Neutral Citation Number: [2025] EWCA Crim 345

Case No: 202303711 B2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT BRADFORD
Mr Justice Globe
T20137468

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2025

Before :

LADY JUSTICE MACUR DBE
MR JUSTICE CAVANAGH
and
MR JUSTICE MOULD

- -

Between :

REX	**Respondent**
- and -	
LEE MICHAEL CALVERT	**Appellant**

- -
- -

Simon Myerson KC (instructed by **Crown Prosecution Service**) for the **Respondent**
Alistair Webster KC (instructed by **Charter Solicitors**) for the **Appellant**

Hearing dates: 11 & 12 February 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 26 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Macur LJ :

Introduction

1. On the 26 June 2014, Lee Calvert ("the appellant") was convicted of murder and possessing a firearm with intent to endanger life. Subsequently, he was sentenced to life imprisonment with a minimum term of 36 years, later reduced to 32 years on appeal. His application for permission to appeal against conviction was refused on paper, and renewed unsuccessfully before the full Court: *R v Calvert & Others* [2016] EWCA Crim 890.

2. The appellant first applied to the Criminal Case Review Commission ("CCRC") on 8 September 2017 principally on the basis that two new witnesses had given statements indicating that Raymond Cowan ("RC"), a critical prosecution witness, had admitted to them that the evidence he gave was false and that he had been asked to lie by the police and / or the Selby family. One of the witnesses also confirmed that the appellant's co-defendants made admissions to him of their part in the incident but informed him that the appellant had not been involved.

3. On 3 April 2019, the CCRC decided not to refer the case to the Court of Appeal on the basis that the fresh witness evidence would not be admitted under section 23 of the Criminal Appeal Act 1968 in light of the Court of Appeal stance to the similar 'new' evidence that had sought to be introduced in the renewed application for permission to appeal.

4. However, in July 2022 the CCRC were asked to revisit the decision upon the receipt of further evidence, detailed below, concerning the credibility of RC's evidence at trial. Consequently, the CCRC obtained and reviewed further materials and directed police inquiries pursuant to section 19 of the Criminal Appeal Act 1995. Ultimately, the CCRC determined that there was a real possibility that the conviction would not be upheld. The appellant now appeals against conviction upon a reference by the CCRC on the basis that there is fresh evidence that RC has ostensibly admitted that he gave perjured evidence at trial.

5. The appellant is represented by Mr Webster KC. The respondent prosecution is represented by Mr Myerson KC. Both were trial counsel.

Summary of the facts

6. The Full Court's judgment in 2015 gave a "broad outline" of the background facts which is sufficient to reproduce here. We refer below to any additional detail of the trial evidence which impacts upon the proposed fresh evidence in so far as it is relevant to our decision.

7. As taken from the judgment of the Full Court:

> "6. Barry Selby was viciously attacked by a group of masked men in the bedroom of his home at 11 Rayleigh Street, East Bowling, Bradford at around 2 am on 14 October 2013. His wife, Donna Selby, was present and witnessed what happened. He was first shot in the knee with a handgun. He then had acid poured

over him. He subsequently died in hospital. The agreed medical evidence was that the gunshot wound was not causative of the death; death was the consequence of the acid attack.

7. There had been three men involved in the bedroom attack: although neighbours were to say they observed five (as they thought) men leaving the vicinity of the house. They left in a dark Mitsubishi 4x4 vehicle. In addition, a light coloured Astra was also caught on CCTV leaving the East Bowling area shortly afterwards. It was later found parked at Dorchester Court in Holmewood: a neighbour noted it being parked there at around 2.20 am. CCTV captured four men, dressed in dark clothes, running away. It was the Crown's case that Calvert, Lowther and Woodhead had been involved in the attack on Barry Selby; and that Feather (the owner of the Astra) had been there to assist as a get-away driver. The Crown's case also had initially been that Feather was the "armourer", either providing or storing the gun; but that aspect fell away at trial.

8. Some four hours earlier there had been a shooting incident at 48 Farway, Holmewood in Bradford. A shotgun and a handgun were fired at a house, which was the home of Anne-Marie Haigh and her family. A dark Mitsubishi 4x4 vehicle had drawn up and a number of men, wearing dark clothing and balaclavas, emerged. The guns were then fired at the house and the group departed.

9. In the light of the forensic evidence relating to the bullets that were found, it was common ground that the same handgun – which was not itself ever found - was used in both instances. It was also common ground that the same Mitsubishi - also never found - had been used. What most emphatically was not common ground was whether the same people were involved.

10. Anne-Marie Haigh was an associate of the Selby family (she was also a cousin of Lowther). The applicants themselves were friends. There were agreed background facts that a group of young men on the Holmewood estate in Bradford, of which Calvert was a leading member, had been involved in a series of violent incidents with another group of which Liam Selby, Barry Selby's son, was a leading member. Guns had on occasion been used. There also had been agreed instances of physical violence between Liam Selby and Calvert (there was no evidence that Lowther, Woodhead or Feather had been involved in any such violence).

11. It was the Crown's case that the two attacks represented a continuation of the feud: the background hostility providing the motive for the attacks. Calvert was said to be the ringleader.

