

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

MICHAEL ANTHONY STONE

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Before: Morgan LCJ, Higgins LJ and Girvan LJ

MORGAN LCJ (delivering the judgment of the court)

[1] On 14 November 2008 the appellant was convicted by Deeny J of two counts of attempted murder, one count of doing an act with intent to cause an explosion by igniting the fuse of an improvised explosive device, three counts of possession of explosive substances with intent to endanger life or cause serious injury to property, one count of possession of an imitation firearm, one count of criminal damage and one count of possession of offensive weapons, namely three knives, a garrotte and an axe. He was sentenced to 16 years imprisonment in respect of the attempted murders, 10 years imprisonment in respect of the explosives offences, 2 years imprisonment in respect of the possession of an imitation firearm and the offensive weapon counts and 12 months imprisonment in respect of the criminal damage count, all sentences to run concurrently. He now appeals against his convictions for attempted murder and possession of explosive substances with intent.

The circumstances of the offence

[2] On Friday, 24 November 2006, the day it was expected that Rev. Ian Paisley and Martin McGuinness would be nominated as First and deputy First Ministers, the appellant arrived by taxi at the main entrance gates to the Stormont Estate around 9.15am. He was wearing a hunting type hat with a scarf around his face, a jacket and was carrying two bags, a tripod and a walking stick. En route the appellant had asked the taxi driver to post two letters. One was addressed to Lindy McDowell of the Belfast Telegraph and the other to a newspaper in England. On arrival at the main gates the appellant said in evidence that he took a sharp left to avoid the security post on the main road and rejoined Prince of Wales Avenue leading up to

Parliament Buildings about 45 minutes later. The appellant suffers from hereditary motor neuropathy and would have found it more difficult than an ordinary person to walk without a stick or some other means of enabling him to maintain his balance although there was video footage of the appellant walking well a few weeks before the incident. He managed to walk up the steep incline leading to Parliament Buildings and ascend the 60 steps in front of it.

[3] Around 11.00am a security guard, Alexander Hoy, saw the appellant writing graffiti on the second pillar of the portico at the front of Parliament Buildings. The appellant had used a spray can of red paint to write "Sinn Fein War Crim...". Mr Hoy asked the appellant what he was doing. The appellant turned towards him holding the can of paint in his right hand and reached into the left hand side of his jacket with his left hand. He produced a hand gun in his left hand and pointed it at Mr Hoy's face approximately 2 feet away. Mr Hoy recognised the appellant as Michael Stone. The appellant said "you better run or you are a f...ing dead man". Mr Hoy ran towards the east side of the building where he knew there were other security personnel and he could raise the alarm.

[4] Another security guard, Ms Sue Porter, was on duty at the main front revolving door at Parliament Buildings. She saw the appellant approaching the glass doors. He looked frail and soaked to the skin as a result of the steady drizzle that had been falling that day. She went to help him thinking he was a photographer but as he came through the doors she recognised him as Michael Stone. She put her hand up to stop the door and put her foot in the door also. The appellant said "Love" but then pulled out a gun and held it to her face inches away and told her to move back or he would f...ing shoot her. He pushed his way through the door and threw a bag on the ground with a fuse coming out of it. He produced a green lighter and lit the fuse which sparked and kicked the bag away into the foyer of the building. This incident was the subject of his conviction on count 4 and is not appealed. Ms Porter struggled with him. The appellant was shouting remarks about Sinn Fein and Paisley and "no power sharing with IRA" as this went on. Ms Porter suspected that the appellant was wearing other devices around his body.

[5] Another security colleague, Mr Peter Lachanudis came to assist. He lifted the appellant's gun arm up in the air. The appellant was shouting "no sell out, no surrender". Ms Porter was able to remove the gun from the appellant's hand and recognised that it was an imitation firearm rather than a real gun. The appellant was still struggling with Mr Lachanudis and Ms Porter struck the appellant on his head with the gun and kned him in the groin. The appellant said "there's a bomb - it's going to go off in 5 minutes". Ms Porter asked him what was in the bag and he said "grenades and everything". She said "you are going to get hurt and blown up too" but he said "so be it". Two other guards, Lee Barrett and Mark Smith, arrived and

assisted Mr Lachanudis to force the appellant to the ground. Ms Porter tied his shoelaces together. They then removed items found on the appellant. Two devices which appeared to be pipe bombs were taken from the appellant's waistband together with two knives. Mr Smith placed the gun on a table.

