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(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

RAYMOND JAMES CRAIG McMASTER

WEATHERUP J

The Charges.

[1] Raymond James Craig McMaster is charged with two counts. First, possession of an explosive substance with intent, contrary to Section 3(1)(b) of the Explosive Substances Act 1883, and second, doing an act with intent to cause an explosion, contrary to Section 3(1)(a) of the Explosive Substances Act 1883.

The Offence

[2] On Tuesday 28 August 2001, on the second day of the Lammas Fair, a white Ford Sierra motor vehicle was present in Castle Street, Ballycastle, County Antrim. In that vehicle was a time delayed improvised explosive device. It is the prosecution case that the defendant drove the motor vehicle containing the bomb from a lay-by at Gracehill Road, Armoy to Castle Street, Ballycastle, a distance of some eight miles, on the late evening of Monday 27 August 2001.

[3] Finton McAuley is the owner of a shop in Castle Street, Ballycastle that is adjacent to the position where the car bomb was parked. He closed his shop that evening and parked his own motorcar in the street outside the shop at about 11.00 pm, and the white Sierra was not present at that time. He went into Ballycastle town centre and returned home at about 1.00 am and was unsure if the white Sierra was present on his return. He opened his shop at 7.30 am on the morning of Tuesday 28 August 2001 and the white Sierra was parked in the street.

[4] Inspector Lusty was in charge of policing in Ballycastle on Tuesday 28 August 2001. He drove along Castle Street about 7.00 am and saw the white Sierra parked in the street. At that time the vehicle gave no cause for suspicion. Sergeant McConville was on duty on that day and at 9.45 am he spoke to stall holders in Castle Street as the white Sierra was interfering with their pitch. Sergeant McConville was suspicious of the vehicle, as it was unlocked and there was a white wire leading through the interior of the vehicle from front to back. He described the smell of petrol when he got into the vehicle through the driver's door as being extraordinarily strong. Inspector Lusty arrived and opened the front passenger door and examined the white wire, and then opened the boot and found two gas cylinders, a red canister and what appeared to be a timing device. He described the smell of petrol from the vehicle as significant.

[5] At 10.35 am on the Tuesday morning a local radio station received a telephone warning that there was a bomb in a white car in the main street in Ballycastle up the road from the Flash in the Pan. The caller wanted the bomb warning reported and told the radio station they had one hour. The Flash in the Pan is a fish and chip shop in Castle Street, Ballycastle.

[6] The Army Technical Officer arrived at 10.57 am and with the use of a remote vehicle he proceeded to neutralise the explosive device. The Scenes of Crimes Officer arrived at 11.54 am and the white Sierra was removed to Ballymena police station for examination. Tape lifts were taken from the vehicle and retained. There were no items forwarded to SOCO at any time that would have served as comparators that SOCO might have sent for forensic comparison with the tape lifts. Fingerprint examination of the vehicle was negative.

[7] Twenty three items were recovered from the vehicle of which ten were subjected to fingerprint examination with negative results. Six items were sent for forensic examination and seven items were retained in storage. Of the six items forwarded for forensic examination one was a liquid taken from the red canister in the boot of the Sierra that was confirmed as petrol. One item comprised unused control nylon bags. The other four items represented separated components of a time delay improvised explosive device involving a modified alarm clock, at least one battery, a bulb/fuse holder and a small pipe bomb. The forensic opinion was that the maximum time delay of the device was approximately one hour. At a later date the forensic science laboratory received two 11.34-kilogram capacity gas cylinders recovered from the boot of the Sierra, one of which was empty and other contained approximately 9.4 kilograms of gas.

[8] The device was designed to operate by the completion of an electric circuit from the car battery activating a modified bulb or fuse wire. The heat generated would initiate the propellant and produce fire, which would ignite

the petrol and eventually caused the gas canisters to explode. If this device had worked it would have produced what Dr Murray of the Forensic Science Agency described as a massive fireball. However the device was not capable of working because the clock hand had a black paint surface that would have acted as an insulator and prevented completion of the electrical circuit.