12. There was no direct evidence linking Calvert to the first attack at 48 Farway. Anne-Marie Haigh gave evidence that, observing the incident from the kitchen window of her next-door neighbour, she recognised Lowther, her cousin whom she knew well. She also recognised Woodhead whom she also knew and whose face she said she saw before his balaclava was pulled down. Two other individuals had observed what happened. They were given the names "Charlie" and "Sam" at trial. These were the two witnesses in respect of whom anonymity orders were made. The defendants were not permitted to know their identities: and their evidence was given in a manner such that they could only be seen by Judge and jury and with voice distortion techniques. Each of those two witnesses gave evidence that they recognised Lowther as one of the men. They also said that one of the other men, whom they did not claim to identify, was taller than the others. Woodhead is significantly taller than Calvert and Lowther.

13. As to the attack at 11 Rayleigh Street, there was no identification evidence of either Lowther or Woodhead. However Donna Selby gave evidence that, although the men in the room were masked, she recognised Calvert. Witnesses who saw the group leaving the scene described one of the men as taller than the others. A description of the jacket that man was wearing was given. Such a jacket (albeit one of a common kind) was later found at Woodhead's house.

14. There was no forensic evidence linking any of the applicants to the scene of either incident. There was some telephone and cell-site evidence capable of being consistent with the Crown's case but by no means in itself conclusive.

15. In addition to the evidence of motive and the identification evidence of Donna Selby, the prosecution also relied as a central plank of its case against Calvert on what was said to be in effect a cell confession made by Calvert, while on remand, to another prisoner called Cowan: a man with numerous previous convictions, including for dishonesty. Clearly his evidence was to be viewed with great caution, as the Judge stressed to the jury. The defence case was that no credence whatsoever could be given to Cowan (one possible inference, among others, posed was that he had been suborned on behalf of the Selby family). However, the prosecution were able to point to a seemingly contemporaneous note made by Cowan containing Feather's phone number and Feather's nick-name "Bogard": Cowan said that Calvert had given him these details to enable Cowan, who hoped to be released on bail, to contact "Bogard" - whom Cowan did not know - about disposal of a gun.

16. None of the applicants chose to give or call evidence at trial."

Renewed application for permission to appeal in 2015

8. As we indicate in [2] and [3] above, the CCRC received the appellant's first application in 2017, relying on new evidence, but in 2019 decided not to refer the case in light of the Court of Appeal's response to the applicant's earlier attempt to adduce what was similar witness evidence at his renewed application for permission to appeal. In the circumstances of this referral, it is appropriate to recount the relevant rulings of the full Court in 2015 to provide the context of subsequent events.

The proposed new evidence

9. Kelly Calvert, the appellant's sister "attended the trial. Since the trial she has been very active in publicly asserting Calvert's innocence and in seeking to gain public support." In a witness statement dated 20 February 2015 she indicated that she had provided a witness statement giving details of an alibi for the appellant: he had been with her throughout the relevant time. However, she was not permitted to give her evidence to this effect and was "ignored" by the solicitor at trial. The appellant, in a witness statement dated 5 March 2015 corroborated that assertion and indicated that he wished to give evidence of alibi to this effect. It was said that his legal team had been negligent in failing to advise him that he and his sister should give evidence, "as well as in other respects."

10. The defence legal team, "conclusively rebut[ted] the criticisms." It was evident to the full Court that the matter was "carefully considered at several discussions and an informed decision (evidenced in writing) was made not to call such evidence." For reasons that will become apparent, we note that the full Court considered that "the very fact that such allegations were made by Kelly Calvert is, with all respect, indicative of a rather distorted and subjective outlook - even if understandable - when it comes to her brother's conviction."

11. Further, Kelly Calvert asserted that, following trial, she had been told in a conversation which was secretly recorded that a member of the Selby family had arranged for somebody (whom she took to be RC) to come forward to incriminate the appellant. However, this was determined to be unreliable as it was based on inadmissible multiple hearsay. The various named individuals had not themselves given any statements.

12. The appellant had provided further statements himself denying that he had ever spoken whilst in prison to RC which he said was supported by prison records which showed that he was not free to move around in prison and would not have met RC. The full Court noted that in cross-examination at trial the appellant's counsel in fact had put it to RC that he spoke at least once to Calvert. The appellant had elected not to give evidence at trial and that was a tactical choice. He could not now, having been convicted, seek to put his own account of events regarding RC, whose evidence had been described by the trial judge as "crucial".

13. Witness statements had been provided by three fellow inmates:

    Thomas Trotter, who said that it would have been impossible for the appellant to have spoken to RC; Jason Green, who was a prison listener and said that RC had informed

him that he had received money and drugs in order to make a statement against RC; and Stephen Loftus, who said that RC had told him he had given a prosecution statement and been paid.

14. The statement of Thomas Trotter was not capable of belief. He was the appellant's cousin and had an interest in supporting him. Further, contrary to the evidence of Thomas Trotter, there was evidence disclosed before the trial which indicated that staff shortages at the prison were such that prisoners did frequently fraternise with each other even when they were intended to be locked in their cells. Trotter's account was also inconsistent with the account given by Jason Green.

