

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

IHAB SHOUKRI, GARY McKENZIE, GEORGE McHENRY,
ALAN JOHN McCLEAN AND JOHN DAVIS

COGHLIN J

[1] Ihab Shoukri and Gary McKenzie have pleaded guilty to membership of and supporting a proscribed organisation, namely, the Ulster Defence Association (“UDA”). Alan John McClean has pleaded guilty to supporting the same proscribed organisation and George McHenry and John Davis, respectively, have pleaded guilty to supporting the UDA and aiding and abetting the support of the same organisation.

[2] At about 7.30 pm on Thursday 2 March 2006 police officers carried out a planned raid on the Alexandra Bar, York Street, Belfast. The officers forced entry into the premises and, in the course of doing so, discharged a number of rounds of CS gas directing them, in particular, into the upstairs function room. Each of the accused was detained on those premises. John Davis was one of two men found lying behind the bar in the function room suffering from the effects of CS gas inhalation. Alan McClean was found at the foot of a flight of stairs amongst a large number of male persons some of whom were wearing combat trousers and boots. He told the police, “I was only having a pint in the bar.” Ihab Shoukri and Gary McKenzie were also present and detained by the police. George McHenry who was detained in the public bar was wearing combat trousers and black boots. Each of the individuals claimed to have attended the bar merely to have a drink. A follow up search of the premises produced eight balaclavas, two pairs of combat trousers, five similar black coloured bomber jackets, loyalist paramilitary flags and various pairs of jeans, trousers and trainers.

[3] Gary McKenzie was found to have in his possession a number of documents which appeared to include a draft speech and notes relating to the provision of chairs, tables, flags, plaques and assorted cleaning materials. During the course of a follow up search of Gary McKenzie's home on 4 March 2006 documents were recovered from his partner's handbag. These also appeared to relate to preparations for a meeting and included references to the mode of dress for the "Provost" teams, instructions for a "colour party" to meet every Tuesday, clothing and boot sizes which appeared to relate to uniform for the colour party, eight "brigade" flags and allocations of tickets for the event to various areas in the vicinity of the Alexandra Bar. On 14 June 2006 a similar search took place of the home of Alan John McClean which resulted in the seizure of a video cassette recording a paramilitary display at a bonfire in 2004 together with a Bon Jovi CD entitled "Blaze of Glory".

[4] The prosecution case is that the police raid disrupted a rehearsal for a meeting commemorating and glorifying the UDA part of which would include a show of strength by men in paramilitary uniform.

[5] In a number of respects the evidence seems to suggest that, in fact, the event that the police disrupted was a rehearsal for a form of paramilitary prize giving. It appears that this event was intended to embody many of the features so greatly admired by loyalist and republican terrorist organisations alike including pseudo-military ranks and a colour party turned out in the essential uniform of balaclavas and urban combat trousers. Indeed, the speech of which you Ihab Shoukri seemed to have been the author even included the phrase "we'll never go away you know" presumably drawn from republican rhetoric. It appears that the proceedings were to culminate in the distribution of a number of plaques as tokens of appreciation for past services which would take place to the rousing strains of Bon Jovi. I note that there were only 20 people in the premises when the police arrived.

[6] It is important not to be distracted by the somewhat theatrical aspects of this event from the sinister nature of the organisation that it sought to commemorate. I note that Mr Shoukri's speech also included a description of that organisation in the following terms a "well oiled ruthless killing machine" that "matched and indeed surpassed the IRA in political assassinations." That would appear to be UDA-speak for the brutal and largely sectarian campaign of murder, mutilation, violence, intimidation and extortion that they regularly visited upon the ordinary citizens of this province.

[7] After giving the matter careful consideration it seems to me that the principal factors that I should take into consideration in sentencing these accused are as follows:

- (i) Each of you has pleaded guilty to membership, support, professing to belong to or aiding and abetting support of a proscribed terrorist organisation responsible for appalling criminal activities over a number of years.
- (ii) However, my duty is to sentence you for the crimes to which you have pleaded guilty namely your association with that organisation during a period limited to approximately one month from 31 January to 3 March 2006 or, in some of your cases, solely to the latter date.
- (iii) While much of it was undoubtedly couched in the standard paramilitary bombast reminiscent of the “fighting talk and military metaphors” referred to more than 30 years ago by Lowry LCJ, as he then was, in *R v. Adams* [1978] 5 NIJB, the speech drafted by Ihab Shoukri also included a direction that the struggle should henceforth move into the political arena and such a theme does seem to have formed the basis for this particular event.
- (iv) Furthermore, the documentation recovered by the police strongly suggests that this acknowledgment of the faithful and their long service was conceived of as a private affair with admission to be gained by ticket and “security” being present outside.
- (v) In my view the essentially private nature of the event together with the exhortation to move into the “political arena” and the absence of any arms or threats serves to distinguish this case from that of *R v. Cunningham* [Belfast Crown Court 20 May 2005] in which the accused also pleaded guilty to professing to belong to a proscribed organisation, namely, the Ulster Freedom Fighters. In addition, in the *Cunningham* case the accused had taken part in a video intended for public exposure that depicted a group of armed and masked men fronting colours and regalia purporting to hold a press conference in the course of which threats were issued against another organisation.
- (vi) Finally, while the primary duty of the court is to pass sentence according to law, that exercise does not take place in a vacuum and it is important to have regard not only to the personal circumstances of the offender and any victim but also to the circumstances of the wider society. As Mr Adair QC on behalf of the prosecution quite properly concedes the prevalence or otherwise of a particular form of criminal behaviour may well influence the degree of emphasis to be given to the elements of retribution/deterrence in a sentence. In my view it would be unrealistic for the court to close its eyes to the significant changes that have taken place in this society since these offences were committed. It is indisputable that the restoration of local political institutions upon an agreed basis has coincided with the fundamental