[6] Mr Barrett saw the black bag in the foyer. There was a wire protruding from it and he could smell burning. Another guard, Samuel Wallace, who had observed the appellant lighting a wire from the bag, kick it into the foyer and heard him shout that it was a bomb had raised the alarm and evacuation of the building had begun. Mr Smith decided to remove the appellant outside onto the portico. There he and the other guards removed further items from the appellant. These included a knife, an axe, a pair of scissors, two pairs of glasses and a lighter. There was also a black camera tripod bag containing suspect devices. The appellant said that he was "planning to have a go at Adams and McGuinness".

[7] Police arrived. They searched and arrested the appellant who told them there was a blast incendiary inside the building. The appellant was found to be wearing a flack jacket. As the appellant was complaining of chest pain he was taken to hospital where tests proved negative. Whilst in the police car the appellant told the police officers that there were eight bombs in total, three round shaped ones in the camera tripod bag and four cylindrical ones in his coat which had been taken off him. He also said that he had unfinished business with McGuinness and Adams and that the blast incendiary device was made of black powder, diesel oil, firelighters and gas canisters; the ignition was not electronic but five lengths of fuse wire which he had lit. The appellant spoke to Constable McDonald at the hospital and said that he had planned to enter the Debating Chamber at Stormont, use a smoke bomb as a diversion and then slit the throats of Adams and McGuinness. At the police station the appellant kept talking about "getting Adams and McGuinness".

[8] The letters written by the appellant to the newspapers were posted as requested. In these letters the appellant indicated that by the time of receipt he would either be in police custody for what would be the rest of his life or more probably would be dead because he did not intend to desist from his mission to assassinate Gerry Adams and Martin McGuinness. He explained that he had a replica handgun to bluff his way past the security guards at the entrance to Parliament Buildings. He then intended to ignite the device in the flight bag to create panic and confusion while he made his way along the corridor towards the Debating Chamber and the 2 targets.

[9] Parliament Buildings houses the Assembly Chamber on the ground floor. On entering the building through the revolving doors it is necessary to ascend the 6 steps leading onto the Great Hall. The distance from that point to the Assembly Chamber is 40 metres if using the Great Hall and main entrance

hall as intended by the appellant. There is a shorter route using the corridor to the side of the 6 steps. There generally were members of staff in the rotunda area of the entrance corridor and close protection officers either in the rotunda area or the rest room.

[10] At interview the appellant said that he was a dissident loyalist freelancer and had gone to Stormont specifically to assassinate Adams and McGuinness and to disrupt the event which could have betrayed Ulster with some unionists voting to share power with Sinn Fein. He regarded Adams and McGuinness as war criminals who did not deserve to be in a devolved government. He outlined his actions that morning and accepted that he had pointed the gun at the security guard outside the building. He had lit the fuse on the flight bag which contained a blast incendiary device. He had planned the whole operation and was solely responsible. He had intended to set off the 6 incendiary devices to cause confusion and allow him to enter the Chamber. He would have lobbed the nail bombs in and then gone in and stabbed Adams and McGuinness and cut their throats. He described the other devices as nail bombs and said that the clingfilm and foil used on the fuses was to protect them from getting wet in the rain. He told police that he "would appreciate you coming back with a charge of conspiracy to murder McGuinness and Adams". He apologised to the security staff. He claimed his actions were political and he was willing to give his life for his beliefs and was not ashamed of his actions. "But that's why I was there. Specifically to take those two men outAdams and McGuinness, I see as war criminals..."

[11] Captain Matthew Wilson, the ATO, who was called to Stormont found 8 devices; 5 devices were in the portico and 3 in the entrance hall to the building. Dr Gerard Murray Forensic Scientist later examined the devices. The camera tripod bag in the portico contained two rocket type devices with fuses and nails and tacks attached. These were viable explosive devices and if the rockets had exploded simultaneously the effect could have proven fatal. The tripod bag also contained a white plastic box with a lid for a fuse to pass through. In the box were many small plastic tubes which were pyrotechnic projectiles with fuses and loose firework composition material. Silver foil and cling film held two bags of nails on the top of the box which was all taped together. If this viable device had exploded nails would have been thrown out with sufficient force to penetrate skin and flesh within 1 metre of the explosion. In the portico there were found two long cardboard tubes with the ends sealed up and a small hole for the fuse leading to a combination of firework material and nails. Two further such devices were found in the entrance hall of the building. Ignition of these devices would have scattered the nails with considerable force injuring anyone standing within 5 to 10 metres.