15. Jason Green's account was that RC said to him that he was scared of repercussions. He had given 'the statement' after a visit of the appellant to his cell, although the Court noting that the appellant "now maintains that he never spoke to Cowan"; RC said he "had been approached by another prisoner and asked to give the statement saying the appellant had told him [about killing somebody] and in return he had been paid drugs and money". Green completed a form recording the fact of the visit. The Court noted that trial counsel acting for the appellant had, following the trial, advised that Green's prison records be obtained; but they have not been disclosed in the evidence. Green stated, "wholly implausibly" in the view of the Court, that after his release from prison he came across the "Free the Bradford Four" Facebook entry set up by Kelly Calvert after the trial, took an interest and "then recalled my conversation with [RC] on D-wing and realised that he must have given evidence which was a surprise as he had said to me that he was going to retract his statement".

16. The Court referred to Alan Gatenby's ("AG") statement dated 14 May 2014 which had been disclosed by the prosecution in the schedule of unused material. AG said that in about April 2014 he had met Green in prison. Green had told him that the appellant's mother and another person had approached him. Green had been told by them that someone had put in a statement saying the appellant had confessed while in prison to murder and Green had been offered £10,000 to give a statement saying that the appellant was with Green all the time and had not confessed and that AG had put this other person up to making the statement.

17. The police had attempted to pursue the matter with Jason Green but he failed to keep appointments. The appellant's legal representatives had been made aware that Jason Green might be able to assist his case and attempted to contact him prior to trial. The Court considered therefore that his evidence could have been made available at trial, unless it was deliberately decided not to follow up the matter, and no reasonable explanation had been provided about this. The Court considered that "It has all the marks of having a second go when the tactic of conducting the trial without calling evidence failed to achieve the desired outcome."

18. Stephen Loftus' evidence was to the effect that "he heard a prisoner in the showers abusing RC – who was denying it - for making a prosecution statement (that is suggestive of it being common knowledge in the prison, …)." Loftus said RC told him that he had given a statement and had been paid. RC also said that he had retracted the statement. The Court found the failure to explain why his statement was not sought earlier and how it eventually emerged to be "most disconcerting". In any event, neither Stephen Loftus nor Jason Green had recorded RC saying that the statement he made was in fact false.

19. The full Court observed that the appellant's legal team at trial had made "various positive suggestions" to RC in cross examination: "RC denied [being a paid grass]." Significantly, the Court concluded that "The proposed fresh evidence is clearly directed to meet that point and to seek to show that Cowan is indeed a liar and had been suborned to give misleading evidence at trial (which indeed was part of the defence case at trial). Possibly one can deduce that the appellant and his family remain aggrieved that the prosecution case – accepted by the jury – to an extent depended on a witness such as RC."

The current application

20. The CCRC "Statement of Reasons for a Reference to the Court of Appeal" ("Reasons") states that the second application received on 21 July 2022:

> "27 … made a single submission concerning the witness RC. RC was visited in prison on 8 June 2021 by Guy Lambert [(GL)], a private investigator instructed by the Calvert family. RC made a statement to the private investigator in which he confessed to lying on oath at Mr Calvert's trial.
>
> 28. In his statement, RC claimed that he had lied when interviewed by the police and made up the story that [the appellant] had told him he was responsible for the murder of Mr Selby. RC said that he was approached by acquaintances of AG, a friend of the Selby family, who threatened that he and his sister would come to harm if he did not comply. He claimed that he was passed a note with a telephone number on it by one of AG's friends and was told to say that [the appellant] had given it to him. He kept the note until he was issued a prison diary and then wrote the telephone number in his diary and flushed the note down the toilet. He lied because he was concerned for his own safety and that of his sister, but she has now passed away, so he is able to admit what he did.
>
> 29. Mr Cowan's statement was accompanied by a statement from Guy Lambert of A1 Investigations, who confirmed that he had been to see Mr Cowan in prison and that Mr Cowan had admitted that he had lied at the trial. Guy Lambert exhibited a page of notes that he had taken during his conversation with Mr Cowan, and which Mr Cowan had duly signed."

21. At [84] and [85] of the Reasons the CCRC acknowledge that RC's credibility was "tested in evidence at the trial" and "was also considered at the appellant's "appeal where new evidence was submitted to the Court to support the argument that [RC] was a liar and has been induced to give misleading evidence at trial". However, it goes on:

> "86. Notwithstanding that Mr Cowan's credibility has already been considered at trial and appeal, the CCRC considers that there is new evidence available – in the form of RC's further

