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Judgment: approved by the Court for handing down | *Delivered:* **1/10/2010**
(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

v

PAUL ANTHONY JOHN McCAUGHERTY
and
DERMOT DECLAN GREGORY
(otherwise known as MICHAEL DERMOT GREGORY)

HART J

[1] The defendants have been convicted of various terrorist offences and I have already set out the background to these offences in my judgment of 30 June 2010. It is therefore unnecessary to refer at any length to the circumstances of the charges against each defendant.

[2] McCaugherty has been convicted of seven counts; two of conspiracy to possess explosives and firearms and ammunition with intent to endanger life or cause serious damage to property, or to enable others to endanger life or cause serious damage to property; three of using money for the purposes of terrorism; one of entering into an arrangement to make property available for the purposes of terrorism, and one of belonging to a proscribed organisation, namely the Irish Republican Army.

[3] McCaugherty set out to purchase a substantial quantity of weapons and explosives on the continent on behalf of the Real IRA. He was introduced to a person whom he knew as Ali who he believed was a genuine arms dealer, but in reality was an agent of the British Security Service who was pretending to be an arms dealer. He agreed to purchase 100 kilograms of plastic explosive, 28 AK assault rifles, 20 RPGs (rocket propelled grenade launchers), 10 sniper rifles and 2 pistols. The initial price was agreed at €104,000, but this was increased to include the cost of the weapons being smuggled to an agreed destination near Cherbourg, from where they were to be smuggled to Ireland,

and ultimately to Northern Ireland, in a vehicle provided for that purpose by the Real IRA. In the course of his negotiations with Ali McCaugherty handed over a total of €45,970 in cash as part payment for the proposed delivery.

[4] For the reasons set out in my judgment I was satisfied that at all times McCaugherty was acting as a senior and trusted member of the Real IRA, and it is unnecessary for me to recite the many admissions and statements to that effect he made to Ali during their various meetings.

[5] Any attempt to purchase and import such a large amount of weapons and explosives for terrorist purposes must be regarded as exceptionally serious because of the potential for murder and destruction on a large scale represented by such a quantity of munitions. It is true that there was never any prospect of McCaugherty obtaining these weapons because the entire operation was a carefully contrived sting. Nevertheless, this was a very serious and determined attempt by McCaugherty to obtain weapons for the Real IRA, there can be no doubt that he was doing so in his capacity as a leading member of the Real IRA, and the sentence has to reflect these factors.

[6] McCaugherty has a number of previous convictions, but these are for relatively minor matters and I do not regard them as an aggravating factor in the case, although it means he cannot be given any credit for a clear record. On behalf of McCaugherty Mr Colton QC advanced a number of matters as mitigating factors. The first was that although I rejected the submission that he was entrapped in the legal sense at the trial, nevertheless he had been entrapped in the non-legal sense, perhaps enticed would be an appropriate word, and because of this some reduction in the sentence would be appropriate. Mr Colton referred to R v Chapman & Denton (1989) 11 Cr. App. R. (S.) 222 in particular. However, in Chapman the court accepted that there was no evidence that he had been a dealer in amphetamine on any other occasion. In contrast, McCaugherty's admissions to Ali reveal that he has been an active and energetic terrorist for a considerable period of time, and one who was prepared to go to great lengths to obtain weapons, as can be seen from the fact that he made numerous trips to meet Ali to destinations as far apart as Amsterdam, Bruges and Istanbul. In those circumstances I do not consider that there should be a reduction in the sentence because of any enticement extended to McCaugherty.

[7] The second mitigating factor put forward was that although the defendant was arrested on 19 June 2006, the committal papers were not served until 8 October 2008, two years and four months later. It was suggested that despite the admitted complexity of the case this stage of the proceedings constituted an unjustifiable delay in the proceedings, although Mr Colton did not complain of the length of time it then took to have the defendant returned for trial. It is well established that where there has been an unreasonable delay, even though the delay would not justify the court

from staying the proceedings because of an abuse of process, the delay can still give rise to a breach of a defendant's right under Art. 6(1) of the European Convention on Human Rights to have a hearing within a reasonable time, and such a breach may in turn result in a reduction in the defendant's sentence. See Lord Bingham in Attorney General's reference No 2 of 2001 [2004] 2 A.C. 72 at [50]. This Convention right is a reflection of the common law practice of reducing a sentence in such circumstances.

[8] In the present case the prosecution did not dispute the chronology prepared by the defence, and I accept that there was an unjustifiable delay at that stage of the proceedings because, although the case was a complex one, no explanation has been advanced that would justify what appears to be an excessive length of time for the prosecution to decide whether to prosecute the defendants, and once having made the decision, to prepare the committal papers. I will therefore make some allowance for that delay in favour of the defendant.

