Neutral Citation No: [2010] NICA 6 | *Ref:* **MOR7790**

Judgment: approved by the Court for handing down | *Delivered:* **19/2/10**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

PATRICK MARTIN McCOURT

_____

Before: Morgan LCJ and Coghlin LJ

_____

Morgan LCJ

[1] The appellant in this case was convicted at Belfast City Commission on 28 January 1977 before Lord Justice McGonigal on the first count of hijacking and on the second count of membership of the Provisional IRA both offences committed on 26 March 1976. He was sentenced to five years imprisonment on the first count and three years imprisonment on the second count, the sentences to run concurrently.

[2] The background facts are that on 26 March 1976 John O'Connor was in his Maxi car on Racecourse Road, Londonderry when a youth reached in and took the keys out of the ignition, another youth then got into the car with his hand in his coat pocket giving the impression that he was armed with a gun and ordered O'Connor out of the car. Approximately 90 minutes later Fort George Camp, an army base, came under mortar and rifle fire.

[3] The appellant was arrested some months after the incident of 24 May 1976 and after a number of interviews made a written statement in which he said that he and another man met a person who was in the Provos, they were told that the car was needed for a job and they were asked to get a car and leave it at the square in Carnhill. They saw a tan coloured Maxi. The man with him was the one who had his hand in his pocket and in his statement the appellant admitted to telling the driver to get out of the car and driving the car to where it was to be left. He stated that he did not have a gun.

[4] The trial proceeded in January 1977 and no transcript of the trial is available, although efforts were made to seek to secure it. The appellant in his submissions makes the case that he gave evidence on his own behalf denying

that he had been involved in the hijacking or that he had been a member of the IRA and it is clear that in addition to this, evidence was also called on his behalf from Patrick Joseph Columba O'Carroll who was at that time in custody awaiting trial on a number of offences. O'Carroll's evidence was that it was in fact he and a co-accused Bradley who apparently had been a life long friend who had been responsible for the hijacking of the vehicle.

[5] The learned judge then, as Ms McDermott has indicated, gave his sentencing remarks the following day and in relation to those he describes the position in relation to Mr McCourt by saying "Insofar as you McCourt are concerned the evidence satisfies me that you were both involved with Bradley in the hijacking, that you belonged to a proscribed organisation" and in relation to Bradley he concluded that he had taken part in a robbery attempt at a supermarket.

[6] The issue that is raised in this appeal concerns the provisions of Section 2(5) of the Northern Ireland Emergency Provisions Act 1973 which provide that where the court trying a scheduled offence convicts the accused of that or some other offence then without prejudice to their power, apart from the sub-section, to give a judgment they shall at the time of the conviction or as soon as practicable thereafter give a judgment stating the reasons for the conviction. The requirements in relation to the giving of the judgment were considered by Lord Lowry in The Queen v Thompson (1997) NI 74 and in the course of that judgment he said that the judge's task is to reach conclusions and give reasons to support his view and preferably to notice any difficult or unusual points of law in order that if there is an appeal it may be seen how his view of the law formed his approach to the facts. It is clear therefore that the judge was not expected to set out chapter and verse in relation to the resolution of every factual matter which appeared to establish the case beyond reasonable doubt, but this court accepts the submission that it was the intention of Parliament that the accused person should be aware of the basis for the conviction and that approach gains further support from the decision of Lord Justice McGonigal, as it happens, in the unreported case of The Queen v Campbell and Quinn where he allowed an appeal in relation to a case where he concluded that it would have been impossible for the Appellate Court to review the judge's verdict and decide without knowing his reasons whether he was justified in reaching the conclusions which he did.

[6] In this case we accept the submission that there were factual matters which had to be dealt with by the trial judge. There were potentially a number of those, but perhaps the most obvious of them was in relation to the evidence of O'Carroll. The evidence that he had given raised factual disputes which clearly would have required resolution by the tribunal of fact. We further accept the submission that it is not every case in which reasons are not given which will justify the conclusion that the verdict is unsafe. But where there are serious disputed issues of fact and it is impossible for the Appellate

Court to review the judge's verdict and decide without knowing his reasons if he was justified in reaching the conclusions which he did, then in those circumstances it is highly likely that the court will be left in a position where it will be driven to the conclusion that the verdict is unsafe. This is one of those cases. For the reasons that I have given we are of the view that the verdict is unsafe and we quash it.