> account given to GL in June 2021 and matters arising from this – which further undermines the credibility of RC and which indicates that he can no longer be relied upon as a witness of truth.
>
> 87. RC's latest account was seemingly provided openly and willingly to GL, knowing that he was working on behalf of [the appellant] in connection with an appeal. It was also apparently provided without any forewarning and without any opportunity for RC to prepare an account in advance. Although the CCRC acknowledges the possibility that RC may have been approached by someone else acting on behalf of the appellant prior to GL's visit, the CCRC has seen no compelling evidence to support that proposition.
>
> 88. The CCRC is aware of information contained within the case notes prepared by A1 Investigations which indicates that [the appellant] had knowledge of RC's movements within the prison and was seemingly aware of the dates upon which he was due to be released. …
>
> 89. The CCRC is of the view that this alone is insufficient to suggest that [the appellant] or his family might have influenced RC in any way, or that RC was given any advanced notification of GL's attendance on 8 June 2021. In the absence of any other evidence in this regard, the CCRC has no reason to doubt that RC's disclosures to GL were made spontaneously, free of any external influences.
>
> 90. Having given his account orally to GL, RC then maintained this account when he signed the statement two weeks later at GL's second visit. In so doing, he confirmed by way of the standard declaration that the statement was true and that he understood that he would be liable to prosecution if he had said anything in that statement which was false.
>
> 91. The most notable point in relation to the new account is the fact that RC says that he lied in his evidence relating to [the appellant's] confession. However, additionally, the CCRC considers that there is new evidence which indicates that RC was deliberately untruthful in certain key aspects of his account to GL, and in his dealings with GL's firm, A1 Investigations. The information provided by RC to GL has also raised further inconsistencies in comparison with what he has said previously, either in his earlier statements or during his evidence."

22. The CCRC then refer to the physical assault RC alleged to have occurred post making the June 2021 statement, the fact of RC's sister's previous demise, RC's knowledge of Gatenby; the 2014 diary; RC's contact with Jason Green; the inducements made by the West Yorkshire police; and, the disposal of the note containing Bogard's telephone number.

23. The CCRC concluded that RC has "attempted to retract his trial evidence" and states he lied when giving evidence that he had been recipient of a cell confession from the appellant, but this retraction is untested. RC had lied to GL and consequently the retraction itself may be another example of dishonesty. It goes on to say:

> "118 Whilst the CCRC's review has not identified a cogent reason to prefer Mr Cowan's retraction over his trial evidence, it follows that, either way, Mr Cowan has clearly lied about a matter which goes to the very heart of the prosecution's case against Mr Calvert; either his trial evidence is false or the retraction is false.
>
> 119 … The CCRC is therefore of the view that this case relates more to Mr Cowan's overall credibility."

RC's statements dated 22 June 2021

24. The statements which RC undoubtedly signed are dated 22 June. In the lead statement RC is recorded as saying that he knew the appellant from the induction wing in HMP Armley. He had been approached by police who were making enquiries into "the Lee Calvert Murder case" on seven occasions between February and May 2014. He had informed them on numerous occasions that he "did not wish to get involved or make any statement in relation to this enquiry". However, on the promise of being moved prison and not having to attend court he gave a statement. He then stated "I now want to set the record straight in relation to this matter. When I was interviewed by the police I lied and made up a story that LC had spoken to me and told me he was responsible for the murder of Barry Selby. I had in fact been approached by acquaintances of AG. They told me that if I didn't tell this story to the police that I would come to some harm. They also said that they would make sure an accident happened to my sister. My sister has subsequently passed away and this is why I can now admit what I did. During the time that I was threatened I was passed a note with a telephone number on it. I cannot remember the name of the person but I can recall it was one of AG's friends. I was told to say that LC had passed it to me. I kept the note until I was issued a prison diary and at that point I put the number in the diary and destroyed he note by ripping it up and flushing it down the toilet. I was so concerned about the threats made to me that on the 26 August 2014 I approached Jason Green who was a prison listener and made up a further story to him in order to try and get moved to another prison".

25. In a further manuscript witness statement, signed by RC but prepared by GL, RC is recorded as saying that AG whom he first met in 2013, was a "tall ginger haired male who I though was arrogant" He saw him with a mobile phone and with "the same two or three people" who threatened RC.

26. Of note is that the witness statement to which the CCRC refer in [28] of the Reasons (see above) was not signed by RC. This first draft statement, prepared by GL post his visit to see TC, was edited on the advice of the appellant's solicitors to remove reference to AG as "a friend of the Selby family". We return to this point below.

27. GL filed a witness statement to accompany the statement of RC. In that short statement dated 9 June 2021, he stated that prior to being employed as a private investigator he had been a serving police officer for 16 years; he had asked RC a number of questions concerning his time in HMP Armley and RC "admitted he had lied under oath". He exhibited his contemporaneous notes signed by RC to the statement, as well as an attendance note written by Green.

28. The manuscript notes are scant and in 'shorthand'. They read:

> "Issue around reassurance- didn't want to co-operate. 15th out for i/v. Armley D1 induction landing Police tole RC on i/v at Halifax that he would be (indecipherable) safe if he co-operated with the investigation. Keep name undisclosed.
>
> Permission to access records.
>
> No bail because on recall.
>
> Prison diary seized.
>
> Jason Green cleaner talked every day. Phone number LC gave me was in diary the first day I got diary. Piece of paper put in diary then flushed.
>
> Post hearing September. Approached in Armley. Threatened (insert above line) by mates of A Gatenby (lower line resume) family that if I didn't come forward and say LC had approached me and told me about murder I would face the consequences.
>
> Happy to act for the defence
>
> The threats continued whilst in Crown Court which is why I lied. II agree with the above notes as an account of a conversation with GL."