[12] The device in the flight bag in the entrance hall consisted of a dozen rocket type fireworks aligned in opposite directions and interconnected with

a fuse, wrapped round a two litre bottle containing petrol and firelighters. Smaller bottles of petrol and a butane gas canister (half full) were taped together with a piece of paper protruding from the top. The bag also contained 2 smaller bottles of petrol, 2 bottles of petrol/firelighter and a sock full of pyrotechnic "ammo pellets". The fuses projected through two holes cut in the flight bag. Igniting this device would cause a fire and exploding rockets which could turn into a fireball igniting carpets or curtains and would constitute a real danger of causing severe burns to anyone nearby. Construction of the device was rudimentary but it would still be effective. Dr Murray confirmed that the fuse in the bag was blackened consistent with having been lit. It was possible that a manufacturing fault was responsible for the fuse not fully igniting.

[13] The appellant's case at trial was that he was engaged in performance art work. He had formed this idea 5 or 6 weeks before the day in question. His intention was to protest with graffiti and props. He would clear the building with the flash bang devices and place the nail bombs at the base of the walls. The fireworks were to "put a rocket up the backside". He had no intention to kill or injure anyone. The other fuses apart from the flight bag could not be lit as he had covered the ends in tape and he claimed he had shaken the black powder out of the core of the fuses so it would just be lighting a piece of paper. He did not use innocuous substances because he wanted to be taken seriously. The nails in the devices were symbols of "nailing the truth". The three knives were also props, two were fisherman's knives. He had painted the knives and the gun black, the devices were grey and Stormont was white - all part of a monochrome colour scheme. The imitation gun had the magazine removed and a piece of sponge painted black inserted to refer to certain politicians calling unionists "spongers". The fisherman's hat also painted black and the other items used by fishermen referred to Martin McGuinness whose nickname or codename was "the fisherman". The small pair of scissors resembled a phoenix and he intended to lay these at a pillar as a begrudging salute to the IRA war dead and then lay a poppy to the loyalist dead. He claimed that the bottle of water he had with him was to pour into the flight bag so that the devices would not explode.

[14] The appellant claimed that the letters he had written to journalists were to add to the drama of his performance and ensure maximum coverage in the press by saying he was going to kill Adams and McGuinness. He said that he had not intended to ignite the flight bag but then said that lighting the fuse to the flight bag was only to create a thunder flash, a simulation, not an explosive device and that when SOCO opened the bag expecting a bomb they would only find damp squibs. He had planned to arrive with £30.00 - symbolic of the 30 pieces of silver, a sign of betrayal directed at the DUP and Sinn Fein. He produced a painting he had painted in October 2006 entitled "My last long mile" in the style of a Jackson Pollock which he said

represented his walk up to Stormont and his intention to paint red graffiti on the columns.

[15] The appellant also claimed that he had written a third letter to the then Chief Constable Sir Hugh Orde in which he had described his intention to carry out these acts as a form of performance art. He said that the letter had been placed inside a poster he had been carrying relating to the "Ulster Says No" campaign at the time of the Anglo Irish Agreement. He relied on a photograph of the scene taken by a police photographer shortly after his arrest which included a piece of paper on the ground close to the revolving doors which the learned trial judge accepted could have been a poster of the type referred to by the appellant. The piece of paper was never recovered so the only evidence that it contained a letter to the Chief Constable is that of the appellant.

[16] Some weeks before these events the appellant had been interviewed by Mr Jervis, a journalist. The appellant told him that he was going to "do something big" for devolution day. He said that it was an art thing. The appellant had developed a skill as a painter so that statement would not have aroused any suspicion in Mr Jervis who as it happens was at Stormont on the day of these events.

The intention of the appellant

[17] The first issue in the appeal was whether the learned trial judge was entitled to conclude that he was satisfied beyond reasonable doubt that the prosecution had established that it was the intention of the appellant to kill Mr Adams and Mr McGuinness. In our view there was more than sufficient evidence for him to come to that conclusion. At paragraph 106 of his judgment the learned trial judge concluded that the appellant was "a wholly unreliable and unconvincing witness whose testimony where not otherwise confirmed is wholly undeserving of belief". He pointed out that the appellant had suggested in evidence that he had taped over the ends of the fuses in the explosives devices but the expert evidence demonstrated that in each case a part of the fuse was exposed and capable of being lit. He claimed that the gas canister in the bag was empty when this was not the case. He claimed that there was only heating oil in the bag when in fact there was highly inflammable petrol. He said that he would not have ignited the flight bag but in fact he did so. He denied that the wire noose he had brought with him was a garrotte but he had so described it to Lindy McDowell in his letter to her. These were only some examples of his unreliability.

