



Neutral Citation Number: [2023] EWCA Crim 1005

Case No: 202200082 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM CHESTER CROWN COURT

Sir Peter Openshaw

Ind. No. T20207065

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/09/2023

Before :

LORD JUSTICE DINGEMANS

MRS JUSTICE CUTTS

and

HIS HONOUR JUDGE LICKLEY KC

Between :

Christopher More

- and -

Rex

Applicant

Respondent

Sam Stein KC and Danielle Cooper for Mr More
Nigel Power KC and Martin Reid for the **Respondent**

Hearing dates : 21 and 31 July 2023

Approved Judgment

This judgment was handed down remotely at 14.00 hrs on 1.09.23 by circulation to the parties or their representatives by e-mail and by release to the National Archives

.....

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions

prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Lord Justice Dingemans :

Introduction

1. This is the hearing of an application for leave, and if leave is granted the hearing of, an appeal by the appellant Christopher More against his conviction for murder and conspiracy to cause grievous bodily harm.
2. On 9 December 2021, in the Crown Court at Chester, Mr More (then aged 43 years) was convicted (by a majority of 10 to 2) of the murder of Brian Waters on 19 June 2003 (count 1) and conspiracy to cause grievous bodily harm with intent against Suleman Razak on 19 June 2003 (count 2).
3. On 10 December 2021 Mr More was sentenced to life imprisonment with a minimum term of 24 years (less 919 days spent in custody, 297 of which were spent in custody awaiting extradition from Malta) for count 1 and 14 years imprisonment for count 2, to be served concurrently.
4. James Raven and John Wilson had been convicted of the murder of Brian Waters after a trial on 18 August 2004. Otis Matthews had been convicted of the murder of Brian Waters after a trial on 25 October 2007. They were all sentenced to life imprisonment with a minimum term of 24 years. Ashley Guishard was acquitted.
5. The appeal raises issues, among others about the adequacy of the disclosure provided by the prosecution in this case. The disclosure related to material relevant to Mr More's belief, as set out in his defence statement and repeated in his evidence, that Mr Wilson was a police informant, albeit one who had gone rogue.
6. The concerns about the adequacy of the disclosure process arose because there had been the late disclosure of material to the trial judge, on an ex parte on notice basis, which led to the making of agreed fact number 145. Agreed fact number 145 related to a shooting of Mr Wilson the year before the murder of Mr Waters, and Mr Wilson's report to the police that some people in the criminal fraternity thought he might be an informant.
7. There had been a number of hearings at the trial to inform the trial judge of sensitive material, see the Criminal Procedure Rules Part 3.11. These hearings were ex parte hearings between the prosecution and Court on notice to the defence.
8. The formal grounds of appeal against conviction on behalf of Mr More are that: (1) the summing up was unbalanced and unfair so that the conviction was unsafe; (2) the very late disclosure of material helpful to Mr More's case at the trial, which became an agreed fact, meant that there was a legitimate concern about the disclosure process overall which needed to be explored; and (3) the very late disclosure of the agreed fact could not undo the prejudice of evidence called by the Crown on the issue of whether John Wilson was a police informant, nor could it repair suggestions made in cross examination of Mr More.
9. The prosecution resist the appeal and submit that: (1) the summing up was fair; (2) there was late disclosure, but the disclosure process was properly carried out and there is

nothing further to be disclosed; and (3) the defence had been able to make extensive use of agreed fact 145 at the trial, and the conviction was safe.

10. As the application for leave to appeal against conviction and grounds of appeal raised issues about the adequacy of disclosure the application was referred to the full Court of Appeal, Criminal Division for directions. There was an ex parte hearing between the prosecution and the full Court on notice to Mr More's legal team on 13 January 2023, followed by an open directions hearing. The Court made an open direction that material known as the Operation Picking material should be reviewed by the Crown Prosecution Service reviewing lawyer (the prosecution reviewing lawyer). Following that review the prosecution identified further information which was set out in a note, which was referred to in submissions as the "2023 material".
11. There was a further ex parte hearing between the Court and the prosecution on notice to Mr More's legal team on 21 July 2023 and a hearing of: the application for further directions; the adjourned application for leave to appeal; and, if leave to appeal against conviction is granted, the substantive appeal against conviction. At the hearing on 21 July 2023, the Court directed that the materials from the Operation Picking reviews which formed the basis of agreed fact 145 and the 2023 disclosure note should be provided to the defence. The hearing was adjourned to a further hearing on 31 July 2023.
12. The disclosure of the documents underlying agreed fact 145 and the 2023 material was provided, although there were substantial redactions on the documents. There was a final hearing before the Court on 31 July 2023 at which submissions were made about those documents. Shortly after the conclusion of the hearing on 31 July 2023 the Court asked, on notice to the defence, to be provided by the disclosure officer with unredacted copies of the redacted documents.
13. This was done on 2 August 2023, and the Court has now seen unredacted copies of the documents underlying the 2023 materials. The Court directed disclosure of a few more lines of the redacted documents and gave Mr More's legal team permission, if so advised, to put in further submissions.
14. Further written submissions were filed on behalf of Mr More on 9 August 2023 and by the prosecution on 10 August 2023.
15. We are very grateful to Mr Stein KC and Ms Cooper on behalf of Mr More, and Mr Power KC and Mr Reid on behalf of the prosecution, and their respective legal teams, for their helpful written and oral submissions.

Grant of leave to appeal against conviction

16. We will grant leave to appeal against conviction because there are matters requiring the Court to review carefully the disclosure process in this case, and to consider the effect of the disclosure process on the safety of the conviction.

Factual circumstances of the murder and conspiracy to cause serious bodily harm

17. On 19 June 2003, Brian Waters, then a 43 year old man, was attacked and tortured at Burnt House Farm in Cheshire. Although the plan had been to torture and inflict really

serious bodily harm to Mr Waters, he was unable to breathe properly as he was being restrained and tortured, and died. There were a group of men in an outbuilding of Burnt House Farm who carried out the attack. Suleman Razak, was also attacked and seriously injured.

