

Neutral Citation No: [2024] NICC 1

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*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

Delivered: 10/01/2024

IN THE CROWN COURT OF NORTHERN IRELAND

SITTING AT LAGANSIDE COURTHOUSE

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THE KING

v

PATRICK MCCANN

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**HER HONOUR JUDGE SMYTH**

**Recorder of Belfast**

*Introduction*

[1] I am very grateful to counsel for the prosecution and the defence for their assistance in this sentencing exercise which concerns the application of the Counter-Terrorism Act 2008 and the Criminal Justice Order (Northern Ireland) Order 2008 as amended by the Counter- Terrorism and Sentencing Act 2021.

[2] The defendant is to be sentenced in respect of-

(i) Possession of explosive substances in suspicious circumstances (the component parts of pipe bombs and a quantity of lamel small arms propellant) Count 2

(ii) Possession of explosive substances in suspicious circumstances (F3 fireworks) Count 3

(iii) Making explosives substances under such circumstances as to give rise to a reasonable suspicion that he was not making them for a lawful object (tennis ball bombs) Count

*The Background*

[3] On 29 September 2019, PSNI officers carried out a search of the defendant's home in Belfast. The police recovered the following items;

(i) Six green firework fuses which showed no evidence of burning.

(ii) Two partially constructed pipe bomb type improvised explosive devices, likely to be intended as anti-personnel weapons.

(iii) The remains of 124 "Dum Bum" brand type fireworks. There were four fuses present along with a green and orange tennis ball partially cut open and wrapped in overlapping lengths of 18mm wide black adhesive tape.

(iv) 15 boxes of unopened "Dum Bum" brand type fireworks, an empty "Dum Bum" brand box and two loose banger type fireworks.

(v) One black balaclava

(vi) One paper wrapping and black masking tape.

The defendant is forensically connected to all of these items.

[4] The defendant was arrested on 30 September, interviewed and whilst he made a "no comment" interview, he provided a written statement in which he denied being a member of an illegal organisation or having an explosive device or the component parts of same in his possession. He stated that the fireworks recovered were for purely recreational purposes and that the bits of pipes were merely pieces of scrap he had in his house and that they were not part of any device.

[5] Subsequently, the defendant told police that he had copper pipes and a hammer for his own protection and that he used to have a sword also. He stated he was a "paranoid wreck" after being shot twice and that he hated paramilitaries because they had ruined his life. He said he had found one pipe and bought the other and that he bought a lot of strange things. He described removing the firework fill and putting it into a tennis ball because "there's a bigger bang" and that it was for his own personal use. He said that he "puts 10-15 of the fireworks fill into a tennis ball and throws it at trees" using the fuse from the firework in the tennis ball and putting the tape around it to muffle the sound.

[6] On Sunday the 17May 2020 Police carried out further searches at the defendant's home and found two boxes containing category F3 fireworks. He was arrested on 22 May 2020 on suspicion of possessing explosives under suspicious circumstances. When he was interviewed by police, he said that the fireworks belonged to him and that they had been missed by police when they searched his home in September 2019. He said that the bangs "calm him" because he was shot by paramilitaries and by way of explanation said that: "I know that's mental; I like lighting them".

[7] He was asked whether he had been "taking apart fireworks and using the components and explosive powders to make explosives?" His reply was that he did "last year" but that he "doesn't now". He said that he had not done it since "last September" and that he had been "putting them in wee plastic balls and throwing them in a field but it was to help with [his] mental health. He said that he put the explosives into tennis balls and used the fuse from the firework in the ball. He had bought approximately fifty boxes of fireworks last year.

[8] The DoJ prepared a pre-sentence report. The defendant told the author that in the west Belfast area where he resided at that time, there was a strong paramilitary presence and that he had since moved his family to a different location to avoid criminal associates. He said that he was in fear of dissident republicans, and that

they had made threats on his life, and had done so for many years. He said he had been told that he had to store the items, and specifically that he was told that he would come to harm if he did not comply, and that his children and partner may also be harmed. He said that he took these threats seriously because he had previously been a victim of paramilitary shootings in 2011 and 2017, and that he agreed to store the explosives for this reason.

[9] He was asked about the account he had given to police, and he said that he was forced to lie to the police because he had to offer some explanation that did not draw police attention to the paramilitaries. He said that he had no intention of using fireworks or other explosives for illegal purposes, and that his only motive in storing them was to avoid retribution by the paramilitaries. He agreed that he did not alert the authorities to the threat he was under, or to the explosives in his possession.