The Arrest

[9] On Tuesday 23 April 2002 at 7.05 am, at Ballymoney Police Station, PC Millar and PC Scott attended a briefing by DI Harkness in relation to the car bomb found in Castle Street on 28 August 2001. Nineteen days earlier police had received intelligence that the defendant had been the driver of the white Sierra. PC Millar and PC Scott went to the defendant's home with a search team and at 9.05 am the defendant was arrested for possession of an explosive device at Castle Street, Ballycastle on 28 August 2001 and with membership of the Ulster Volunteer Force, a proscribed Loyalist paramilitary organisation. Nothing of significance was found in the search of the defendant's home.

[10] The defendant was taken to Coleraine police station in a police vehicle driven by PC Millar with PC Scott in the front passenger seat and the defendant in the rear seat. While in the police vehicle the defendant, who had been cautioned, stated that he was sure that it was a Karl McConaghy who had touted on him. PC Scott informed him that he had no idea where the information had come from but that he, PC Scott, did not think that it was McConaghy.

[11] At 9.23 am the police vehicle arrived at the yard at Coleraine police station, and after alighting from the police vehicle the defendant said "Look what's going to happen to me here. I had nothing to do with making that up. I only drove the car." PC Millar reminded the defendant that he was still under caution. The defendant made no further comment.

The Interviews.

[12] On 23 April 2002 the defendant was interviewed on four occasions, in the presence of his solicitor Ms Carlin, by PC Woods and PC Millar. The first interview was between 1156 and 1201 hours. The defendant agreed that he had earlier said in the yard of the police station "Look what's going to happen to me here. I had nothing to do with making that up. I only drove the car." He stated that he had been asked to drive the car to Ballycastle on the night before it was left there.

[13] The second interview took place between 1235 and 1305 hours. The defendant described the make and colour of the vehicle; the location of a lay-by where he said he had picked up the vehicle; the public house where he had been approached to drive the vehicle, which was some 8 or 9 miles from the

pick up point; how he had thumbed a lift home to Coleraine from Ballycastle after he had left the white Sierra; the colour and make of the vehicle that took him from the public house to the lay-by; the instructions he had received for the placing of the white Sierra; how he did not realise what was in the car until he saw it on TV two or three days later; that he did not smell any petrol in the vehicle; how he had driven the car to Ballycastle as a favour for a man he did not know; he was unclear whether the keys had been left in the vehicle; how he had been beaten up by paramilitaries in Bushmills some years earlier as an alleged drug dealer; that he had not often attended the Lammas Fair; that he hitched a lift home from Ballycastle with a man and a woman and got home about 1.00am or 1.30am; when he realised it was the car bomb he had driven to Ballycastle he did not tell anyone.

[14] The third interview was between 1446 and 1516 hours. The defendant described how he had left home in the evening at 8.00 pm; he questioned the police about the information they had received about him and stated that someone was trying to stitch him up; he agreed that he had driven the car but denied that he knew what was in the car; the owner of the car had not given him any instructions on what to do with the keys of the car and he thought he had left them in the car; he had been drunk at the time and did not think about what he was doing; when asked about the smell of petrol he described that he might had flooded the engine as there had been difficulty starting the vehicle in the lay-by; he timed the placing of the car at about 10.30 pm; he denied that he poured petrol over the inside of the car.

[15] The fourth interview was between 1604 and 1614 hours. The defendant continued to deny knowledge of the bomb in the white Sierra.

[16] At 1650 hours on 23 April 2002 the defendant was charged with possession of an explosive substance and doing an act with intent to cause an explosion.

[17] The next day, the 24 April 2002, the defendant asked to speak to DC Woods and PC Millar in the absence of his solicitor and without the interview being tape-recorded. He was interviewed between 0943 and 0944 hours. He informed the police officers that his common law wife had received a telephone call the previous evening stating "If Raymond does not take the rap for this and gets bail his life will not be worth living". The defendant then retracted the previous admissions that he had driven the white Sierra to Ballycastle and stated that on Monday 27 and Tuesday 28 August 2001 he had been at the Lammas Fair with his common law wife and his mother and his mother's friend and his three children. He told police that his mother's friend had driven them to the Fair on both days in his gold Hyundai Pony and they remained at the Fair until 11.30 or 12.00 each night.

The Submission of No Case To Answer.