[9] I have been referred to a number of previous cases in which the courts in Northern Ireland and in England have had to consider the appropriate sentence for explosives offences. Perhaps the case with the closest similarity to this case is R v McDonald and others [2005] EWCA Crim 1945, where a number of members of the Real IRA were sentenced to lengthy terms of imprisonment, having pleaded guilty to conspiracy to import an even larger consignment of munitions, and related charges. In that case, as in this, the defendants tried to obtain weapons in order to carry on their terrorist campaign, and believed they were dealing with agents of the Iraqi government who could provide them with munitions and money, when in reality they were negotiating with members of the Security Service. In that case the Court of Appeal in England reduced their sentences from 30 to 28 years' imprisonment. However, the quantity of munitions McCaugherty hoped to buy was not as great as that in the McDonald case, where the defendants hoped to obtain 5000 kilos of plastic explosive, 2000 detonators, 22 RPG's, 500 handguns and £1.5 million, and I make some allowance for the very considerable difference between the quantity of munitions sought in that case and the quantity sought in the present case, substantial though that quantity was.

[10] I was also referred to the sentences passed in a large number of explosives cases in this jurisdiction. I do not consider it appropriate to engage in an analysis of each of those cases, it is sufficient to say that in the past sentences in the region of 25 years were regularly imposed in cases where the defendants were convicted of offences involving the use of explosive devices. Continuing terrorist activity at the present time requires the court to impose severe deterrent sentences in cases such as this.

[11] In this case McCaugherty cannot claim the credit that would have been extended to him had he pleaded guilty, but Mr Colton advanced as a mitigating factor that many of the witnesses, particularly the great majority of the anonymous witnesses, were agreed. That undoubtedly contributed to a shortening of the trial, and some allowance was made for a similar attitude in R v Murray [1995] NIJB 108, where the sentence was reduced from 25 to 23 years to take account of that attitude, because, in the words of Hutton LCJ:

> "it meant that there was a very substantial saving of time in relation to the work of the Crown Court and in relation to the numerous witnesses who would otherwise have had to be called".

For the same reason I consider it appropriate to make some allowance in favour of the defendant, as well as the element of delay to which I have referred.

[12] Taking all of these factors into account I sentence McCaugherty to 20 years imprisonment on count 1 and count 2. The maximum sentence of 10 years imprisonment for membership of a proscribed organisation should normally be reserved for someone who occupied a prominent position in such an organisation. It is abundantly clear from the evidence in this case that McCaugherty did occupy such a position, and I sentence him to 10 years imprisonment on count 3. Counts 4, 5 and 6 carry a maximum sentence of 14 years imprisonment, and I sentence him to 12 years imprisonment on each of those counts. Counts 1 to 6 were part and parcel of the same criminal enterprise and the sentences on those counts will therefore be concurrent.

[13] Count 7, entering into an arrangement to obtain the documents relating to the Panda restaurant in Portugal, was a quite separate episode in which the initiative came entirely from McCaugherty. It was not brought about by the sting being mounted against him and his associates by the Security Service, because McCaugherty sought to take advantage of his discussions with Ali to further the aims of the Real IRA in a completely different enterprise designed to bring a financial reward to the Real IRA. I sentence him to 5 years imprisonment on count 7. When deciding whether to make the sentence on that count consecutive to, or concurrent with, the sentences on the other counts I must ensure that the total sentence for all of his offending is appropriate and proportionate to his overall criminality. In view of the sentence on the principal charges I will make the sentences concurrent. The total sentence in respect of McCaugherty is therefore one of 20 years imprisonment. As these offences are governed by the provisions of the Criminal Justice (NI) Order 1996 I am obliged to consider whether a custody probation order should be imposed, but in view of the nature of these offences I am satisfied that such an order would not be appropriate.

[14] Gregory's efforts to provide property for the Real IRA were significant. I am satisfied that it was his intention to use the Real IRA to retrieve his property; that he was prepared to pay them a substantial portion of whatever might be the proceeds of the sale of the property once the operation was completed to achieve this, and so was content that the Real IRA would benefit from this. It cannot be easily quantified how much they would have benefited by this exercise, but it would have been a substantial amount of money on any showing. It may even be that he, as McCaugherty asserted, intended to give the entire property over to the Real IRA, but I think this form of altruism is somewhat unlikely, and I sentence him on the basis that he intended that he would benefit substantially from the Real IRA's efforts on his behalf. Nevertheless this was a serious offence. Money is the life blood of any terrorist organisation, and anyone who makes property available to a terrorist organisation helps that organisation further its objectives of murder and destruction, and the punishment must reflect this.

[15] By way of mitigation I give him credit for the fact that he has a clear record. It is clear from the references that have been handed in on his behalf that he has been a very hard-working man who is devoted to his child. As I stated in my judgment he has been involved in an extremely protracted and bitter legal custody battle, and this may have led him to neglect his own affairs and warped his judgement. By his involvement in this offence he may have imperilled his custody of that child. I take all these factors into account as mitigating factors. To reflect them I sentence him to 4 years imprisonment.

[16] By virtue of s. 23(1) of the Terrorism Act 2000 I order the forfeiture of the 49,970 Euro handed over to Ali by the defendant. Mr Kerr QC stated that whilst the prosecution were not pursuing the application for confiscation of the Panda Restaurant in Portugal, but will pursue an application for the forfeiture of the restaurant, and that will be dealt with on another occasion.