18. The prosecution case was that Mr Waters used the farmhouse to cultivate cannabis with Suleman Razak's stepfather, John Majid. Mr Razak was employed to water the plants and assist with the harvest. Mr More's co-accused, John Wilson, was a drug dealer who occasionally worked with Mr Waters. Mr Wilson came to believe that Mr Waters had made a mistake in a deal that resulted in money being seized by the authorities. As a result, Mr Wilson planned the attack in revenge on Mr Waters and to extract some form of payment from Mr Waters.
19. The prosecution case was that in the early hours of 19 June 2003, Mr Wilson sent Mr More and others to Burnt House Farm to torture Mr Waters and steal his cannabis as punishment for the money being seized. They drove to the farm and stole the cannabis before returning to wait for Mr Waters. When he returned, they tortured him and Mr Razak, leading to Mr Waters' death. After Mr Wilson had that afternoon spoken to Thomas Darby, he told his driver (who was not involved in the attack) to telephone the police.
20. The prosecution relied on evidence that: Mr More was closely associated with his co-accused; Mr Wilson recruited Mr More to locate Mr Waters' cannabis farm. Mr More successfully located the farm after following Mr Waters' son; before the attack, Mr Wilson made efforts to confirm that Mr Waters was in the country; and Mr Wilson then telephoned Mr More. It was the prosecution's case that Mr Wilson was providing information about the attack to Mr More. The prosecution case was that Mr More was involved in the purchase of a horsebox which was intended to be used to transport the cannabis to be stolen from Mr Waters.
21. There was also evidence that Mr Matthews stayed at Mr More's home the night before the murder and Mr Raven arrived at Mr More's home at 4am on the morning of the murder. DNA with a match probability to Mr More was recovered from cigarette butts, a drink bottle and faeces found in a carrier bag at the scene. The bag also contained drink bottles and cigarette butts that contained DNA with a match probability to Mr Raven and Mr Matthews. DNA with a match probability to Mr More was recovered from a glove at the scene. The glove was covered in brick dust that was indistinguishable from a brick wall that the attackers purportedly smashed to create a lookout spot, suggesting that Mr More was involved in the breaking of the wall.
22. There was evidence that Mr More returned home with Mr Matthews on the evening of the murder. Finally, there was evidence that Mr More fled the jurisdiction on 21 June 2003 after the murder and remained at large for 16 years.
23. The defence case was that Mr More was a documentary film maker who investigated serious criminal activity and police corruption. He had previously been involved in a project to make a documentary about cannabis farms. Whilst the project fell through, he remained interested in the subject and befriended Mr Wilson in the hope that he may uncover criminal activity that he could use in a documentary. Mr More stated that in 2002, he was shown stolen National Criminal Intelligence Service ("NCIS") paperwork that suggested that Mr Wilson was an informant. Mr More could remember that Mr

Wilson's number seemed to be on the paperwork, which seemed similar to the number he still used. Mr More decided to gather information about Mr Wilson with the intention of selling any resulting story about rogue police informants to his media contacts. As part of his investigation, he agreed to locate Mr Waters' home and go there with Mr Raven and Mr Matthews. He believed that the plan was to steal Mr Waters' cannabis, which would be moved to another location. Mr More planned to film the cannabis in that other location so that he could use this material in a documentary.

24. There was evidence at trial showing that Mr More had worked as an undercover reporter on a number of programmes exposing wrongdoing. In 2002, plans were announced by the Secretary of State for the Home Department to reclassify cannabis from a class B drug to a class C drug. Cannabis was in fact reclassified as a class C drug from 2004 before it was classified again as a class B in 2009. Channel 4 had asked Stephen Boulton a television producer and Gregor Stewart, a television journalist specialising in undercover operations to film an illegal cannabis farm.
25. Mr Stewart had worked in the past with Mr More's father, and Mr More was introduced to Mr Stewart. It was agreed by Mr Boulton and Mr Stewart that Mr More was a good undercover investigator, although he was also described as brash and overconfident. Some payments were made to Mr More but by October or November 2002, Mr Stewart was no longer involved in the proposed programme. A new journalist, Janice Finch, considered that Mr More was too expensive to use on the programme. Mr More's case was that he continued to plan to make a programme by himself on a speculative basis. Ms Finch had a further call with Mr More in February 2003, but he was not in the event retained to work on the programme. The Channel 4 filming of the programme "Blunkett's Reefer Madness" was completed on 2 June 2003. The programme was broadcast on 22 June 2003. The programme did not contain any material from Mr More.
26. Mr More gave evidence that he arrived at the farm on 19 June 2003 at 4am and remained on the perimeter as a lookout. He saw his co-accused steal the cannabis. However, Mr Raven returned and told Mr More that he had told Mr Wilson about Mr More's plans for a documentary investigation. Mr More spoke to Mr Wilson by telephone, who told him to leave the scene. Mr More obeyed, leaving at about 8.30am. At the time that he left, he had not seen Mr Waters or Mr Razak. Mr More never assaulted them and had no knowledge of or involvement in any attack. Any murder must have occurred after he had left the scene. He had left the country after these events because he was frightened of what Mr Wilson might do to him. He gave evidence of what Mr Wilson had said by way of threat to him in the telephone conversation before he left the farm. It was submitted on behalf of Mr More that the fact that he believed Mr Wilson to be an informant: explained why Mr More was with Mr Wilson, which was to make a programme; meant that Mr More was unlikely to be involved in serious criminality such as torturing Mr Waters; and explained why Mr More was so afraid of Mr Wilson that he ran away, because Mr Wilson would have been well connected.
27. When summing up the judge reminded the jury of Mr More's dealings with Channel 4 and investigative programmes, telling the jury that Mr More's case was that "he was engaged in speculative covert surveillance to steal the cannabis plants and the equipment to set up a cannabis farm" and to film it and expose Mr Wilson as a police informant and make money by selling the film. The judge said that the prosecution case was that whatever his background Mr More "and James Raven had thrown in their

lot with Otis Matthews to work with and for John Wilson” and “the story of the undercover investigation of a cannabis farm is a skilfully concocted fiction intended to explain away his otherwise incriminating continued dealings with Raven, Matthews and Wilson and maybe others as well.”

Other relevant pre-trial matters

28. On 1 May 2002, Detective Inspector Phoenix, an officer in the National Crime Squad (a predecessor organisation to the National Crime Agency), was at Manchester Piccadilly railway station. He had a hardback notebook, which was sometimes described in the evidence as a day book, and a sheaf of confidential papers in a briefcase. The briefcase and the contents were stolen at the railway station.
29. The contents of the briefcase became known as the NCIS material, but were also sometimes referred to in submissions as the Phoenix material. The name of John Wilson was, among other names, mentioned in the NCIS material. It was apparent that the NCIS material had fallen into the hands of criminals and photocopies of some pages of the NCIS material were recovered from criminals during the police investigations into the theft of the papers. It is now apparent from agreed fact 145 that some of the criminals who had either seen or heard about the NCIS material, believed that Mr Wilson was a police informant. The prosecution case at trial was that the NCIS material showed that Mr Wilson was a target for police operations, and did not show that he was an informant. The National Crime Squad commenced an operation to recover the stolen NCIS papers. This was called Operation Picking.
30. It appears from a police statement made by Mr Wilson on 3 June 2002, that on 26 May 2002 (and so just over a year before Mr Water’s murder and shortly after the theft of the NCIS materials) Mr Wilson went to a pub in Manchester for a proposed meeting to discuss the NCIS papers. A male wearing a balaclava arrived on a bicycle and shot Mr Wilson in the back. Mr Wilson was admitted to Manchester Royal Infirmary for treatment and it seems that he had police guarding him at the hospital. On 3 June 2002, Mr Wilson made a police statement in which he stated that he refused to identify who he was meeting, and said he was not prepared to support a police prosecution and would not support the police in their inquiries.
31. Mr More was arrested in Malta on 6 June 2019, nearly 16 years after he had left the UK. He gave a false name on arrest and resisted his extradition in part on the basis that he was not Mr More. Mr More’s true identity was proved by fingerprints. Mr More was extradited to the United Kingdom. As Mr More had been extradited, he was brought before the criminal courts and he was not interviewed by the police.
32. Mr More served a defence case statement on 21 January 2021 before the trial in which he said that he believed that Mr Wilson was a rogue police informant, which fact was confirmed by stolen NCIS material he had been shown. He had agreed with Mr Wilson to attend the barn to steal cannabis as part of his efforts to research Mr Wilson for the purposes of a television programme. He had left the farm before any torture or murder. He sought disclosure of the NCIS material, which he believed had been seized from his home. There had been police searches of his home and car.