[10] It is important to set out the explanations put forward to police and to the author of the DoJ report, because the defendant now accepts that by pleading guilty to these offences, the items were not in his possession for any lawful purpose and that he was not acting under duress or any undue pressure.

[11] The defendant now states that prior to these offences, he owed money to paramilitaries because he had bought a van shop with their help. He was unable to repay the money, as the business was not a success. He said that he sold the van for scrap, and because of the amount of debt outstanding, he agreed to store these materials in exchange for the debt being partially satisfied. He accepts that he was not under threat, but he did believe that if he did not comply then there would be consequences.

[12] The defendant relies on the previous paramilitary shootings in 2011 and 2017 and also the fact that since his arrest he has received death threats, which have been communicated to him by the police. He said that police told him that these were regarded as credible threats from republican paramilitaries, and as a consequence, he relocated his family out of the area. Whilst these offences were not committed under threat, he said that he felt some pressure because of the debts owed, and the previous shootings, and he maintains that his concerns have been borne out by the later threats.

[13] The prosecution submits that the information communicated by Police regarding the threats received is as follows-

On the 5 June 2020: "Police are in receipt of information suggesting that dissident republicans in Belfast suspect that Patrick McCann is residing in Newcastle. They may travel to Newcastle to locate him. This is believed to refer to you."

On the 10 July 2020: a message had been received that "Paddy McCann is to stay out of Belfast".

On both occasions, the defendant was provided with a Protect Yourself Booklet, Crime Prevention Services were offered and he stated that he did not wish to make a

statement of complaint. Police have no information regarding the van shop, however, clearly, those who associate with paramilitaries cannot expect leniency because they fear inevitable repercussions from those organisations.

#### *Aggravating Circumstances*

[14] It is agreed that the aggravating circumstances are-

- The items were possessed for a terrorist purpose.
- There was a degree of persistence in offending, albeit it is accepted that the making of tennis ball bombs is significantly less serious than the other offences.
- There was propellant available and the accused had made explosives

#### *Mitigating Circumstances*

[15] The court has been provided with a report from Carmel Lynch-Coman, Consultant Clinical Psychologist. The defendant is assessed as having a full-scale IQ within the low-average range, and his overall profile suggests that he has a significant weakness in the area of verbal comprehension, which includes verbal reasoning and concept formation. Based on his performance in the verbal Comprehension Index, only seven percent of adults of a similar age would have similar or lower ability than him in this area.

[16] He has a mental health history dating back to his teenage years, and there is evidence of significant deterioration following his shootings in 2011 and 2017. His mental health issues are described as chronic. Ms Lynch-Coman recommended a registered intermediary in order to assist the defendant to engage in the proceedings due to his cognitive and emotional vulnerability, and in particular, to assist his understanding of verbal information.

[17] The court also has the benefit of a medical report and addendum from Dr Harding and a report from Dr East. Dr Harding had originally assessed the defendant as insane at the time of the offending. That finding was disputed by Dr East and ultimately, while no agreement could be reached on that issue, the doctors did agree that the defendant fulfils the diagnostic criteria for PTSD and has unresolved treatment needs.

[18] The defendant is almost 42 years old, has been with his partner for over 24 years and is the father of nine children and grandfather of four. The children are aged between 2 and 21 years old, and the defendant remains living with his family in a new location, away from west Belfast and the influence of paramilitaries.

[19] As a consequence of the two shooting incidents, the defendant has physical, as well as mental ill- health. Extensive surgery for leg injuries has resulted in permanent restriction and pain, and he remains in receipt of anti-psychotic, anti-anxiety, and anti-depressant medication. He was previously referred to WAVE counselling in 2017, but his case was closed after he stopped attending with them. In 2018, he was admitted to the RVH following a suicide attempt.

[20] These offences occurred in 2019 and 2020 and in the three and a half years that have elapsed since the latter offences, the defendant has not reoffended and has complied with strict bail conditions. He has expressed regret for his involvement, and entered guilty pleas once his fitness to stand trial and issues related to his mental state were explored.

[21] In terms of emotional vulnerability, the DoJ report refers to the defendant's fears at the prospect of a prison sentence. The author considers that he would be at risk of imminent self-harm or suicide if an immediate custodial sentence were to be imposed and recommends informing the prison authorities of these specific risks to ensure appropriate protective measures.