[18] At the conclusion of the Crown case Mr Magee SC, who appeared with Mr Gibson for the defendant, applied for a directed verdict of not guilty. Reliance was placed on R v Galbraith 73 Cr. App. Rep. 124. The second limb applies to cases where there is some evidence that the crime alleged has been committed by the defendant but it is of a tenuous nature, for example because of inherent weaknesses or vagueness or because it is inconsistent with other evidence. It was submitted that the Court should conclude that the prosecution evidence taken at its highest was such that a jury properly directed could not properly convict upon it and it was the duty of the Court to stop the case.

[19] It was submitted that in taking the prosecution case at the highest it was necessary to consider all the evidence, being the inculpatory statements of the defendant as well as the exculpatory statements of the defendant. In R v Hamand (1985) Cr. App. Rep. 65 the trial judge rejected a submission of no case to answer where the defendant's statements claiming self-defence were before the Court, but no evidence of self-defence had been given at that stage. The appellant was called to give evidence and was convicted. On appeal it was held that where a defendant made a "mixed" statement ie partly admissions and partly exculpatory statements, those excuses or assertions formed part of the evidence in the case, although the exculpatory statements might not carry as much weight as the admissions. Accordingly, it was held that the trial judge had been in breach of the fundamental principle that the appellant have a free choice of whether to give evidence or not, and the conviction was unsafe and was quashed. In considering the defendant's application I took into account both the admissions of the defendant on 23 April 2002 and the denials of the defendant on 24 April 2002.

[20] Section 77 of the Terrorism Act 2000 provides that where an accused is charged with possession of an article in such circumstances as to constitute an offence under Section 3(1)(b) of the Explosive Substances Act 1883, and it is proved that the article was on any premises at the same time as the accused, the Court may assume that the accused possessed (and if relevant knowingly possessed) the article, unless he proves that he did not know of its presence on the premises or that he had no control over it. Section 121 defines premises as including a vehicle. Section 118 provides that if the defendant adduces evidence to raise this issue the burden is on the prosecution to disprove the matter beyond reasonable doubt. Accordingly Section 77 places only an evidential burden on the defendant and the legal burden remains on the prosecution.

[21] Whether the statutory assumption is to be applied is a matter for the discretion of the Court. In R v McLernon (1992) NI 168 at 177 - 178 Hutton

LCJ discussed the statutory predecessors of Section 77, of which it can still be said that such a provision "….erodes the protection of the ordinary criminal law, and we feel that its application must be viewed in the most circumspect manner" per Lowry LCJ in R v Killen (1974) NI 220. Hutton LCJ referred to an example where the presumption could be properly applied, being a case where the evidence raised a very substantial suspicion that the appellant was involved with other men in a house in the possession of firearms and ammunition. In R v McLernon the Court of Appeal agreed that the trial judge had been entitled to apply the statutory provision because of the very suspicious circumstances, which involved the failure of the appellant to give any explanation for his presence in a house where firearms, ammunition and items of military equipment were found.

[22] In the present case the evidence against the defendant comprised his two pre-interview statements and his admissions during the four police interviews of driving the vehicle that was found to contain the bomb, as well as his exculpatory final interview. It was not disputed on behalf of the defendant that he had made all the statements attributed to him by the police. I was satisfied that the evidence raised very grave suspicions and that there was an unsatisfactory attempt at exoneration. I was satisfied that the defendant had a case to answer without recourse to the statutory assumption.

[23] I was further satisfied that it was an appropriate case to apply the statutory assumption as the gravely suspicious circumstances created by the defendants admitted statements to police demanded explanation. Before reaching that conclusion I considered whether the use of the statutory assumption would visit any unfairness on the defendant or on the trial and concluded that there would be no such consequence. Accordingly I rejected the defendant's application for a directed verdict of not guilty.

The Defence Evidence.

[24] The defendant gave evidence. His evidence was that he had been untruthful to the police when he made the statement in the police yard and during the first four interviews in the presence of his solicitor. The truth was that he was had never driven the white Sierra. He believed that his arrest had been a set up because of his involvement with a friend in a fight with two men who were members of a paramilitary organisation. After the fight his friend had telephoned to tell him that he, the friend, was going to be shot by the paramilitaries and that they, the paramilitaries, would deal with the defendant in their own way. Accordingly, the defendant claimed that when he was arrested he believed that he was being set up by the paramilitaries because of his fight with two of their members.