33. The prosecution asked for detailed particulars of how Mr More had got the stolen NCIS material. A reply was given saying that Mr More had received those papers from Mr Deaffern, who had died in November 2020.
34. On 18 March 2021 Ross Collison, a National Crime Agency Officer, made a witness statement. He referred to the theft of the NCIS material. He said in the third paragraph of that statement “following a request from CPS, I reviewed the paperwork from Operation Picking which included the original hard-back lined writing book containing sensitive information and the numerous sheets of A4 paper containing sensitive National Crime Squad information ... the purpose of my review was to identify any entries in the aforementioned paperwork where the name ‘John Wilson’ or ‘John Godfrey Wilson’ was mentioned.”
35. It is apparent from the submissions before us that Mr Collison’s statement was interpreted by Mr More’s legal advisers to mean that Mr Collison had read through the whole of the Operation Picking material to search for Mr Wilson’s name, but that the prosecution had understood Mr Collison to have read through only the DI Phoenix papers, being the day book and the loose sheets of paper, in the Operation Picking material. We will return to this issue.

The first trial – March 2021

36. On 22 March 2021, the first trial began. On 23 March 2021, the prosecution served the witness statement from Mr Collison, together with redacted copies of DI Phoenix’s day book and papers.
37. The material was served, rather than disclosed, because, as set out above, it was the prosecution’s case that the material suggested that Mr Wilson was the target of a National Crime Agency operation rather than an informant, and this therefore undermined Mr More’s defence that the NCIS material that he had seen had led him to believe that Mr Wilson was an informant.
38. On 25 March 2021, the jury were discharged after an issue had arisen in relation to a juror.
39. On 29 March 2021, a second trial started with a different jury. This trial, because it was the first to be completed, has been referred to in submissions as the first trial and we will refer to it in the same way.
40. On 5 April 2021, the police statement made by Mr Wilson on 3 June 2002 about his shooting and the handwritten notes and other documents were disclosed as part of what was referred to at trial as D2016. The handwritten notes refer to Mr Wilson and they refer to a gunshot wound to his back. There are also crime scene investigation exhibits which appear to relate to a car. There are also photographs of Mr Wilson and others.
41. The prosecution called evidence in accordance with their case. Mr More gave evidence at the first trial starting on 15 April 2021 saying he had been provided with the NCIS materials and had been told by Jez Deaffern that Mr Wilson was an informant and had been shot because of the NCIS materials. Mr More was cross examined on 20 April 2021.

42. The jury could not agree. A further trial was ordered.

Applications and the second trial

43. Prior to the start of the second trial, on 20 September 2021 Mr More made a section 8 application for disclosure of Mr Wilson's status as an informant and for confirmation of whether D2016 represented the entirety of the material relating to Mr Wilson's shooting. In paragraph 1 of the application, it was stated that Mr More "will state that John Wilson was a police informant and that this fact was widely known at the time. He discovered this fact from information in the NCA paperwork stolen from DI Phoenix on 1 May 2002 and subsequently found to have been copied and circulated."
44. In response on 5 October 2021, the prosecution disclosed further documents. Mr More was told that these documents and D2016 were the only records held by Greater Manchester Police about the shooting.
45. On 14 October 2021 a further section 8 application was made, seeking any material that suggested or confirmed that Mr Wilson was an informant. No further disclosures were made. The prosecution neither confirmed nor denied that Mr Wilson was an informant.
46. The second trial began on 1 November 2021. Mr Collison gave evidence at the second trial. He stated that he had reviewed the stolen NCIS material which suggested that Mr Wilson was the subject of an NCIS investigation rather than an informant. In cross-examination, he was asked whether a person could be a criminal and an informant. He stated that a criminal would not be recruited as an informant as they would be "flagged" as such. In re-examination, he suggested that prior to recruiting an informant, checks would be made to confirm whether a potential informant had been flagged as a criminal. At this point, the judge raised concerns that the line of questioning risked undermining the neither confirm nor deny approach adopted by the prosecution.
47. After Mr Collison's evidence, Mr More lodged a further section 8 application seeking disclosure of whether there was intelligence suggesting that Mr Wilson's life was in danger because of circulation of the NCIS papers. Mr More also applied to adduce D2016 as hearsay material and submitted that the prosecution should conduct a full disclosure review. The prosecution did not disclose any further material and opposed the application to adduce D2016 as hearsay on the basis that the evidence was unreliable.
48. Before there had been a ruling on that application, Mr More gave evidence commencing on 20 November 2021. In cross-examination, the prosecution suggested that he was lying about his belief that Mr Wilson was an informant.
49. Mr More gave evidence in accordance with his defence case that he was a documentary film maker who investigated serious criminal activity and police corruption. The NCIS paperwork shown to him by Mr Deaffearn suggested that Mr Wilson was an informant. Mr More decided to gather information about Mr Wilson with the intention of selling any resulting story to his media contacts. As part of his investigation, he agreed to locate Mr Waters' home and go to Mr Waters' home with Mr Raven and Mr Matthews. He believed that the plan was to steal and relocate Mr Waters' cannabis, which he would then be able to film for his documentary. Although he had been at Burnt House Farm on the day of the murder, he was not party to any plan to torture Mr Waters or Mr

Suleman and had left the farm after a phone call with Mr Wilson before they had arrived.

