicitors' papers as well as the shorthand writers' notes. The position that was reached in this case upon which we 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 are available. The only other contemporaneous record we have is from the Mourne Observer.

[73] In relation to Kirkpatrick, it is clear to us that DCs McAteer, Hassan, and Shiels and DSgt Clements all gave sworn evidence at the voir dire. They denied any suggestion that they had concocted statements, and the judge rejected any suggestion that they did. The circumstances of these officers is now clearer as a result of the *Latimer* decision which we have discussed in *Thompson*. The question is 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 not being admitted. Similarly, the argument can viably be made that if they were admitted, the weight to be given to them would lessen. That is the heart of Kirkpatrick's appeal.

[74] We have taken some time to reflect on this case before reaching our conclusion. Having done so we find that Kirkpatrick's appeal cannot succeed for the following

reasons. First, as we have already said 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 we set out above. As the CCRC itself said at that time “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 some 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 the taking of Cyril Cullen’s statement.

[75] Finally, lest this point be unclear to appellants or the CCRC, the fact that issues arise from *Latimer* as to 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. The outcome of appeals will depend on a close and careful analysis of the facts of a particular case and consideration of the overarching consideration of whether a conviction is unsafe.

[76] In the circumstances of this case we also find that the judge was entitled to rely on the evidence of medical professionals in the way that he did. 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 is relevant that no complaints of concoction were made to them. Thus, we cannot be satisfied that the judge in exercising his discretion to admit the statements, made an error on this basis.

[77] The above argument made in Kirkpatrick’s case has also been made by both of the Cullens, although in the case of Cyril Cullen, it is of obviously less weight because the officers were not involved in his interviews. However, the point is made that this is all part of the one investigation, and so, if the interviews in relation to Kirkpatrick and Eric Cullen are so flawed, Cyril Cullen’s is also flawed. This argument cannot in our view hold water. The proper way of looking at this case is as we have said that the conspiracy argument fails given that the discredited police officers were not involved in all three cases.

[78] In addition, it is trite law to say that we cannot rehear a case 44 years later. The trial judge weighed up the counter claims of the appellants as to accident and the provision of alibis and found against them. Unsurprisingly, these factual findings were not disturbed on appeal in 1982. It is also material that the appeal was focused on the murder charge rather than the false imprisonment and kidnapping convictions. Accordingly, for all of the reasons we have discussed and after careful consideration of this case, we dismiss ground one of appeal.

[79] Ground two of appeal is in relation to the good character of the appellants. Leave is required for this ground as it was not referred by the CCRC, but it is part and parcel of the case. This was argued by Mr Hutton with much energy and skill however we are unpersuaded. It is accepted that the appellants were of 'good character.' It is inconceivable that the evidence of same would not have been before the court. Furthermore, in our view the matter would have been in the mind of O'Donnell LJ who was a highly experienced criminal judge. The absence of specific reference to same in the judgment does not permit the conclusion that it was not considered. The court is also significantly disadvantaged in respect of such a ground in light of the absence of transcript.

[80] The prosecution arguments on this point are the much more compelling and reflect the law in this area which we summarise as follows. Paras [36] and [37] of *R v Gary Jones* [2007] NICA 28 make the point clear applying the judgment of Lord Lowry *R v Thompson* [1997] NI 74 as follows:

"[36] ... 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 directions. In *R v Thompson* [1977] NI 74 Sir Robert Lowry LCJ, when giving the judgment of the Court of Appeal, provided guidance on the duties of a judge giving judgment in a criminal trial heard without a jury. At page 83 he said:

'While on the subject I might say a word on the duty of the judge when giving judgment in a trial under the 1973 Act. He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal, it may be seen how his view of the law informed his approach to the facts.'

[37] In *R v Walsh* (unreported) the learned trial judge did not give himself a reminder of the fact that the accused was of good character nor a specific direction similar to what he would have given to a jury. It was argued on appeal

that he should have done so. In giving the judgment of the Court of Appeal, reported at [2002] NICA 1 Sir Robert Carswell LCJ said it was not incumbent on a judge hearing a criminal trial without a jury to do so. At page 12 he stated:

‘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).’

[81] In addition, as Mr Murphy pointed out, Carswell LCJ in *R v John Christopher Walsh* [2002] NICA 1 also applied the same similar analysis, see pages 12-13 of that judgment.

[82] Overall, whilst not expressly contained in the partial papers we have, we are not prepared to conclude that O’Donnell LJ did not direct himself on this matter as an experienced trial judge well versed in this area of law would do. It is also noteworthy that this ground did not feature in the appeal taken to the Court of Appeal in 1982 or in the CCRC referrals. We take from these omissions that the point did not weigh heavily with the appellants or a number of sets of advisors they had. It would be quite wrong of us to rely upon it now after 44 years on the basis that it does not expressly feature in paperwork which is itself incomplete. In addition, as we have said the law is clear that such directions need not be express. Accordingly, we refuse leave and dismiss this ground of appeal.

[83] The third ground of appeal which is relied upon by Mr Taylor and contained in the written papers was that some additional factors should cause the court to question the correctness of the verdict in that:

- (a) There were significant differences between the statements provided by Damien Rice (the deceased’s brother for the coroner’s inquest into the death of Francis Rice 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.

- (b) Also, it is alleged there is evidence that the murder was linked to paramilitary activity and that the Protestant Action Force telephoned the Sunday News Newspaper on 20 May 1975 and used a recognised code claiming responsibility for the murder. However, Mr Kirkpatrick was of previous good character and had no known connections to paramilitary organisations. In fact, when imprisoned he was detained on a mixed wing and at no point was he claimed as a member of any paramilitary organisation.

[84] We can deal with these points in short compass. That is because we are not convinced that these arguments undermine the safety of the conviction. True it is that some discrepancies arise however this was all before the trial judge who assessed the evidence as a whole. It would be wholly wrong for us as an appellate court to effectively rehear the case by adjudicating on these evidential matters ourselves. In addition, as with ground two of appeal, we note that the CCRC has not raised these issues. In truth this ground of appeal is makeweight and of no merit. We refuse leave and dismiss this remaining ground of appeal.

Overall conclusion

[85] Accordingly, we are not satisfied that the safety of these convictions is undermined by any of the arguments raised by this CCRC reference or by appeal. We dismiss the appeal on all grounds for the reasons we have given.