decline if not virtual disappearance of overt terrorist activity carried on by republican and loyalist paramilitaries. In the same context, recognition has to be given to the fact that individuals who previously supported or were members of terrorist groups or, indeed in some cases, who were convicted of terrorist offences, appear to have subsequently abandoned such behaviour and assumed positions of responsibility and influence in the general community. Of course that is not to say that members and/or former members of such groups do not continue to exercise a malign and sinister influence in some parts of the province and some organisations seem to have proved much more amenable to civilising influences than others.

[8] Ihab Shoukri you have a criminal record most of which relates to motoring offences. However, you were convicted of blackmail, an offence which you appear to have committed in company with Gary McKenzie in August 1999. For that offence you received a prison sentence of 2 ½ years while Gary McKenzie received 3 years. Your pre-sentence report describes you as an articulate and intelligent person. I note that you benefited from an excellent secondary education from which you emerged with sufficient A-levels to qualify for university. References submitted upon your behalf confirm your positive relationship with your mother, commitment to youth cross community sport and the fact that you have now formed a stable relationship of some standing. All of which makes it the more difficult to understand why you chose to waste such potential.

[8] In December 2003 you Gary McKenzie were convicted of possessing a firearm in suspicious circumstances. I am told by your counsel that this related solely to a magazine that was attached to a replica weapon and I note that you were dealt with for that offence by way of a suspended sentence of 18 months. On 27 of June 2007 you were convicted of riot and received a sentence of imprisonment of 12 months suspended for 2 years. The earlier suspended sentence was made consecutive but extended for a further period of 3 years.

[9] Alan McClean has a relatively minor criminal record relating to driving offences and a single conviction for riotous behaviour, an offence which took place some 6 ½ years ago and in respect of which he received a conditional discharge. His pre-sentence report describes a childhood and upbringing blighted by sectarian tensions and family links to paramilitary groups and a current lifestyle restricted as a result of concerns for personal safety. The report from Dr McClelland refers to significant educational and cognitive difficulties that are likely to restrict opportunities for employment.

[10] George McHenry has a significant criminal record amounting to some 65 convictions the great majority of which relate to road traffic offences. The

pre-sentence report notes a stable current lifestyle based on his part-time employment and family.

[11] John Davis has a long criminal record stretching back to 1966 which includes numerous offences that appear to have been largely the product of excessive drinking. It appears that he has been the licence holder of the Alexandra Bar for more than 30 years and at least one of his references describes him as being “well regarded as a responsible businessman and landlord”. I find it rather difficult to reconcile that description with a record that includes a number of offences of disorderly behaviour, possessing an offensive weapon in a public place, assaulting the police, criminal damage, six offences of driving while under the influence of alcohol and four offences of permitting persons to consume alcohol on licensed premises outside hours. Despite the last mentioned convictions I am informed that you have never even received a warning from the police about the conduct of your licensed premises which is an omission that I find somewhat hard to understand.

[12] Each of you has pleaded guilty after a Rooney hearing and I take that into account. I have also read and taken into account the helpful pre-sentence reports in respect of each of you prepared by the Probation Board for Northern Ireland. The Crown take the view that you Shoukri and McKenzie were the most deeply involved in the preparations for this event which is reflected by the membership charges while you McClean are charged only with support relating essentially to the paramilitary images on your mobile phone and the CD. The Crown does not make the case that you were wearing paramilitary clothing on the evening in question. The charges to which McHenry and Davis have pleaded guilty also reflect their lesser degree of involvement. Having regard to the extent of your participation, the convictions of membership of the UDA and your previous records, Ihab Shoukri and Gary McKenzie I have reached the conclusion that there is no alternative to a immediate custodial sentence and each of you will go to prison for 15 months. George McHenry and Alan John McClean you have pleaded guilty to the less serious offences of, respectively, professing to belong to the UDA and supporting the UDA. In your case, George McHenry, apart from the motoring offences, you do have two convictions for riotous behaviour in November 2002 and May 2004. However, I note that you received a Community Service Order for 200 hours in respect of the last mentioned offence and that you completed that sentence without incident. In each of your cases I shall impose a sentence of 12 months imprisonment but, in view of your lesser involvement and less serious records together with the other circumstances to which I have referred I propose to suspend those sentences for a period of 3 years. John Davis your criminal record, amounting to some 59 previous convictions, eloquently confirms your addiction to alcohol and I note from the report from Professor Farnan that you also suffer from a long standing and serious arthritic condition. I am told that you are to

be admitted to hospital in June of this year. The pre-sentence report confirms that previous Community Service Orders imposed upon you had to be returned to court because of health problems and your inability to complete the outstanding hours. I have formed the impression that you are a rather vulnerable and inadequate individual who would have been unable to put up any effective resistance to those seeking to use these licensed premises for illegitimate purposes. In your case, subject to your agreement, I intend to make a Probation Order for a period of two years with a condition that you attend such counselling and courses as may be required by your probation officer and GP for the purpose of dealing with your addiction to alcohol.