The trial judge's ruling on hearsay and neither confirm nor deny

50. On 22 November 2021 the judge gave a ruling identifying that in the light of the evidence given by Mr More it was irrelevant whether Mr Wilson was a police informant, and the only issue was whether Mr More believed him to be an informant. In the course of his ruling the judge said “for at least 200 years the courts have resisted attempts by a defendant to require the prosecution to say whether or not a named person was or was not an informant”. The judge identified the policy reasons for that. It is established that the policy extends to questions about persons who are not informers, but about whom the question has been asked whether they are an informer. This is because if one person's status is revealed as not being an informer, any subsequent failure to reveal another person's status becomes, in effect, a confirmation. The limitations of this general principle in order to achieve fairness in a particular case are set out in paragraph 122 of the Attorney General's guidance on disclosure and paragraph 10.9 of the Code of Practice issued under the Criminal Procedure and Investigations Act.
51. The judge found that the key issue was whether Mr More believed, or might have believed, that Mr Wilson was an informant. It was not whether he was, or was not, in fact an informant. It was therefore not necessary to reveal whether Mr Wilson was an informant. Moreover, the judge refused to admit the material in D2016 as hearsay on the basis that it was unreliable and it was therefore not in the interests of justice to admit it. He noted that the jury had seen the redacted stolen material and was aware that Mr Wilson had been shot. It was for the jury to decide whether the redacted material supported Mr More's claim that it caused him to believe that Mr Wilson was an informant.
52. At about this time the prosecution advised that they had asked for the Operation Picking papers to be recovered from storage and reviewed.
53. On 29 November 2021 the National Crime Agency indicated that it had completed its review of the Operation Picking papers and provided to the prosecution material. There was an ex parte hearing before the judge and proposed agreed fact 145 was provided to the defence.

Agreed fact number 145

54. Following the ruling, the prosecution disclosed further information in the form of an agreed fact, which became agreed fact number 145. It was based on material recovered and reviewed by the National Crime Agency's statutory disclosure team during Operation Picking.
55. Agreed fact 145 provided that “On or before 28 May 2002 John Wilson told the Greater Manchester Police that he had been shot as a result of the circulation of the stolen NCS documents amongst the criminal fraternity. He said that he might be regarded as a police informant. He said that his telephone number appeared in the stolen NCS documents and he had received a number of calls from people that he did not know. He said that he had arranged to meet someone at the location where he was shot, and that he attended

the meeting in an attempt to obtain further documents. He also said that he was shot because he was about to find out from the promised documents who was an informant.” The agreed fact was put before the jury before the prosecution’s closing speech. It is apparent from the summing up that leading counsel for Mr More was able to make extensive use of agreed fact 145 and the timing of its disclosure in closing submissions.

56. The prosecution were asked by the defence why the disclosure had come so late. In a note dated 9 December 2021 the prosecution stated that the trigger had been the defence application asking whether there was intelligence in 2002 and 2003 that John Wilson’s life was in danger as a result of the circulation of the NCIS papers, see paragraph 46. The defence had asked whether there were rumours that Mr Wilson was a grass. The prosecution stated that D2016 had been held by Cheshire Police and it had been obtained by them as part of the investigation into the murder of Mr Waters. The material underling agreed fact 145 was the Operation Picking material. The material had been examined in response to the request.

The summing up

57. The judge summed up to the jury on 1 and 2 December 2001. The judge directed the jury, among other matters, in standard terms that they were the ones who decided the facts, and no one else. Further he directed them before he started on his review of the evidence: “I must be selective, and so I will not repeat all the evidence that you have heard. I will not repeat each and every point that the barristers have made. If I did so, we would be here for another month. Therefore, if I mention or appear to stress something which you think to be unimportant, then you ignore it because your decision as to what is important or relevant matters and mine does not. Conversely, I may omit or underemphasise something which you think is important. You decide what is important, not me.”
58. The judge set out the respective cases for the jury and said that is the essential matter for you to decide where the truth lies. Later the judge summarised the defence evidence about his involvement being for an undercover film: “Well, let me then remind you of the evidence that was called. The background is that in 2002 the seriousness of cannabis offences was reduced by a change in the law. Channel 4 asked Stephen Boulton, a television producer, and Gregor Stewart, a television journalist specialising in undercover investigations, to make a programme examining the effects of this change. They hoped -- rather naively, you may think -- to film an illegal cannabis farm in operation. First of all, they hoped to have the cooperation of the cannabis farmers, but before doing so, of course, they needed to find a cannabis farm and so they engaged an investigator to try to do so. Stephen Boulton had in the past worked for the defendant's father, Christopher More Snr, who was a respected investigator. Through him, Boulton and Stewart met his son, the defendant. Boulton introduced him to Gregor Stewart and the defendant worked on various programmes for them. Boulton described him as cocky, brash and overconfident. Gregor Stewart said, well, he had a certain bravado but was often disorganised and he lacked calmness and professionalism, but both agreed that he was a good undercover investigator; he could associate with criminals and gain their confidence and he helped them to make a number of successful programmes which they listed. They knew that the defendant had used James Raven as an assistant and as security.”

59. In the course of the summing up the judge addressed the evidence given by Collison about the NCIS papers: “He examined the notebook to see if there were any references to John Wilson. He found 14 such pages which he copied in a redacted form, blocking out material which does not relate to Wilson or related to material names and tactics which are still sensitive. You have copies of that material as redacted, now filed at divider 11, which I do not think you need to turn up. He explained to you the references to Wilson on those 14 pages. He told you that there is a rule of practice soundly based on public policy which has been followed for many years by the police, by the security services and upheld by the courts that the authorities will never confirm or deny that any person was an informant. To do so would expose those who give information to risk and may deter others from giving valuable information in other cases. Mr Collinson said he saw nothing in those papers about Wilson which supported the suggestion that he was an informer. On the contrary, he said Mr Wilson appeared to be a target for a law enforcement operation which became Operation Flood, referred to at page 13 of that material. When examining the material recovered, there was a further typed document mockingly and ironically headed: "The green grass anti-bacterial monitoring unit," which referred to material “generously provided by the Detective Inspector.” The judge reminded the jury that in cross examination Mr Collinson had agreed that in the papers was one of Mr Wilson’s phone numbers, which was still in use at the time of the murder of Mr Waters. This, it was suggested on behalf of Mr More, did not suggest that Mr Wilson was a sophisticated criminal anxious to avoid police investigations, supporting the proposition that he was a police informer.
60. The judge also said: “I will remind you later of what the defendant said about it. I need to remind you of the evidence which relates to the shooting of Wilson. The NCIS material was stolen on 1st May 2002. Just over three weeks later on 26th May, John Wilson was shot. It is an agreed fact -- in fact, it is agreed fact 133 -- to the effect that Wilson was shot as he sat in a car outside the Stable Gate Public House in Denton. Police found a copy of the stolen NCIS papers in that car so Wilson at least was aware of the contents and, of course, you have the beginning of this week the further agreed fact, fact 145, which Mr Bennathan read to you yesterday and I need to read again, but from that it is clear that Wilson understood that others believed he was an informant having read the stolen NCIS papers which Mr Bennathan argues strongly supports the defendant's assertions that he so believed at the time. I will return to that when I review the defendant's evidence with you.”
61. During a short break for the jury leading counsel for Mr More made the following submission to the judge. “The second point, with great respect, is this: if the Court is to make comments that are supportive of the Prosecution case but were not advanced by the Prosecution, and on our note and our recollection this happened a number of times, this with great respect the Court should either not make those comments -- which would obviously be our preference -- or if the Court does so, should, as it were, own them as the Court's own comments and should not, if the Prosecution have not advanced submissions, should not say they are those of the Prosecution when they are not. That was one example. There were others.” The judge made some factual corrections as requested on behalf of Mr More.
62. At the conclusion of the summing up the jury retired to consider their verdicts. Mr More was convicted on 9 December 2021. He was sentenced on 10 December 2021.