[25] Further the defendant claimed that he was addicted to a substance called Nubian, a body building relaxant. He practice was to reduce Nubian

to a liquid and inject it into his arm. At the time of his arrest he had not had any Nubian for several days. He had taken diazepam the previous night as a partial substitute but was craving a further injection of Nubian. His evidence was that when he was arrested he decided to tell the police that he had driven the vehicle, but had not had any knowledge of the bomb. On that basis he stated that he had calculated that he would be charged with driving offences only, as he had no licence or insurance, and that he would be released within a very short time and would have the opportunity to arrange an early injection of Nubian. He stated in evidence that if he had denied everything he would have been kept in custody and would not have had access to Nubian. For this reason he decided to make a false admission to police of driving the motor vehicle, but to deny any knowledge of the bomb.

[26] However his plan was not successful because the police did not believe him and did not release him. The defendant's evidence was that by the time he released he was not going to be released he considered that it was too late to withdraw his false story. After he was charged he was visited by his common law wife and mother on the evening of Tuesday 28 April 2002. At that time two things occurred. In the first place his common law wife told him of the telephone threat that she had received. Secondly, his mother insisted that he should tell the police the truth about his whereabouts on Monday 27 August 2001, namely that he was at the Lammas Fair with his wife and mother and children. The following morning the defendant withdrew his admissions of driving the vehicle and gave his alibi for the time of the movement of the car bomb.

[27] The defendant's common law wife gave evidence. She had been his partner for 14 years and they had three children. She stated that the defendant had been present with her at the Lammas Fair on Monday 27 and Tuesday 28 August 2001 from 10.30 or 11.00 am until 10.30 or 11.00 pm each day. She confirmed the defendant's use of Nubian by injection and her receipt of the threatening telephone call that she then reported to the defendant on the evening of 24 April 2002.

[28] The first count of being in possession of an explosive substance with intent relates to the defendant taking possession of the motor vehicle at the lay-by on the evening of Monday 27 August 2001. The second count of doing an act with intent to cause an explosion relates to the defendant driving the motor vehicle from the lay-by to Ballycastle. I have to be satisfied beyond reasonable doubt, first of all, that the defendant did drive the motor vehicle to Ballycastle, and secondly, that the motor vehicle driven by the defendant contained an explosive devise, and thirdly, that the defendant had knowledge that the motor vehicle contained an explosive device. Where I refer below to being satisfied I intend to convey that I am satisfied beyond reasonable doubt.

<u>The Driving of the Vehicle</u>

[29] In relation to the driving of the motor vehicle the evidence against the defendant is that of his admissions to police on 23 April 2002. In the police station yard before interview he admitted driving the motor vehicle. In the four police interviews, in the presence of his solicitor, he admitted driving the motor vehicle. He does not challenge that he made those admissions in the police yard and in the police interviews. He contends that the admissions were untrue and that he made them in order to secure an early release to facilitate a drug habit. There was no evidence about the defendant's use of Nubian other than that of the defendant and his common law wife confirming his use of this drug by injection. There was no evidence as to its effect on the defendant or its addictive qualities.

[30] The defendant gave an account of his involvement in the driving of the motor vehicle in significant detail and that provided a persuasive account of events relating to his involvement in the movement of the motor vehicle.

[31] The defendant's explanation of his plan for giving a false account to the police involved his admission of driving the motor vehicle but his denial of knowledge of the bomb in the motor vehicle. However, as the transcript of interviews make clear, the defendant did not initially state to the police that he had no knowledge of the bomb in the vehicle. It was only during the course of the second interview, when the subject of his knowledge was raised by the police officer, that he stated that he first knew of the bomb in the vehicle when he saw the event reported on television some days later. Had the defendant been engaged in the plan that he described in evidence, one might have thought that he would have been at pains to bring home to the interviewing officers, at the first moment, that he had no knowledge of the bomb. His statement in the police yard, and the matter about which he was asked at the first interview, was that he had driven the car but had not been involved in making up the bomb. He was admitting transport of the bomb but denying manufacture of the bomb. That leaves open the question of his knowledge of the bomb being in the car when it was driven; the one matter on which his plan required him to persuade the police, but yet he does not mention it.