*The Impact of the defendant's emotional and physical ill-health on sentencing*

[22] In *PS Abdi Dahir CF and The Queen* [2019] EWCA Crim 2286, Lord Burnett, LCJ explained the proper approach to sentencing offenders who suffer from mental health conditions or disorders. Such a condition or disorder may be relevant to culpability or to the type of sentence imposed, in particular a disposal under the Mental Health legislation. In accordance with the principles applicable in cases of physical ill-health, mental health conditions and disorders can only be taken into account in a limited way in so far as the impact of custody is concerned. Nonetheless, the court must have regard both to any additional impact of a custodial sentence on the offender because of his mental health and to any personal mitigation to which his mental health is relevant.

[23] Subsequently, The Sentencing Council's definitive guideline, *Sentencing Offenders with Mental Disorders, Developmental Disorders, or Neurological Impairments* came into effect in England and Wales from 1 October 2020 in relation to adult offenders who at the time of the offence have a relevant mental disorder. Blackstone 2024 discusses the relevant provisions at E22.

[24] In terms of the general approach, the guidelines state that the fact that an offender has an impairment or disorder should always be considered by the court but will not necessarily have an impact on sentencing. Accordingly, in assessing whether the impairment or disorder has any impact on sentencing, the approach to sentencing should be individualistic and focused on the issues in the case.

[25] The guidelines also assist in the assessment of culpability. Culpability may be reduced if an offender was at the time of the offence suffering from an impairment or disorder (or combination of impairments or disorders). The sentencer should make an initial assessment of culpability in accordance with any relevant offence specific guideline and should then consider whether culpability was reduced by reason of the impairment or disorder. Culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour. In some cases, the impairment or disorder may mean that culpability is significantly reduced. In other cases, the impairment or disorder may have no relevance to culpability. A careful analysis of all the circumstances of the case and all relevant materials is therefore required.

[26] In this case, there is evidence in Ms Lynch-Coman's report that a custodial sentence may impact very significantly on the defendant's emotional health and that he has issues with his physical health which may make a custodial sentence more difficult. Whilst these matters can only impact the sentence in a limited way, they are nevertheless relevant. As far as culpability is concerned, there is no evidence that the defendant's mental health materially reduces his culpability, but I accept that he has been assessed as a vulnerable and anxious individual, with a traumatic history connected to paramilitary attack.

[27] In terms of risk, the author of the pre-sentence report states that "static risk calculations" indicate that the defendant poses a low risk of re-offending but noted that the tools for assessing future risk should be used with caution in convictions related to terrorism, as they have limited testing. However, the risk of serious harm to the public is assessed as medium. The basis for the distinction is unclear but I accept that there is insufficient evidence to make a finding of dangerousness under the Criminal Justice (NI) Order 2008 and no contrary submission is made by the prosecution.

#### *The approach to Sentencing*

[28] Section 4 Explosive Substances Act 1883 states :

(1) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a *lawful object*, be guilty of an offence.

[29] The burden of proving a lawful object lies on the defendant on the balance of probabilities and the defendant accepts that he had no lawful reason for possessing any of the items seized. Nor is there any dispute that the only proper inference that can be drawn from the possession of a combination of partially constructed pipe bombs, small arms propellant, fireworks fill and fuses is that it was for a terrorist purpose or was, as a minimum, possessed on behalf of those who would have had a terrorist purpose. The prosecution does not submit that the making of the tennis ball bombs was for a terrorist purpose.

#### *The impact of the Counter-Terrorism and Sentencing Act 2021*

[30] Section 24 of the Counterterrorism and Sentencing Act 2021 ("the 2021 Act") commenced on 30 April 2021. It inserted a new Article 15A into the Criminal Justice (NI) Order 2008-

15A (1) This Article applies where –

(a) a person is convicted after the commencement of section 24 of the Counter-Terrorism and Sentencing Act 2021 of –

(i) a serious terrorism offence;

(ii) an offence within Part 4 of Schedule 2A (terrorism offences punishable with more than two years' imprisonment); or

(iii) any other offence in respect of which a determination of terrorist connection is made;

[31] Part 3 of Schedule 2A of the Criminal Justice (NI) Order 2008 contains offences which are not terrorist offences but are offences that are capable of being determined as having a terrorist connection and are punishable by life imprisonment. The offences at count 2 and count 3 are specified. If the court determines that there is a terrorist connection, a number of consequences flow. In particular, the court is required under Section 30(4) of the Counter-Terrorism Act 2008 as amended by Section 1(4) and 1(5) of the 2021 Act to treat that fact as an aggravating factor and must state in open court that the offence was so aggravated.

[32] In this case, there is no dispute that those offences do have a terrorist connection and I have determined that they are so aggravated.