The judge noted that Mr More was being sentenced, under the transitional provisions, under the sentencing regime for murder applying at the time of the murder.

The application for leave to appeal against conviction and further directions

63. As noted above on 13 January 2023 there was an ex parte hearing between the Court and prosecution, on notice to Mr More's legal team. Following that hearing an open direction was made to the effect that the prosecution reviewing lawyer should review the Operation Picking material. It had become apparent that the Operation Picking material had been reviewed at the end of the trial by officers of the National Crime Agency. Those officers, although briefed by members of the prosecution legal team, had not been present at the trial and could not have known all of the relevant details of the case on behalf of Mr More.
64. Directions were also given for the parties to produce a schedule of relevant sections of the summing up about which complaint was made on behalf of Mr More, to which the prosecution could serve their response. The Court gave directions about obtaining transcripts of evidence. The parties were directed to prepare an agreed chronology, and to lodge skeleton arguments and authorities.

The 2023 material

65. The prosecution reviewed the material arising from Operation Picking. There were various descriptions of the number of boxes, a point about which Mr Stein made complaint. It was suggested that there were six, nine or twelve boxes. In final submissions Mr Power confirmed with Mr Reid that it was six boxes.
66. In a note dated 10 February 2023 the prosecution disclosed what has been referred to as the 2023 material. This was to the effect:

“Wilson spoke to the National Crime Squad on 30th May 2002 and 2nd July 2002. On both occasions, he was in the presence of his solicitor.

On 30th May 2002, his solicitor said that there were two possible reasons why Wilson was shot. Either he was perceived to be an informant or another person was likely to be exposed as an informant and wanted Wilson out of the way. Wilson said that he wanted to see DI Phoenix's day book so that he could carry out his own risk assessment. He had been called several times by a person that he would not name and whom he presumed to be the informant. He again asked the day book and refused to name the person who had lured him to the meeting where he was shot. He said he knew them very well. Later in the meeting he provided the name of the suspected informant.

[It might be noted that it was originally stated that the meeting was held on 14th May 2022 but the prosecution said that this was a typographical error. We will return to this point]

On 2nd July 2002, he said that following the shooting, his phone had been seized by police and he had purchased a pre-pay mobile phone. He received calls from people he was not prepared to name. They asked him why he was sending them blank messages. He threw away the phone and ordered a new SIM that used his old number (07768 800 548) but the same thing happened. He tried to convince the people receiving blank text

messages that he did not send them. Sometimes he met with them to show them his phone. He felt that these calls were making his associates uneasy about him, as there was gossip suggesting that he was a police informant and the problems with the calls were hindering him from convincing people otherwise. He said that he had not received any direct threats since the shooting.”

Further submissions

67. Following this disclosure, Mr More sought a further directions hearing, suggesting that a full investigation was required into the late disclosure of further evidence. This was because the prosecution asserted that a thorough review had occurred and there was no further material to disclose, but the subsequent disclosures demonstrated that these assertions were flawed and provided legitimate grounds to conclude that there had been persistent, and potentially deliberate, failings to disclose relevant material.
68. Mr More sought further information and directions. The prosecution made it clear that the Operation Picking material was never scheduled because it did not meet the disclosure test.
69. The Court did not direct a further disclosure hearing and directed that any issues could be addressed at the hearing of the application for leave to appeal against conviction.

The hearing on 21 July 2023

70. The hearing of the application for leave to appeal, further directions if required, and the hearing of the appeal, if leave was granted, took place on Friday 21 July 2023. As there had been a change of part of the constitution of the full court which had heard the ex parte hearing in January 2023 there was again another ex parte hearing between the court and the prosecution, on notice to Mr More’s legal team. There were then submissions on both sides but the court was unable to conclude the hearing on the day. Directions were given for the prosecution to disclose the underlying materials from the Operation Picking papers, redacted as necessary, which had given rise to the note dated 10 February 2023.

The hearing on 31 July 2023 and the provision of unredacted copies of certain documents to the Court

71. In the interim Mr Stein on behalf of Mr More had been in contact with former leading counsel for Mr More. Former leading counsel for Mr More had set out his recollections of various matters relating to disclosure, including counsel’s understanding of the extent of the task undertaken by Mr Collison.
72. The disclosure of the materials underlying both the making of agreed fact 145 and the 2023 material was provided, although there were substantial redactions on the documents provided to both the Court and to Mr More’s legal team. There was a final hearing before the Court on 31 July 2023 at which submissions were made about those documents.
73. As noted above, shortly after the conclusion of the hearing on 31 July 2023 the court asked, on notice to the defence, to be provided by the disclosure officer with unredacted copies of those documents. This was done on 2 August 2023 and the court has seen

unredacted copies of the documents. The Court directed disclosure of a few more lines of the redacted documents and gave Mr More's legal team permission, if so advised, to put in further submissions.

74. In a note dated 9 August 2023, it was submitted on behalf of Mr More that there should be another hearing, that it was now apparent that the date of 14 May 2002 was not a typographical error, that, exceptionally, disclosure should be made of Mr More's status, and it was now apparent that more facts should have been added to agreed fact 145.
75. In a note dated 10 August 2023, it was submitted on behalf of the prosecution that: there was no need for a further hearing; the date of 14 May 2002 was a typographical error; and that the prosecution's previous submissions answered the points made on behalf of Mr More and that there was nothing material to add to agreed fact 145.

The revised issues on the appeal

76. At the conclusion of the various hearings it is now apparent that the following matters are in issue: (1) whether the summing up was so unbalanced that the conviction was not fair; (2) whether there has been such an absence of integrity in the disclosure process that: special counsel ought to be appointed; so that the court can consider whether the appeal ought to be allowed on the basis of an abuse of process; and further directions are required (3) in any event, whether the late disclosure of agreed fact 145, and the disclosure of the 2023 material, mean that there was not a fair trial and the conviction is not safe.