[32] I do not accept the defendant's denial that he drove the motor vehicle to Ballycastle. I am satisfied that he did drive the motor vehicle to Ballycastle. I am satisfied that his explanation to police on 23 April 2002 was a description of the events in which he was involved. The detail in his description of events persuades me of his involvement. I am also satisfied that there are other details of the events of that evening that he withheld from police during the interviews. His explanation for offering to police what he alleged in evidence was a false account was not credible.

The Presence of the Explosive Device

[33] The second question is whether the explosive devise was in the vehicle when it was driven by the defendant to Ballycastle. I am satisfied that the vehicle was placed in Castle Street, Ballycastle in the very late evening of Monday 27 August 2001 or shortly after midnight on Tuesday 28 August 2001. When the vehicle was discovered in the morning there was a wire attached to the battery in the engine compartment at the front of the vehicle, which wire was fed below the passenger dashboard and into the rear of the vehicle and under a speaker on the rear shelf. From there it was fed into the boot and attached to a timing device. Also in the boot were the two gas canisters and broken coping stones were used to secure the gas canisters. The alternative to this explosive device having been in the vehicle when the defendant drove that vehicle to Castle Street, Ballycastle would be that after he had left the vehicle another person or other persons brought the component parts of the explosive device to the scene and placed them in the vehicle and connected the wiring. I do not find such an alternative to be credible. That those planning this car bomb would have arranged for the explosive device to be assembled at the scene in a public street, even in the hours of darkness, is absurd. I am satisfied that the explosive device was in the vehicle when the vehicle was brought to the scene by the defendant.

Knowledge of the Explosice Device.

- improbabilities of the defendant's account.

[34] The third question is whether the defendant had knowledge of the presence of the bomb in the vehicle. There are a number of improbable elements in the description of events that the defendant gave to the police. He was approached by a man, whom he did not know, when he was in a public house, and requested to drive the man's motor vehicle; the motor vehicle was in a lay-by some eight miles away and he was to drive it a further eight miles to Ballycastle; there was no precise location and no particular purpose specified; there was no arrangement about the keys of the vehicle; the defendant left the vehicle unlocked; he was given a lift to the lay-by by a man he did not know, and who then left him to drive the vehicle and hitchhike home from Ballycastle to Coleraine; there was no explanation for the defendant's agreement to undertake this task, whether financial reward or friendship with some other person or to escape from pressure being applied by others or any other reason.

- the defendant's lies to the police and the Court.

[35] As is implicit in the finding that the defendant drove the vehicle, I am satisfied that the defendant lied to the police at the fifth interview on 24 April 2002. At the fifth interview he claimed that a threatening phone call had been

received by his partner, in which it was stated that he was to take the rap or his life would not be worth living. It is to be expected that whether the defendant was guilty or innocent of knowingly transporting a bomb there might be others who would issue threats to the defendant through his partner that the defendant was not to blame anyone else while he was being interviewed by the police. There was no need for any caller to demand that the defendant take the rap. It was only necessary that in the interests of others he should not attribute blame to others and that in his own interest he should not attach blame to himself. His response to this alleged threat however was to withdraw the limited admissions that he had made and offer a complete denial. I do not accept that this phone call was made and I reject the defendant's evidence and that of his common law wife on this issue.

[36] Further it is implicit in the finding that the defendant drove the vehicle that I am satisfied that the defendant lied to the Court. In the first place he lied to the Court in relation to his initial account to the police at the four interviews on 23 April 2002 being part of a plan to secure early release so that he might obtain further quantities of Nubian. Secondly he lied to the Court by denying being in the motor vehicle.

[37] On the basis of those lies I must not conclude that the defendant is guilty of the offences with which he is charged, as there may be reasons other than his guilt for the lies that he has told. If he had been the driver of the motor vehicle, without knowledge of the car bomb, he may then have felt it necessary to tell lies and deny any involvement with the vehicle in order, mistakenly, to protect himself against a finding that he had knowledge of the bomb. However I take into account the finding that the defendant cannot be believed.