CCRC Investigations

29. In August 2022, the CCRC made a direction to the Chief Constable of the West Yorkshire Police under section 19 of the Criminal Appeal Act 1995 requiring him to appoint an Investigating Officer from another force to carry out enquiries on behalf of the CCRC. Accordingly, on 7 September 2022, Jenny Birch of West Midlands Police was appointed. She was directed by the CCRC, among other things to: (i) "interview [RC], explore the credibility of his latest account and the circumstances surrounding his alleged involvement in a conspiracy to pervert the course of justice and perjury at the trial of [the appellant]." , and (ii) "to interview GL to establish his reasons for visiting RC and the circumstances leading to his alleged confession".

30. As to the first inquiry, RC was arrested for perjury and perverting the course of justice. He was cautioned prior to interview and answered "no comment" to all questions asked.

31. As to the second, GL was interviewed on 15 November 2022 and a formal witness statement taken: He said that he had thirteen years previous experience as a police officer before becoming a private investigator. The appellant's case had been "advertised" on the internet by the Calvert family. A1 Investigations made "a successful bid" and he spoke to the appellant on the phone on 11 November 2020 who gave "a resume of the case specifically surrounding the witness" and CCTV footage. The appellant's mother paid the deposit for the work to be done. Transcripts of the appeal were received om 23 November 2020. Amongst other directions, the appellant "also directed us to find RC to find out which prison he was at in order for me to speak to him at a future date. The appellant's suspicion was that RC had lied during the trial and he wanted me to see if RC would admit to these lies." GL visited the appellant's mother and sister. After further telephone calls with the appellant regarding prospective lines of inquiry in general, on 10 February 2021 the appellant phoned to discuss a visit to RC. On 15 February 2021, the appellant agreed for GL to undertake the visit. On 3 March 2021 the appellant called to discuss the visit to RC. "We spoke about how we were going to deal with any information [RC]. I said that would depend on what RC says to me if he intended to talk to me at all. I said if he changes his mind then the case would be back on, but if he says no the appeal would be dead in the water." On 17 March 2021 the appellant phoned to say that RC was due to be released the following morning from a named prison "and asked me to catch RC on his way out of the prison." However, "shortly after Karen Calvert called and said it wasn't a good idea to visit RC – she didn't explain why. Karen text me later that day and said RC was not being released until next Thursday. I don't know where they had their information from. I tried to confirm this with the prison however they wouldn't release any information to me." On 10 May the appellant called to discuss the specific questions he wished GL to put to RC.

32. Then this:

> "On 8 June 2021 I visited RC. I did this via the prison booking system. I had booked an hour slot. I visited RC in the family room, there were three other prisoners about. RC was fine with that. I spoke to RC asking him if he knew why I was there which he didn't. I explained that I was a private investigator making inquiries into the murder of Brian Selby. I explained that LC was making an appeal and had suggested that RC had lied. At that RC opened up to me and told me that he had lied and that he was being threatened. He stated that his sister had subsequently died and so he wasn't bothered about the consequences of these threats being made towards him. RC spoke about AG before I introduced that name. He said that he had been threatened by mates of AG they threatened him in HMP Armley and said that his family would be harmed if he didn't say [the appellant] had approached me and told me about the murder. I was very shocked that RC said this to me. I was expecting him not to say anything I made notes at the time which I produced previously as GCL 1. I put some of the questions to RC as directed by [the appellant]….Towards the end of the visit he asked me if I could put £20 in his present account. I didn't commit to that request. I discussed it with my boss later who said no as it would look like

> we have paid for the information. At the end of the visit RC signed my notes and I then returned to the office."

33. On 9 June 2021 GL typed up a statement and sent it to the appellant's solicitors "for review". On 22 June he returned to see RC in prison with the typed statement which signed. GL also wrote an additional statement of how RC knew AG. During that visit RC asked if GL could speak to the parole board on his behalf, GL refused. He gave Karen Calvert an update on the same day. On 23 June the signed statement was scanned to the appellant's solicitors.

34. GL exhibited a typed log (GLC3) to the statement which supplements the information provided in the statement. An entry in the log indicates that the draft statement typed up by GL was "read by LC mother" on 10 June. The entry on 17 June 2021 states "Reading over the appeal points by Barrister. Rewrite RC statement". RC then signed the redrafted statement, the only one presented to him, and an additional statement was taken by GL, at the solicitor's request, detailing how RC knew AG. RC asked Mr Lambert to "speak to" the Parole Board on his behalf.

The appeal

35. Grounds of appeal were drafted on 7 November 2023 in accordance with the Reasons above. In summary, the key issue in the appeal is identified to be RC's credibility. "There was no scientific evidence linking the Appellant to either incident, nor was there any direct evidence …" The trial judge had given the "normal warnings" about identification evidence, as per *Turnbull* [1997] QB 224; (1996) 63 Cr App R 132. Mr Webster KC asserts "that, in accordance with the guidance given … had the evidence stood alone the judge would have been obliged to withdraw the case from the jury."