Summing up fair (revised issue one)

77. It was submitted on behalf of Mr More that the summing up was biased because: judicial comments were erroneously put forward as prosecution arguments; judicial comments were exclusively supportive of the prosecution case; facts that were agreed were presented as part of the prosecution case; arguments were wrongly attributed to the defence; and the summary of Mr More's evidence was focused on evidence given in cross-examination.
78. It was submitted on behalf of the prosecution that the summing up was balanced and fair. In particular: the judge reminded the jury of numerous points made on Mr More's behalf and was reminded of the answers given in examination-in-chief and cross-examination; the agreed facts were part of the prosecution case and the evidence and competing arguments were presented in a balanced manner; the comments by the judge were setting out the prosecution case; and the judge reminded the jury of important defence points.
79. The relevant principles to be considered when assessing the fairness of a summing up were common ground between the parties and are set out in *R v Reynolds* [2019] EWCA Crim 2145; [2020] 4 WLR 16 at paragraphs 50 to 70. It is not necessary to repeat them in this judgment. It is necessary to look at the summing up as a whole and to consider whether the respective cases have been put fairly on behalf of the prosecution and defence.
80. It is important to record that the judge directed the jury in standard terms that they were the ones who decided the facts, and no one else. Further he directed them before he

started on his review of the evidence, as set out in paragraph 56 above: “I must be selective, and so I will not repeat all the evidence that you have heard”. He told them that if he mentioned or appeared to stress something which they thought to be unimportant, then they should ignore it because it was their decision as to what was important.

81. At the outset of the summing up the judge summarised the defence case saying “I will later summarise the defendant's explanation for involving himself with Wilson, Raven, Matthews and maybe others, and that explanation is that he was engaged in speculative covert surveillance to steal the cannabis plants and the equipment to set up a cannabis farm at the Great British Car Wash to film it, thereby exposing Wilson as a police informant and, of course, to make money by selling the film to a television company.” The judge fairly also summarised the evidence about this being an undercover film in the terms set out in paragraph 57 above.
82. We have been through the schedule of complaints but we do not consider that the criticisms of the judge’s approach are well-founded. For example, so far as the first complaint is concerned, the judge said “The prosecution case is that John Wilson engaged the defendant whom he knew to have investigative skills to find out where Brian Waters’ cannabis farm was”. The complaint about that is that it was “presenting facts that were uncontroversial and undisputed as the prosecution case. Creating the impression that all of the reliable evidence came from the prosecution”. The real difficulty with this complaint is that this is a fair and accurate summary of the prosecution case. The prosecution case went on to suggest that Mr More was a willing accomplice in the plan to steal Mr Waters’ cannabis plants and torture Mr Waters, but Mr More denied that. It is right that part of the defence case was that Mr More worked for Mr Wilson so that he could carry out his speculative covert surveillance, but the judge had already reminded the jury of that part of the defence case.
83. We note the complaint made by leading counsel for Mr More during a break in the summing up that the trial judge was dressing up his comments as comments made by the prosecution. Mr Power submitted that the judge was in fact setting out the prosecution case. We have looked through the materials and it is apparent that whilst the judge expressed the prosecution case in a way which did not appear to mirror the words used by the prosecution (looking at the opening note, wording of prosecution applications, and transcript of cross examination – we do not have a transcript of the prosecution closing speech), we cannot see that he was adding to the prosecution case when he was summarising it for the jury.
84. We can see nothing in the comments made by the judge that would make this conviction unsafe.

The disclosure process (revised issue two)

85. The Criminal Procedure and Investigations Act 1996 (CPIA) governs issues of disclosure. The updated Attorney-General’s Guidelines on Disclosure at paragraph 121 provide that it is essential that principles are scrupulously adhered to, to ensure that the procedure for examination of material in the absence of the accused is compliant with article 6 of the European Convention on Human Rights (ECHR). Reference is also made to *R v H and others* [2004] UKHL 3; [2004] 2 AC 134 (*R v H*).

86. In *R v H* at paragraph 36 a number of questions are identified:

“(1) What is the material which the prosecution seek to withhold? This must be considered by the court in detail.

(2) Is the material such as may weaken the prosecution case or strengthen that of the defence? If No, disclosure should not be ordered. If Yes, full disclosure should (subject to (3), (4) and (5) below) be ordered.

(3) Is there a real risk of serious prejudice to an important public interest (and, if so, what) if full disclosure of the material is ordered? If No, full disclosure should be ordered.

(4) If the answer to (2) and (3) is Yes, can the defendant's interest be protected without disclosure or disclosure be ordered to an extent or in a way which will give adequate protection to the public interest in question and also afford adequate protection to the interests of the defence?

This question requires the court to consider, with specific reference to the material which the prosecution seek to withhold and the facts of the case and the defence as disclosed, whether the prosecution should formally admit what the defence seek to establish or whether disclosure short of full disclosure may be ordered. This may be done in appropriate cases by the preparation of summaries or extracts of evidence, or the provision of documents in an edited or anonymised form, provided the documents supplied are in each instance approved by the judge. In appropriate cases the appointment of special counsel may be a necessary step to ensure that the contentions of the prosecution are tested and the interests of the defendant protected (see para 22 above). In cases of exceptional difficulty the court may require the appointment of special counsel to ensure a correct answer to questions (2) and (3) as well as (4).

(5) Do the measures proposed in answer to (4) represent the minimum derogation necessary to protect the public interest in question? If No, the court should order such greater disclosure as will represent the minimum derogation from the golden rule of full disclosure.

(6) If limited disclosure is ordered pursuant to (4) or (5), may the effect be to render the trial process, viewed as a whole, unfair to the defendant? If Yes, then fuller disclosure should be ordered even if this leads or may lead the prosecution to discontinue the proceedings so as to avoid having to make disclosure.

(7) If the answer to (6) when first given is No, does that remain the correct answer as the trial unfolds, evidence is adduced and the defence advanced?

It is important that the answer to (6) should not be treated as a final, once-and-for-all, answer but as a provisional answer which the court must keep under review.”

87. If there are issues of non-disclosure the Court will scrutinise any further materials with particular care to decide whether the defendant has had a fair trial and whether the conviction is unsafe, compare *R v Knaggs* [2018] EWCA Crim 1863.

88. It is submitted on behalf of Mr More that the late disclosure of agreed fact 145 raises legitimate concerns about the integrity of the disclosure process. It should have been

disclosed during the first trial. The fact that the Operation Picking material has not been scheduled proves a failed disclosure exercise. The evidence of a flawed disclosure process renders the conviction unsafe because there were failings to address the defence requests and the investigation occurred over 20 years and the evidence was complex and came from multiple sources. This heightened the need for a proper disclosure process. It was submitted that a thorough and extensive review of the sensitive unused material, the disclosure process (including the actions of the various law enforcement authorities concerned) and the content of the private hearings should be conducted by independent counsel to ensure that no further material falls to be disclosed.