[33] Article 15A(1)(b) and (c) provide that where the court does not impose a life sentence, an indeterminate custodial sentence, a serious terrorism sentence or an extended custodial sentence and decides to impose a custodial sentence, Articles 15A (3), (4) and (5) apply. Article 15A(4) is the relevant provision in this case and states that:

“(4) Where the offender is aged 21 or over, a sentence under this Article is a sentence of imprisonment the term of which is equal to the aggregate of –

(a) the appropriate custodial term; and

(b) a further period of one year for which the offender is to be subject to a licence.

[34] The term under par(4) must not exceed the maximum term of imprisonment with which the offence is punishable (apart from Article 13); the “appropriate custodial term” means the term that, in the opinion of the court, ensures that the sentence is appropriate; a court which imposes a sentence under this Article shall not make an order under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences) in relation to that sentence, a person detained pursuant to the directions of the Department of Justice under para (5) shall while so detained be in legal custody (offenders under 21) and remission shall not be granted under prison rules to the offender in respect of a sentence under this Article (15 A (6),(7),(8),(9), (10)).

#### *The appropriate sentence*

[35] The prosecution and defence agree that the sentencing range in this case is between four to six years before reduction for the guilty plea. The question is where within that range this case should properly fall. There is an abundance of evidence

that the defendant is a vulnerable man who has an undisputed diagnosis of PTSD. He has been the victim of two shooting incidents and threats from paramilitaries. He is the father of a large family and he has taken clear steps to remove himself and his family to a location well away from west Belfast. These offences occurred in September 2019 and May 2020 and there has been no offending since. It is clear that the impact of a custodial sentence upon him will be more significant than in other cases because of his vulnerabilities. Deterrence is always an important consideration in cases of this nature. In my view, taking all of those mitigating circumstances in the round, along with the aggravating circumstances, a starting point of 4 years is appropriate.

[36] There is a dispute between prosecution and defence regarding the appropriate reduction for the guilty plea. The defence submit that a reduction of one third is appropriate while the prosecution suggest a lesser reduction. At para 43 of *R v Maughan and another* [2022] UKSC it was stated that:

“Article 33 of the 1996 Order is neither prescriptive nor exhaustive. It does not expressly require the judge to reduce the sentence because of the plea nor does it prescribe any rate of discount if he does so although there is a clear steer that a discount should be considered. It does not prescribe how any indication of an intention to plead should be given or indeed to whom it should be given. Admissions at interview have been considered sufficient but correspondence from solicitors to the Public Prosecution Service or an indication at court during a remand would also be sufficient to trigger the obligation under article 33. If the judge reduces the sentence for the plea he must articulate that he has done so and take into account when and in what circumstances an indication of an intention to plead was given.”

[37] In this case, the defendant refused to answer questions when he was first interviewed by police on 30 September and through his solicitor, provided a written statement in which he denied possession of the items found. Thereafter, he provided a number of accounts which were a mixture of truth and falsehood, admitting possession but providing an explanation that was untrue. When he was arrested for a second time on 17 May 2020, after further searches of his property uncovered other items, he falsely asserted that they had been missed by police during the previous searches. He gave an account to the DoJ probation officer that he had been acting under duress, which he now accepts was untrue.

[38] However, the prosecution accepts that those accounts should be seen to some degree through the prism of the defendant's emotional health and cognitive limitations and some credit should be given for the admission of possession of the items. The defence also point out that this man was and remains in fear of paramilitaries and this is the backdrop to the way in which he conducted himself in police interviews. The guilty plea was delayed while complex medical examinations were undertaken into the issue of insanity. Ultimately, the experts disagreed on that issue but did agree that there were unresolved treatment issues arising out of PTSD.



The guilty plea was then entered. In all the circumstances, I consider that 25% reduction is appropriate.

[39] Article 15A of the Criminal Justice (NI) Order 2008 requires the court to pass a sentence of imprisonment the term of which is equal to the aggregate of –

(a) the appropriate custodial term; and

(b) a further period of one year for which the offender is to be subject to a licence

[40] I therefore sentence the defendant to three years in custody with an extended licence period of one year in respect of count 2 and count 3 concurrently. Two thirds of the sentence will be served in custody and after that period has been served, the Parole Commissioners will determine when the defendant may be released.

[41] It is conceded that count 4 (tennis ball bombs) does not have a terrorist connection and I impose a determinate custodial sentence of two and a half years divided equally between custody and licence, concurrent to counts 2 and 3.

[42] I direct that the defendant's medical reports are provided forthwith to the NIPS and brought to the attention of the Chief Medical Officer within the prison.

[42] The defendant will be subject to the notification requirements for a period of 10 years.