36. In his skeleton argument filed in January 2025, Mr Webster indicated that a witness summons had been issued to compel RC's attendance before this Court but did not know "what account he will give when called to give evidence." Mr Webster maintains:

    a. RC's changes and prevarications indicate him to be an unsatisfactory witness;

    b. The circumstances in which RC made his statements to GL provide an "unassailable record of what he said."

    c. Absent any compelling account from RC to explain why the statements made to GL were untrue, this Court will have clear evidence that he contradicted the evidence which he had given at the trial.

    d. In that RC contradicted what he told GL, there is now material which directly undermines the reliability of RC's evidence at the trial. The only conclusion is that RC is such an unreliable witness that it would be dangerous to rely upon his evidence as founding a safe conviction.

    e. In this case there was no evidence to support the suggestion that pressure had been brought to bear on RC and "the circumstances of the interchanges with GL suggest that the redaction was freely given".

37. The prosecution opposes the appeal. In the Respondent's Notice Mr Myerson submits that: "No proper investigation has been undertaken into why those lies were told. The

obvious interest that the appellant has in the result is simply disregarded". The story given by RC about lying for fear of something befalling his sister cannot be true, because his sister was dead before the "threat" was made. RC's statement that he spoke to Green, the prison listener, with a further made-up story to try to get moved to another prison does not accord with Green's own account. GL's witness statement and log is notably silent on the questions he asked, the basis on which RC agreed to see him, or GL's own instructions. The CCRC were in error not to ask the appellant and his family "to explain exactly how it was that the investigator was asked to approach RC, what to say to him, and when to visit him, together with how they knew (as the investigator could not discover) where RC was and when he was to be released. The truth of the retraction evidence could only be addressed after cross-examination.

38. A witness order was issued on 30 January 2025 to compel RC's attendance to give evidence at this Court. He came to Court from custody. Prior to this, and with the knowledge and consent of the prosecution and by direction of this Court, Mr Hustler, the appellant's solicitor attended on RC first by telephone on 11 June 2024 and then face to face on 1 August 2024.

39. On 11 June 2024, Mr Hustler reported that: he spoke to RC for four minutes. He explained who he was and who he acted for. He "thanked him for providing the previous statement to GL and explained that he wanted to discuss matters with him in more detail now that events had moved forward. … I had hoped that if I could keep him on the telephone that he might engage with me. After we had spoken about the police interview, he said firmly, but politely, that he had to be going. I attempted to re-engage him in conversation, but he re-iterated what he had just said and ended the conversation."

40. On 1 August 2024:

> "I introduced myself as the person he had spoken to on the telephone. Before sitting down, and after the introduction he said immediately that everything that he said was true. In the context of the introduction I saw this as confirmation of what he had told GL. However, before I could begin to set an agenda for the meeting he then said that he would not have 'said what he said' if Lee hadn't been bragging in the prison. This struck me as more equivocal. I suggested that we go through the statement that he had made to GL as a starting point. I began to read the typed statement he had made out to him. (I had taken both the hand written and typed statement with me.) He told me that he had never said any of those things as I read the opening two paragraphs. I challenged this as I said he had signed the statement. He then told me that as a result of making the statement, he had been arrested and had now been 'NFA'd.' …He indicated that he wanted to say nothing else and I confirmed that he was under no compulsion to do so. However, although he would not be pressed on previous accounts, I told him that a question that the Court would want an answer to was whether or not he would be prepared to give evidence for either the prosecution or the defence (which is how I phrased the question). He said that as far as he was concerned he would not

> give evidence for either the prosecution or the defence. His demeanour was controlled and polite throughout and at the end of the meeting, we shook hands on parting."

The hearing of the appeal

41. The appeal was listed on the 11 and 12 February. We heard evidence first from GL whilst awaiting the production of RC, who then gave evidence. Neither witness was present when the other gave evidence.

42. We have summarised the statements of GL and 'transcribed' his manuscript contemporaneous notes taken during his first visit to RC above. In oral evidence GL confirmed the contents of his statement as true. He said that prior to his visit on 8 June 2021 he had rung the prison to obtain a visit without saying the reason why. RC had "no idea why I was there." He made up his notes contemporaneously in the back of his diary as he sat talking to RC and typed them up subsequently. When he returned with the type written statement, he "gave [RC] ample time to read the statement which he agreed with."

43. In cross examination by Mr Myerson, GL said that he had received "a full transcript of the trial", but had not seen the 2016 'new evidence'. He was aware that the full Court had refused to admit the statement of Kelly Calvert, but did not explain his understanding why that was so.

44. He said he did not ask RC whether he had been in contact with the appellant or anybody on his behalf. He (RC) spoke about AG before he (GL) had mentioned the name. "I was quite shocked by what he said to me", and had been distracted from the questions LC had wanted to ask. He had spoken to LC's mother immediately after the prison visit in what was quite a quick phone call since he had a long journey home ahead of him. The family said "enough". He had made no note of the call. He typed up the statement the next day based on his contemporaneous notes.

45. GL could not remember if he had asked the name of AG's associates, "It was the first time I'd met him. He was locked up for another crime. He gave a reasonable account of why he had lied".

46. He had been asked by the solicitors to amend the statement. He didn't see the necessity to point out the differences to RC when he returned to the prison to have the statement signed.

47. He could not explain the difference between the contemporaneous note and the statement, for he agreed that he wrote in his note that RC says 'LC', that is the appellant, gave him the phone number that he wrote in his prison diary, and the threats from the acquaintances of AG were made 'post September'. He was unable to identify anything in the note which indicated that AG was a friend of the Selby family which he had typed into the first (unsigned) statement.