89. The prosecution submit that the disclosure process was not flawed. Disclosure was an enormous task not helped by the fact that Mr More had escaped for over 16 years. Mr More's defence was first expressed in a defence statement served shortly before the first trial and in response, DC Collison's statement and exhibits were served. D2016 was properly disclosed during the first trial. No further disclosures were made because Mr More did not seek any further disclosure during that trial. The prosecution was therefore entitled to conclude that in light of the lack of requests for further disclosure, the defence had decided against pursuing that line of enquiry. When Mr More eventually raised concerns at the retrial, the matter was further investigated and further material disclosed.
90. We agree that the late disclosure of agreed fact 145 does cause concern about the integrity of the disclosure process in this case, which is serious both for Mr Waters' family and for Mr More. This is why we granted leave to appeal against conviction. As is apparent from the matters set out above this Court has attempted to undertake its duties to scrutinise the process of disclosure very seriously. At the end of the first ex parte hearing on notice, the Court directed the prosecution reviewing lawyer to review the whole of the Operation Picking papers. This led to the disclosure of the 2023 material. The Court has in later hearings directed the Court to disclose the materials underlying agreed fact 145 and the 2023 material, and, after the Court was provided with the unredacted materials, the Court has directed the prosecution to provide further unredacted parts of those materials. We have had the benefit of the notes prepared on behalf of Mr More and the prosecution following that further disclosure. We have considered carefully whether, exceptionally, it was necessary to instruct special counsel to conduct a review of the materials, but we have concluded that it was not necessary to do so. This is in the light of all the information which the Court has seen and in the light of what we have been told. We understand why it was submitted on behalf of Mr More that there should be a further hearing. This is because Mr More's legal team have not seen all of the materials that this Court have seen. This is one of the weaknesses with a procedure, necessary though it is in order to preserve the policy of neither confirming nor denying a person's status as an informant, where the defence will not see all that is seen by the prosecution or Court. However, in the light of all that this Court has seen and been told, we do not consider that it is necessary to have a further hearing in order to do justice, and be seen to do justice. There have been open hearings for directions, and the hearing of the applications for leave to appeal against conviction, and if leave is granted, the appeal itself, on 21 and 31 July 2023. There is nothing further, on the basis of what this Court has seen and been told, which can take this appeal against conviction any further at a future hearing.

91. It is fair to the prosecution to record that the focus of the earlier requests for disclosure appeared to be directed to finding out whether Mr Wilson was, in fact, a police informant and the effect of some of the submissions to this Court have been that this court ought to order disclosure of Mr Wilson's status. The trial judge, however, identified that the real issue at the trial was not Mr Wilson's status but Mr More's belief in Mr Wilson's status. We agree with the trial judge that was the relevant issue for Mr More's defence. This is because Mr More's belief was relevant to his defence that he was acting as an undercover reporter so that he might be able to make a programme about rogue police informants, and because he was less likely to become involved in torturing a person if he knew that Mr Wilson was a police informant, and because it might have been relevant to Mr More's reaction if Mr Wilson had threatened him in a phone call.
92. In this case, and notwithstanding the late disclosure of agreed fact 145 and the disclosure of the 2023 materials and documents on which it was based, the prosecution resist disclosing the fact whether Mr Wilson was an informant, in order to preserve the principled approach taken by public authorities not to confirm or deny such matters. The ex parte on notice hearings have been held in order to preserve that approach of not confirming nor denying whether Mr Wilson was an informant. We confirm, in the light of all that we have seen and read and having undertaken a careful scrutiny of the matters to which our attention has been directed by the prosecution in ex parte on notice hearings, that we do not direct the disclosure of the information about whether Mr Wilson was, or was not, an informant. We have not directed this disclosure because: the issue was whether Mr More believed him to be an informer on the basis of what Mr Deaffearn had told him and the NCIS papers that he had seen, and not whether he was in fact an informant; and because disclosure of the information about whether Mr Wilson was an informant would not weaken the prosecution case or strengthen the case for the defence in this case.
93. We have considered whether the failure to schedule the Operation Picking materials undermines the disclosure process, but we do not consider it to do so for three reasons. First given that Operation Picking related to the attempts to recover the stolen NCIS material it was reasonable at first to assume that it was unlikely to be a source of relevant materials. That said we agree that when it became clear that the stolen NCIS material formed part of the Operation Picking papers, which it should have done from the time of service of D2016, the Operation Picking papers should have been reviewed for relevance. Secondly, once the prosecution had finally and belatedly appreciated that the Operation Picking material might be relevant, a review was undertaken which led to the making of agreed fact 145, although it is right to record that that review did not lead to the discovery of the 2023 material. Thirdly the absence of a schedule and the absence of the directions given to the reviewing officers was considered by the Court when directing a review of the Operation Picking material to be undertaken by the prosecution reviewing lawyer, which was what led to the disclosure of the 2023 material. We will consider the effect of the late disclosure of agreed fact 145 and the 2023 material under revised issue three.
94. We have also considered whether there was any deliberate misleading of the defence about the scope of the disclosure undertaken by Mr Collison, because if so it might form the basis for an application to stay proceedings as an abuse of process, as any deliberate attempt to mislead a defendant in a criminal trial would affect the fairness of

a trial. In his statement Mr Collison did say “following a request from CPS, I reviewed the paperwork from Operation Picking which included the original hard-back lined writing book containing sensitive information and the numerous sheets of A4 paper containing sensitive National Crime Squad information ... the purpose of my review was to identify any entries in the aforementioned paperwork where the name `John Wilson` or `John Godfrey Wilson` was mentioned.” As Mr Stein pointed out this could be read as suggesting that Mr Collison had reviewed all of the Operation Picking materials. The prosecution say that it meant that Mr Collison reviewed only DI Phoenix’s writing book and numerous sheets of A4 paper which were located in the Operating Picking papers.

95. In this case, it is apparent from the summing up, that the judge had understood Mr Collison to be saying that he had examined DI Phoenix’s book and the looseleaf A4 papers to see if there were any references to Mr Wilson, and not that Mr Collison had examined the whole of the Operation Picking papers to see if there were any references to Mr Wilson. The judge said Mr Collison “examined the notebook to see if there were any references to John Wilson. He found 14 such pages which he copied in a redacted form, blocking out material which does not relate to Wilson or related to material names and tactics which are still sensitive”. We well understand from the way in which Mr Collison’s statement is phrased why it was understood by Mr More’s legal team to mean that Mr Collison had examined the whole of the Operation Picking papers to see if there were references to Mr Wilson. In our judgment fairly read, Mr Collison’s statement and evidence could be understood, in context, both as understood by the defence and as understood by the prosecution. There is no basis for finding, on the material that we have seen, that the prosecution deliberately attempted to mislead Mr More’s legal team about the scope of the exercise undertaken by Mr Collison. It is right that the defence’s understanding may have contributed to the late disclosure of agreed fact 145, because the defence may otherwise have asked for a full review of the Operation Picking papers, but this does not answer the point about the effect of the late disclosure of agreed fact 145 on the fairness of the trial. This is addressed under revised issue three.
96. We have also considered whether Mr Collison went, as suggested in submissions, “too far” in his evidence by suggesting that Mr Wilson was not an informant and, as the judge noted, undermining the approach of neither confirming nor denying Mr Wilson’s status. This issue was dealt with by the trial judge, and we can see no failure in the trial judge’s approach to the matter. In any event we can confirm that, in the circumstances of this case, there was nothing in Mr Collison’s evidence which rendered Mr More’s conviction unsafe.
97. We agree, that on all that we have seen and been told, there is no further information to disclose which will undermine the prosecution case or support the defence case, and that there is no need for further directions on disclosure before this appeal is determined.

