



20 July 2011

## PRESS SUMMARY

### **R v Maxwell (Appellant) [2010] UKSC 48**

*On appeal from the Court of Appeal [2010] EWCA 2552*

**JUSTICES:** Lord Rodger, Lord Brown, Lord Mance, Lord Collins, Lord Dyson

### **BACKGROUND TO THE APPEAL**

The issue in this appeal is whether the Court of Appeal was right to order a retrial in respect of the appellant. The circumstances in which a court may order a retrial are set out in section 7(1) of the Criminal Appeal Act 1968, as amended by the Criminal Justice Act 1988, which provides: “Where the Court of Appeal allows an appeal against conviction and it appears to the Court that the interests of justice so require, they may order the appellant to be retried”.

The appellant and his brother were convicted of murder and two robberies at Leeds Crown Court on 27 February 1998. The appellant was sentenced to life imprisonment for murder to be served with concurrent twelve-year terms for the robberies. The main prosecution witness was Karl Chapman, a professional criminal and a supergrass. On 11 June and 13 October 1996 robberies took place at the home of two elderly brothers. On both occasions the robbers used violence and took money. On the second occasion, the elder brother sustained injuries to the head which later resulted in his death. In the ensuing police investigation Chapman provided the police with information and witness statements implicating the appellant and his brother. They were charged with robbery and murder. Chapman’s evidence was central to the prosecution’s case at trial. He vigorously denied that he was expecting or receiving any benefits from the police for his evidence. Following the convictions there were allegations in the local press that the police were planning to pay Chapman a large sum of money upon his release from prison. Subsequently, the Criminal Cases Review Commission (“CCRC”) decided to investigate. North Yorkshire Police carried out detailed investigations into the activities of the police which formed the basis of the CCRC report in November 2008. The findings of the report showed that the police had conspired to pervert the course of justice in concealing and lying about a variety of rewards and benefits received by Chapman. It was revealed, for example, that the police had paid him sums of money, taken him to brothels, allowed him to consume drugs in their company and not investigated allegations that he had committed violent attacks. On 25 November 2008 the CCRC made a reference to the Criminal Division of the Court of Appeal on the ground that the convictions had been procured by gross prosecutorial misconduct on the part of the police. The appellant and his brother remained in prison during this period. Between October 1998 and September 2004, whilst in prison, the appellant had made a series of admissions of guilt freely and voluntarily to various persons.

On 1 December 2009, the Court of Appeal quashed the convictions of the appellant and his brother. The findings of the CCRC relating to the gross police misconduct were not challenged. The court held that had the findings been revealed during the trial, the trial judge might have stayed the prosecution as an abuse of process or applied section 78 of the Police and Criminal Evidence Act 1984 to exclude Chapman’s evidence altogether, in which case the appellant and his brother would have been acquitted. However, the court also held that the admissions made by the appellant between 1998 and 2004 constituted clear and compelling evidence of his guilt. In light of this the Court of Appeal found that it was in the interests of justice to order a retrial of the appellant.

## JUDGMENT

The Supreme Court dismisses the appeal by a majority of 3:2. Lord Dyson gives the lead judgment. Lords Rodger and Mance give short concurring judgments. Lords Brown and Collins dissent. On 17 November 2010 the Supreme Court handed down its decision but withheld its reasoning until the completion of the retrial. On 16 June 2011, in Leeds Crown Court Paul Maxwell pleaded guilty.

## REASONS FOR THE JUDGMENT

By section 7 of the Criminal Appeal Act 1968, as amended, Parliament has given the Criminal Division of the Court of Appeal the power to order a retrial where, having regard to all the circumstances of the particular case, in its view the interests of justice so require. The “interests of justice” is not a hard-edged concept. Rather, it requires an exercise of judgment in which a number of relevant factors have to be balanced against each other. A decision of the Court of Appeal as to whether the interests of justice require a retrial should only be upset on appeal if it was plainly wrong in the sense that it is one which no reasonable court could have made or if the court took into account immaterial factors or failed to take into account material factors: [18]-[19]. The majority of cases under section 7 of the 1968 Act do not involve any issue of prosecutorial misconduct. Indeed, no case was cited where the court had to consider the relevance of prosecutorial misconduct in the original proceedings to the question of whether the interests of justice require a retrial. Usually, under section 7 the court will consider the gravity of the offence, the length of time the appellant is likely to serve in custody if reconvicted, the appellant’s age and health, and the wishes of the victim of the alleged offence: [20]. Where prosecutorial misconduct is involved the Court of Appeal may treat the case as to some extent analogous to an application to stay proceedings as an abuse of process where it offends the court’s sense of justice and propriety to try the accused. However, the tests for when the court should stay proceedings for abuse of process and when it should order a retrial are not coterminous. The question of whether the interests of justice require a retrial is broader than the considerations involved in an application for a stay: [21], [44].

It is common ground that the prosecution’s case at a retrial would not be based on any evidence which was the product of the misconduct. However, the new evidence constitutes admissions made by the appellant which would not have been made but for the original misconduct which led to his conviction. The Court of Appeal was right to consider that the “but for” factor was no more than a relevant factor and that it was not determinative of the question whether a retrial was required in the interests of justice. In deciding whether to order a retrial, there were several relevant factors which had to be weighed in the balance. The balancing act is fact-sensitive and ultimately requires an exercise of judgment. The Court of Appeal carried out the balancing exercise precisely and with great care. They held that there were strong reasons for not ordering a retrial given the egregious misconduct by the police. However, they concluded that the public interest in convicting those guilty of murder prevailed on the facts of this case. In particular this was because of the gravity of the alleged offence and the existence of new and compelling evidence untainted by the police misconduct. The fact that a differently constituted Court of Appeal might have come to a different conclusion is not material. Accordingly, the decision of the Court of Appeal was not plainly wrong and its judgment should not be interfered with: [23]-[38], [45]-[47], [50]-[60].

Lord Brown, with whom Lord Collins agrees, would have allowed the appeal. They would have held that since the appellant would not have made the admissions but for the prosecutorial misconduct and in light of the enormity of the police misconduct, it is inappropriate that the case should be retried on new evidence: [102]-[105].

*References in square brackets are to paragraph numbers in the judgment.*

## **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at: [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**