48. In re-examination by Mr Webster, he said there was no financial incentive to get 'a result'. Other inquiries had been directed by the appellant and not just in relation to RC. He had presumed that RC would refuse to talk to him. The notes were made during a 40-minute discussion, and the events were fresh in his memory when he drew up the

statement. He had had "difficulty keeping up" with the flow of RC's conversation and GL was playing "catch up" throughout.

49. RC then gave evidence. He is presently serving a sentence of 6 years 9 months for burglary. With the assistance of a dock officer directing him to the relevant parts of the statements dated 21 June 2021, he confirmed that he identified his signature on what was the type written and manuscript statement, but he said he could not otherwise read the statements since he did not have his spectacles with him. He remembered GL's visit "vaguely" and that he was asked questions about the appellant. GL had come back to get the statements signed and told him it "was what we had spoken about previously and he had just typed it up so I signed it".

50. On hearing the statements read out he denied that he had said he lied to the police when interviewed. He did not know AG and had not said otherwise to GL. It was not true that he was approached and threatened. He repeated he did not know AG and did not say to GL that "associates" of AG threatened him.

51. He had the phone number in his diary but could not remember who gave it to him. He knew Jason Green – he was a prison listener. He did not tell GL what he had said to Jason Green or remember being shown the attendance note. He did not tell GL about AG or continued threats. He did not say that "I want to tell the truth now". He did not know "those people" when asked about AG's acquaintances and so why would he be worried about his sister.

52. He was not cross examined by Mr Myerson.

53. Mr Webster characterised RC's evidence as 'absurd'. RC knew the import of witness statements. There was no evidence of pressure being brought to bear upon him or from which it could be safely concluded that anyone else had influenced RC's change of mind: RC did not suggest it himself; there is no record of contact between RC and the appellant and no evidence as to reason for making the retraction. RC's performance was "wholly inadequate/ woeful". Whatever his stance on the retraction now, his evidence is so damaged by fact of retraction, he is impeached and the conviction is unsafe.

54. The substance of the two statements plainly represents what RC told GL. RC's denial of their contents was knowingly false. GL's note keeping "could be better but he did not seek to hide his failings." He was an honest witness.

55. Mr Myerson submits that RC does not "own the statement". It was not necessary to establish GL to be dishonest to demonstrate that his evidence, including the witness statement he produced as a result of his meeting with RC, is unreliable and cannot be accepted as representing what RC said. The contemporaneous notes and the statements produced are irreconcilable and cannot be explained away as being out of order. It does not begin to explain the contents of the 2014 prison diary entry which contained Feather's nickname and telephone number. The statement upon which the CCRC base the reference to this Court is impeached.

Discussion

56. The caution that is inevitably urged upon a jury determining the credibility and reliability of a so called "cell confession" is entirely apposite for this Court to bear in mind when considering the apparent retraction of the same. It is well established that a rigorous examination of the circumstances of the ostensible retraction, both in terms of its provenance and the cogency of its contents are necessary; See *Maharaj v Trinidad and Tobago* [2021] UKPC 27 [55] – [69].

57. Our critical appraisal of the 'retraction' is not achieved by reference to the terms of the RC statements dated 22 June 2021 alone. On the face of one of them there is a confession to perjury and the reason why it happened. On the other, details of the alleged source of the alleged threats. Yet RC now denies the contents and that he has ever made a retraction despite admitting the fact of his freely given signature.

58. In other circumstances, this may have corroborated Mr Webster's submissions that, RC was so thoroughly unreliable to be regarded equivalent to a longstanding fantasist, with the obvious result that the conviction dependent upon his evidence is inevitably rendered unsafe. However, what became clear during the evidence of GL, and somewhat unusually, was the necessity to examine more rigorously still the means by which the retraction statement itself came into being; that is, it was necessary to closely analyse the detail of GL's working methods and his interaction with the Calvert family.

59. Our unequivocal assessment of GL was that he was an honest witness. However, the demonstration of GL's honesty was, as Mr Webster submitted, his self-awareness of his failings. Those 'failings' call into question the face value of RC's statement of retraction, and corroborate to certain extent RC's denial that the statement represents what he said to GL.

60. We have no doubt that GL was committed to acting professionally in the matter of the investigations he conducted, but we conclude that he was ignorant, if not wilfully blind, to the Calvert family's "rather distorted and subjective outlook" of the case, (see [10] and [19] above), which should have alerted him to the possibility of undue influence upon RC and, subconsciously, upon his own independent role. As he indicated, he did not question the Calvert family as to the source of their information regarding the whereabouts of RC, or the indication of the most auspicious time of when to speak to him. GL appears to have been subject to instruction rather than conducting an independent investigation. He was told by the appellant's mother what constituted "enough" from RC when he reported to her the outcome of his prison visit. He typed the first draft statement for RC to sign after speaking to her. It is a matter of note that in that first draft statement the association between AG and the Selby family is drawn-mirroring the factually unsubstantiated cross examination of RC at trial and which the Calvert family attempted to resurrect before the full Court in 2017.