Late disclosure of agreed fact 145 and the 2023 materials (revised issue three)

98. Mr Stein submitted that the late disclosure of agreed fact 145 could not undo the prejudice caused by evidence called by the Crown on the topic of whether Mr Wilson was an informant. It could not repair the suggestions made in cross-examination that Mr More was lying. The failure to disclose the agreed fact prior to Mr More’s cross-examination resulted in him being cross-examined unfairly. The prosecution cross-examined him on the basis that he was lying about believing that Mr Wilson was an

informant when agreed fact 145 was entirely consistent with Mr More's evidence that he believed Mr Wilson was an informant.

99. Mr Power submitted that the issue in the case was whether Mr More believed Mr Wilson was an informant on the evidence available to him. That evidence was very thin and it was perfectly proper to suggest that he was lying about this belief. In any event, it was made clear to the jury that Mr More did not know about agreed fact 145 when he gave evidence.
100. Some of the submissions on behalf of the prosecution went so far as to suggest that what was being reported by Mr Wilson about what the criminal fraternity believed about him after the circulation of the stolen NCIS papers was irrelevant because Mr More did not say that he had spoken to Mr Wilson about whether he was or was not an informant, and because what others believed in the criminal fraternity about the NCIS papers was irrelevant to Mr More's belief. We do not accept these submissions. This is because Mr More was entitled to rely on the fact that it appears that members of the criminal fraternity had read the NCIS papers and concluded that Mr More was a police informant, as supporting what Mr More said was his own reading of the NCIS material.
101. We have considered whether the fairness of the trial was undermined by the prosecution cross examining Mr More on the basis that his belief that Mr Wilson was a police informant was false. We consider that the prosecution was entitled to cross examine Mr More on this basis, even in the light of agreed fact 145. This is because Mr More asserted that he believed Mr Wilson to be an informer based on what Mr Deaffearn had told him and Mr More's recollection of what he had read in the NCIS papers that he had seen. This was a proposition that the prosecution strongly disputed because Mr More said he had relied on the NCIS material to form that belief and the prosecution submitted that the NCIS material did not support that belief and they relied on Mr Collison's evidence about the NCIS material for that proposition. The fact that it appears from agreed fact 145 that Mr Wilson said that after the circulation of the stolen NCIS material amongst the criminal fraternity some people regarded him as a police informant does not mean that Mr More had himself genuinely formed that belief. Further the prosecution was entitled to rely on some evidence showing that Mr More was still with those accomplices later convicted of carrying out the torture and murder after the killing, meaning that Mr More's claim that Mr Wilson had discovered Mr More's plan to make a programme exposing him as a rogue police informant and told him to leave the farm before any killing took place was false, undermining Mr More's case that he believed Mr Wilson to be a police informant. In any event, when Mr Wilson had been arrested, prosecuted, convicted and sentenced to life for the murder of Mr Waters with a minimum term of 24 years, the prosecution was entitled to say it was safe for Mr More to return to the UK if Mr More had genuinely had nothing to do with the murder, genuinely believed Mr Wilson to be a rogue police informant, and had really been planning to make an undercover film. Instead, even after Mr More had been finally located in Malta, Mr More had lied about his true identity to a Court in an attempt to avoid extradition. In these circumstances the prosecution were entitled to cross examine on the basis that it was not safe to rely on anything that Mr More said.
102. Further we do not consider that the timing of agreed fact 145, which was after the conclusion of Mr More's cross examination, meant that the conviction was unsafe. Mr More did not say that he had ever discussed with Mr Wilson what members of the criminal fraternity believed about him after the circulation of the stolen NCIS material

and Mr More was not in a position to give evidence himself about the unnamed members of the criminal fraternity. There was no application to recall Mr More to give evidence in the light of agreed fact 145, and we cannot see a basis on which such an application would have been made. There was no application to discharge the jury, and the timing of the disclosure of agreed fact 145 enabled leading counsel for Mr More to read the agreed fact to the jury and, as is apparent from the terms of the summing up, to make very considerable and proper use of the material to say that it supported Mr More's evidence about his belief that Mr Wilson was a police informant having read the stolen NCIS material. It is no doubt right that, if agreed fact 145 had been disclosed before as it should have been, it would have been referred to at other parts of the trial on behalf of Mr More. That said the critical point is that it was adduced in evidence and it was adduced before speeches and the summing up and the jury were able to consider their verdicts in the light of agreed fact 145.

103. We now turn to consider whether the 2023 material, either in the note or in the underlying materials, would have added anything to agreed fact 145. Agreed fact 145 is set out at paragraph 54 above, and the 2023 material is set out at paragraph 65 above. Mr Stein suggested that the 2023 material showed that there were more than one meeting between Mr Wilson and the police after his shooting, which might support the proposition that he was, in fact, a police informer. There was, in fact, material showing that Mr Wilson had met the police on at least two occasions after the shooting before the jury (being agreed fact 145 and the time at which he made his statement to the police) but, as the trial judge had rightly held, the issue was whether Mr More believed Mr Wilson to be an informant and not his status. As we have confirmed on the basis of everything that we have read and been told there is nothing further to disclose which would weaken the prosecution case or strengthen the case for Mr More.
104. Mr Stein submitted that, following the disclosure of the 2023 material, the documents underlying agreed fact 145 and the 2023 material, and the further unredacted lines, there was some further material which it is now known should be added to agreed fact 145. We can confirm that on the basis of all that we have seen and been told, the prosecution would have been right to resist any further addition to agreed fact 145 to suggest that the date of 14 May 2002 was the date on which the police decided to warn Mr Wilson about risks to his life following the theft of the NCIS material. We can also confirm on the basis that we have seen and been told that Mr Wilson did not have a meeting with the police in November 2001. There was evidence at trial that Mr Wilson was the subject of police operations.
105. We do not consider that the disclosure of the 2023 material or the documents underlying the 2023 material, would have made any material difference to the trial. It was common ground before us that the only way such material realistically could have been adduced in evidence was by way of agreed fact. This was because we were told that Mr Wilson was at the time of the trial, and is now still, serving his prison sentence and that neither prosecution nor defence would have been willing to call him as a witness. When one tries to identify what agreed fact might be produced on the basis of the 2023 material it is apparent that it would have added nothing to agreed fact 145, which was before the jury. We are therefore sure that the late disclosure of agreed fact 145 at trial, and the late disclosure of the 2023 material, did not make Mr More's convictions unsafe.

Conclusion

106. For the detailed reasons set out above we: grant Mr More leave to appeal against his convictions for murder and conspiracy to cause grievous bodily harm; we find that the summing up was fair; we do not direct the appointment of special counsel or make any further directions relating to disclosure; and we find that the late disclosure of agreed fact 145 at trial, and the late disclosure of the 2023 material, does not make Mr More's convictions unsafe; and we dismiss Mr More's appeal against his convictions.