<u>- the defendant's knowledge of petrol sprayed inside the vehicle.</u>

[38] The driving of the motor vehicle from the lay-by to Ballycastle does not in itself indicate knowledge of the explosive device, other than in one respect, namely the presence of petrol sprayed inside the motor vehicle. The two police officers who entered the motor vehicle in Castle Street, Ballycastle, the following morning, described a particularly strong smell of petrol that was evident in the very short time they were in the vehicle. I am satisfied that had the defendant driven the vehicle for 8 miles, with petrol having been sprayed inside the vehicle so as to create the strong smell of petrol that was evident to the police officers, the defendant could not have failed to have been aware of the petrol smell. If the defendant drove the vehicle for 8 miles with that petrol smell, and in all the other circumstances that he described to police, he must have known the nature of the exercise in which he was engaged.

[39] The first option is that the petrol was sprayed inside the vehicle before the defendant drove it to Ballycastle. Alternatively the petrol was applied to

the inside of the vehicle upon its arrival at Ballycastle. In that event the defendant or another, upon the arrival of the defendant in the motor vehicle, would have been responsible. However the probable time of arrival of the motor vehicle, shortly before or after midnight during the Auld Lammas Fair, would have been an occasion when members of the public would have been expected to be present in Castle Street, Ballycastle. I do not accept that those responsible for spraying the petrol inside the vehicle would have arranged to do so in such circumstances. The third option would be that the petrol was applied some time later in the early hours of the morning before dawn when the streets could be expected to be deserted.

[40] At this point I return to the evidence about the timing device that would have been set with a delay of approximately one hour. If it is the case that there was a setting of the one-hour timer some time after the vehicle was placed in Castle Street, then the spraying of the petrol might have occurred at the same time. The telephone call at 10.35am the following morning appeared to have been intended to indicate one hour's notice of the explosion. As it is impossible to conceive that the operation was planned on the basis that the timer would have been set when the streets were filling up with stall holders for the day's events, I consider the message in the telephone call to have been the result of a mistaken or confused impression of the nature of the explosive device on the part of the caller. It may be that the timing device was set in darkness in the early hours of the morning and the petrol was applied inside the vehicle at that time. It may be that the timing device was never intended to be set and it was all an elaborate hoax, although that seems unlikely in view of the manner in which the device was actually constructed. I cannot be satisfied that the petrol had been applied inside the vehicle when the defendant drove the vehicle to Ballycastle.

-the defendant's delay in stating to police that he had no knowledge of the presence of the bomb in the vehicle.

[41] The defendant contends that he had been drinking alcohol and did not realise the import of what he had agreed to do. It is the case that despite his alleged plan of admitting having driven the vehicle and denying having knowledge of the explosive device in the vehicle, he did not expressly state in the first interview that he did not know of the presence of the bomb. The issue of his knowledge was first raised, directly, during the second interview, when the police officer asked when the defendant first realised what was in the car, and he replied that it was two or three days later when he saw it on TV. One of the interviewing officers did understand the defendant's comment in the police station yard to mean, not only that he had not made up the bomb, but that he had not known that it was in the vehicle. This understanding of the officer appears later in the second interview and the officer was corrected by the other officer. It may be that the defendant also believed that his statement in the police yard was such as conveyed that he

had no knowledge of the presence of the bomb. Although the defendant did not expressly state in the first interview that he had no knowledge of the bomb in the car, I have come to the conclusion, on a consideration of the whole of the interviews, that it is possible that the defendant believed that it was implicit in what he had said to the police that he did not have knowledge of the bomb in the vehicle.

Finding.

[42] I have described the defendant's version of events as outlined to the police during the first four interviews as improbable. I have to be satisfied beyond reasonable doubt that the defendant had knowledge that the explosive device was in the motor vehicle when he drove it from the lay-by to Ballycastle. There is no evidence against the defendant other than the statements he made to police on 23 April 2002. If I entertain a reasonable doubt the defendant must have the benefit of that reasonable doubt. I have examined the circumstances to ascertain whether there are factors present indicating the defendant's knowledge of the presence of the explosive device that would convert my satisfaction as to the defendant's probable knowledge into satisfaction beyond reasonable doubt that the defendant knew of the presence of the explosive device. I cannot be sure that the defendant had knowledge of the presence of the explosive device in the motor vehicle.

[43] On the first count of possession of an explosive substance with intent I find the defendant not guilty. On the second count of doing an act with intent to cause an explosion I find the defendant not guilty.