61. Neither, surprisingly we think, did the CCRC seek to investigate this matter further through their directions to the Investigating Officer. Rather, the acknowledgement of this feature is dismissed peremptorily in [87] to [90] of the Reasons. We regard it to be remarkable that RC should unburden himself so suddenly and completely to GL during a visit of which he was apparently unaware and to an individual he did not know. The description of the encounter between RC and GL on the 7 June 2021 is in sharp contrast to the civil yet contained approach of RC to Mr Hustler in June and August 2023.

62. Of greater significance is the disparity between GL's 'contemporaneous' notes of the prison meeting and the draft statement – in either first or second reiteration. Glaringly, the contemporaneous note records the fact that RC told GL that the telephone number in his prison diary was provided by 'LC' – that is the appellant. We are not in any way persuaded that the shock of the revelations or the speed at which he spoke led GL into error. Rather, it is indicative of the fact that the draft statement consists, and we emphasise our view that we do not suggest consciously and complicitly by GL, to provide a narrative that conflates RC's account and the hopes or expectations of the Calvert family. Interestingly, this lack of attention to detail can also be seen in the preparation of GL's own statements as indicated in the change in describing the length of his service as a police officer: in the first statement he said 16 years and in the second, 13 years. In any event, we do not have to reach a conclusive view on why the disparity between contemporaneous notes and draft statement has occurred, rather the fact that we do find it has occurred, and renders the witness statement signed by RC as an unreliable record of events.

63. We also find, and record here, that in whatever other respect his oral evidence was to be regarded as failing to shed light upon the cogency of the contents of the retraction beyond his bare denial, we believed RC's evidence that he had signed the statement without reading it, because he was told by GL, and he understood, that it represented the discussions they had had. This is also in accordance with GL's 'careful' answer in response to the direct questions, 'did he (RC) read it/did you read it to RC', namely 'he had ample time to read it over.'

64. In general, we thought RC appeared to be rather bemused to be brought before the Court to give evidence in this case once again. He was, as he appeared to Mr Hustler in August 2024, civil and polite throughout. We accepted his evidence that he had not brought his reading glasses with him since he had not expected to need them. He accepted the assistance of a prison officer who indicated in the statement where his signature was in two places, and he confirmed they were his. However, RC unequivocally disowned the substance of the statement when it was read over to him. RC's evidence on oath takes the matter no further forward.

65. Consequently, we place no weight upon the retraction recorded in the statement as a retraction of the evidence. Those conversations post-trial that are more reliably transcribed are, as Mr Hustler correctly defined his own with RC, more equivocal.

66. We have appraised the manuscript witness statement prepared by GL at the time of his second visit to RC. GL's note suggests that RC had been "approached by associates of AG" post September. There is no reference in the note to their involvement in the passing of the note which he transcribed into his diary, and which was subsequently seized by the police. The typed witness statement is in variance with this part of the note and states that it was AG's associates, not 'LC', who handed over the note and insisted that RC claim the LC had handed it to him. We regard this to be an implausible explanation of events. The laying of such a complex trail suggests a subtlety that we cannot conceive to have been possessed by those effective described as AG's henchmen. The connotation of the fact that LC passed the note, and the instructions that accompanied it, is far more nuanced than a stand-alone confession to murder.

67. Further, it became clear to us that RC draws distinction between 'knowing' an individual, and 'knowing of' an individual. There is nothing in the second statement

that undermines RC's vehement denial of "knowing this Mr Gatenby" in the sense of associating with him. There is no extraneous support to the contrary. In this latter respect, as did the full Court previously, we bear in mind the contents of AG's witness statement, disclosed to the defence prior to trial: see [16] above.

68. What has become increasingly obvious to us is the thread of consistency in the information that RC gave in his statements to the police, in his oral evidence in the 2014 trial, in what he is reported to have said to GL in 2021 as recorded in the contemporaneous note, and the implication of what he said to Mr Hustler regarding the appellant's braggartry in prison. We accept that this 'consistency' is not corroborated in what are, if true, different accounts to others regarding his sister's demise, his financial opportunism in becoming a witness in the case, and the beating he received from other prisoners after the visit by GL. We also bear in mind RC's equivocation, in response to Mr Webster's inquiry in cross examination, as to whether he, RC, had given honest evidence at the 2014 trial, saying that he had 'forgotten' what he had said then. We find this unlikely if not disingenuous, but do not ignore his present circumstances. Ultimately, we do not find his 'integrity' so impeached by his evidence before us, or the misinformation about his sister to retrospectively impugn his evidence at trial; see *R v Flower* [1966] 1 QB 146.

69. The character of RC was fully exposed to the jury through the exemplary cross examination by Mr Webster. RC was revealed as manipulative, dishonest and inconsistent. However, the difficulty for the defence was the corroboration provided for that part of RC's account relating to the prison diary entry which showed the mobile telephone number for an individual who subsequently became one of the appellant's co-accused. The jury were not assisted by any evidence from the appellant to the contrary. The situation is unchanged.

70. For all the reasons above, we do not consider it to be necessary in the interests of justice to admit the fresh evidence. The safety of the conviction is not undermined. The inevitable result of this decision is that the appeal against conviction is dismissed.