

R v GARLAND [2016] EWCA Crim 1745

Garland was convicted of burglary, aggravated burglary and offences of GBH in December 2007. He was sentenced to a minimum term of 17 years imprisonment.

The case was referred to the Court of Appeal as, it was argued, there had been a material non-disclosure of information available to Crown, which undermined the Crown's case and made the conviction unsafe.

Garland was convicted after his co-accused, who was convicted of the offence, provided Garlands name to the police. There was no forensic evidence linking him to the crime, however, there was telephone communication between both men before and after the commission of the crime. Garland was also convicted of similar offences.

The Crown disclosed information from two confidential sources by way of a Public Interest Immunity (PII) hearing. One source named the offender in the aggravated burglary as *Mark Ellis*. The second source also named *Terence Watts* as being an offender. This information was not made available at the trial.

The Defence argued that this material should have been disclosed prior to the original trial and Garland may have acquitted if the jury had been made aware of it. Submissions were also made that bad character evidence had been adduced against Garland without the trial Judge being aware of the existence of the undisclosed material.

The Crown conceded that the material should have been disclosed at the original trial but denied withholding it in bad faith.

On balance, the Court the appeal on the following grounds:

The main question was whether, the convictions were unsafe, in light of the new information. The Court took the view that they had no doubt as to the safety of the conviction, regardless of the non-disclosure. This was based on the following points;

1. The arguments for Garland were built on shaky foundations; the statements made by the two sources were unclear, unsatisfactory and their provenance was uncertain.
2. There was the evidence of the co-accused—although it was accepted that he had gained by assisting the police.
3. The co-accused had accidentally disclosed the name of his co-defendant as *Jason* to his mother shortly after the incident. This was captured in evidential form and the Court were satisfied there could have been no prior planning by the co-accused to do this, nor any collusion. They were satisfied this was a strong piece of evidence against the Garland.

4. There was extensive phone contact between the two men both before and after the incident.
5. The appellant had been convicted previously of very similar offences and this offending behaviour was properly balanced in the comments made to the jury by the trial judge. Even if bad character evidence had not been adduced under propensity to commit similar offences, it would have been adduced under another limb of the legislation in any event because the defendant had made an attack on the character of his co-accused.

*The interpretation and comments made within this document are not to be considered as legal advice.
Reference should always be made to the original case.*