



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

DPP v Flynn

On appeal from: [2025] IECA 103 and [2025] IECA 104

Judgment delivered on 16 October 2026

[2026] IESC 43

Headline

The Supreme Court directs a retrial of Mr. Flynn on the amended indictment, noting that he has full notice of the charge in its current form and may raise any appropriate issues arising from the amendment if a retrial proceeds.

Composition of Court

O'Donnell C.J., Murray, Collins, Hyland, O'Moore JJ.

Judgment

O'Moore J. (with whom O'Donnell C.J., Murray J., Collins J., and Hyland J. agree).

Background to the Appeal

The appellant, Mr. Flynn, was originally indicted on a charge of conspiracy to burgle, alleging that, between 11 September 2012 and 23 January 2013, he conspired with others to enter residential premises as trespassers with the intention of stealing motor vehicle keys [1].

Following a trial before the Special Criminal Court, that court, in its verdict delivered on 11 September 2023, amended the particulars of the indictment. The amended charge instead referred to an alleged conspiracy to burgle on 22 and 23 January 2013. Mr. Flynn was convicted on this amended indictment [2-3]. The amendment was made without prior notice to either the prosecution or the defence. Counsel for both the Director of Public Prosecutions and Mr. Flynn were critical of the Special Criminal Court's decision to alter the indictment in that manner [4].

On appeal, the Court of Appeal quashed the conviction, holding that the way in which the indictment had been amended infringed Mr. Flynn's constitutional and natural justice rights and resulted in a trial that was not conducted in due course of law ([2025] IECA 103). The Court of Appeal also ordered a retrial on the original indictment, having found that the amendment had been without legal effect. Although Mr. Flynn had advanced a further ground of appeal concerning the admission of evidence characterised as expert evidence, the Court of Appeal did not determine that issue, having already resolved the appeal in his favour on the indictment point.

Mr. Flynn subsequently obtained leave to appeal to the Supreme Court, where his appeal was dismissed on the substantive issues. The Supreme Court however held that the Court of Appeal had erred in finding that the amendment of the indictment was without legal effect and void.

This Court reserved for separate determination the question of whether a retrial on the amended indictment should proceed. In the current judgment, this Court emphasises that its function is limited to determining whether it is legally permissible for the Director of Public Prosecutions to proceed with a retrial of Mr. Flynn on the amended conspiracy charge [8].

Reasons for the Judgment

As counsel for Mr. Flynn accepts, the Court should lean in favour of allowing questions of guilt or innocence to be determined in the ordinary way. However, he identifies a number of factors which mean that the prosecution should not be allowed to proceed. These are considered individually.

O'Moore J does not accept that there is any lack of clarity about the validity of the amendment to the indictment made by the Special Criminal Court [17].

O'Moore J. agrees with the judgment of Donnelly J. that the amended indictment is the relevant one for the purpose of deciding this issue. However, it is acknowledged that it is open to Mr. Flynn to raise any appropriate issue about the fairness, or otherwise, of the DPP proceeding against him on the amended indictment [16-17].

In relation to the submission by counsel for Mr. Flynn that the Court of Appeal did not consider the separate ground that certain evidence against Mr. Flynn did not constitute expert evidence, O'Moore J. states that this submission is misplaced [18].

Mr. Flynn accepts that an appellate court is not required to decide every issue before it, though O'Moore J. states that this concession is somewhat caveated by reference to issues being "*trivial, repetitive or unconnected to the safety of the conviction*". It is stated in the judgment that it was appropriate for the Court of Appeal to decide not to determine an entirely separate and unconnected ground of appeal (regardless of its substance) where it had determined that the conviction should be quashed because of the circumstances in which the indictment was amended [18].

When reviewing the issue of the time to be served by Mr. Flynn, O'Moore J. notes that the amount of time outstanding in Mr. Flynn's sentence is not sufficiently insignificant not to direct a retrial [23]. The judgment accepts counsel's submission that the proper application of *Forsey* is not confined to cases where the entirety of the sentence has been served.

In considering this argument, the Court is not carrying out a utilitarian analysis of the cost benefit of a retrial in light of the amount of time already served. O'Moore J. finds that the offence of

conspiracy to burgle is a very serious one and there is a clear public interest in a retrial that would decide the innocence or guilt of Mr. Flynn [28].

Mr. Flynn has not established that the delay involved or the alleged prejudice arising from a claimed loss of memory and notes amounts to a meaningful reason to refuse a retrial; issues arising from lack of recall are better dealt with by a trial court [30].

For those reasons, a retrial of Mr. Flynn on the amended indictment by the Special Criminal Court has been ordered [33].

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case History

29 April 2026	Oral submissions made before this Court
[2026] IESC 21	Judgment of the Supreme Court
20 January 2026	Oral submissions made before this Court
[2025] IESCDet 116	Supreme Court Determination granting leave
[2025] IECA 104	Judgment of the Court of Appeal
[2025] IECA 103	Judgment of the Court of Appeal
11 September 2023	Judgment of the Special Criminal Court