[18] He claimed in his evidence that the letters he had written to journalists were to add to the drama of the performance and increase coverage of the event but these letters would not have been received until the following morning by which time, if he was correct in his evidence, they would have

been demonstrably false. In those circumstances they could not have added to any performance. Those letters also contradicted the claim that there was a third letter to Sir Hugh Orde because it is difficult to see what role the letters to journalists would have played in any dramatic protest if there was a letter to Sir Hugh Orde which it was intended should be discovered first. Although he made no express finding on the issue it is clear from paragraph 78 of the judgment that the learned trial judge rejected the evidence that there was a letter of the type referred to by the appellant to Sir Hugh Orde and this is again repeated at paragraph 107.

[19] The learned trial judge accepted that the appellant had spoken to Mr Jervis in early November and made the comments attributed to him but noted that in the interim he had put together the lethal improvised explosive devices which he had on the day of his arrest. In addition he was hardly going to tell the journalist that he intended to carry out a murderous attack and not expect the journalist to report it to police. The fact that some of the items in his possession had been painted or improvised did not take away from the evidence pointing to his intention to kill and cause serious injury. We do not consider that the conclusion of the learned trial judge on this issue is open to criticism.

Attempted murder

[20] The second issue is whether the acts of the appellant were sufficient to constitute an attempt in law even if he had the intention to kill. The statutory test in relation to attempts is set out in article 3 (1) of the Criminal Attempts and Conspiracy (NI) Order 1983.

“If, with intent to commit an offence to which this Article applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.”

[21] The distinction between attempts and acts which are merely preparatory reflects the concept of remoteness which characterised the previous common law. The equivalent provision in England and Wales was considered in *R v Gullefer* [1990] 1 WLR 1063. That was a case in which the alleged offender had placed a bet of £18 on a greyhound race. Thinking better of it he climbed onto the fence of the greyhound racing track in front of the dogs and waved his arms in an attempt to distract them in order to have the race declared a “no race”. He was convicted at first instance but on appeal it was held that it could not properly be said that he had embarked on the theft itself. His acts were merely preparatory.

[22] Perhaps the strongest decision in the appellant's favour is R v Geddes [1996] Crim LR 894. In that case the offender made his way into a school with a rucksack containing a large kitchen knife, some rope and a roll of masking tape. The evidence indicated that he had taken up a position in a lavatory cubicle. The jury convicted him of attempted false imprisonment. On appeal it was accepted that the appellant's intention was clear. The evidence showed that he had made preparations, equipped himself, had got ready and put himself in a position to commit the offence charged. He had entered the school but did not have any contact or communication or confrontation with any pupil at the school. The Court of Appeal felt bound to conclude that the evidence was not sufficient in law to support a finding that the appellant had done an act which was more than merely preparatory to wrongfully imprisoning a person unknown.

[23] The decision in Geddes has been criticised on the basis that it appears to introduce a "last act" test for liability. We do not accept that there is any such test. As the court said in Geddes the question is whether the offender had moved from the realm of intention, preparation and planning into the area of execution or implementation. The learned trial Judge concluded that the appellant's plan was as set out in his interviews with police and his letters posted to the journalists. He clearly made substantial preparations by preparing his armoury and getting himself to the Stormont estate in order to enter Parliament Buildings. Having entered Parliament Buildings the finding was that he had lit the fuse of the explosive device which was to create the diversion which would enable him to enter the Assembly Chamber and kill his intended victims. We are satisfied that the lighting of a fuse can be said to be part of the execution or implementation of the plan to kill Mr Adams and Mr McGuinness and thereby more than merely preparatory to the implementation of that plan. We express no view on whether the acts preceding the lighting of the fuse were sufficient. We consider, therefore, that the learned trial judge was correct to conclude that the acts of the appellant were capable of constituting an attempt and that he was entitled to conclude that they did.

Conclusion

[24] For the reasons given we do not consider that the convictions were unsafe and the appeal must be dismissed.