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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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REGINA

-v-

JAMES HENRY GOODALL

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Before: Morgan LCJ, Weatherup LJ and Weir LJ

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MORGAN, LCJ (delivering the judgment of the Court)

[1] This is an appeal by way of reference from the Criminal Cases Review Commission (CCRC) pursuant to the powers contained in Part II of the Criminal Appeal Act 1995. The reference concerns the appellant's conviction by MacDermott J on 7 November 1977 of causing an explosion contrary to section 2 of the Explosive Substances Act 1883 on 21 March 1977 at Exchange Street, Belfast and on the same date of possessing a firearm with intent to endanger life or cause serious damage to property contrary to section 14 of the Firearms Act (NI) 1969. The appellant was sentenced to a term of imprisonment of 15 years in respect of the explosives count and 12 years concurrent on the firearms count. His appeal against conviction and sentence was dismissed on 3 March 1978. Ms Quinlivan QC appeared with Mr Hutton for the appellant and Mr McCollum QC with Mr Henry for the PPS. We are grateful to all counsel for their helpful oral and written submissions.

Background

[2] Around noon on 21 March 1977 an armed gang secured entrance to a factory at Exchange Street, Belfast. A girl and a taller man had what were described as handguns and held up the nearby staff in an area close to the entrance hall leading to the factory floor. A second and smaller man then carried in a bomb which exploded at about 12:20 pm causing approximately £20,000 worth of damage and putting the factory out of production for a fortnight. The prosecution case is that the accused was the person who planted the bomb. He maintained that he had been working on his car at Dawson Street, Belfast that morning after which at about noon he went to

sign on. The judge rejected the alibi evidence called on behalf of the appellant and that issue is not material to this appeal.

[3] On 25 March 1977 the appellant travelled from Northern Ireland to Scotland to a football match. On arrival at Stranraer he was arrested and subsequently served with an exclusion order. He was returned to Northern Ireland on 1 April 1977 and at 3 pm that day was arrested at Larne Harbour in connection with the subject offences. He was then taken to Castlereagh RUC station where he was interviewed.

[4] The appellant was first interviewed by DC Bassett and WDC Abbott at 4:40 pm on the day of his arrest. The interview lasted 35 minutes during which he denied any involvement with the IRA who, he said, considered him "mad". A second interview with DC Nesbitt and DC McCaul began at 8:10 pm that evening and lasted for 2 hours and 40 minutes. The interview notes record that the appellant said "do you want me to admit it" which prompted a plea to tell the truth. Both officers record that the appellant said "all right, I'll admit it to get you off my back". The appellant was cautioned and gave an account to the police officers. He then made a written statement which was read over to him. It was recorded that he signed the endorsements.

[5] The statement is endorsed as being recorded by DC Nesbitt and witnessed as to its making by DC McCaul. Subsequent ESDA testing reveals that that part of the endorsement naming DC McCaul as having witnessed the statement was probably not recorded contemporaneously. The ESDA test did not, however, suggest any irregularities in the body of the statement. The body of the statement read as follows:

> "On Monday 21 March 1977 I was standing in Dawson Street between 9 and 10 am when a fellow came up to me and asked me to do a wee job. I asked what it was and he says to do the Academy Shirt Factory. I said alright as long as nobody gets hurt. He said he would see me in about 15 minutes in the Lodge Road. I went down to my house and changed my clothes. I drove up the road in my own car which is a green Hillman and picked up the fellow and a girl. They both got into the back seat and the fellow had something with him. He told me it was a bomb and we headed towards the Academy Shirt Factory. We stopped near to it and we got out of the car. The girl went up and knocked the door and it opened. She went into the shirt factory and the door was closed over. We went in after the girl and I was carrying the bomb. When we got inside the other fellow shouted "This is a bomb". I went in a good bit into the factory and left the bomb on the floor. The other fellow said you'se have plenty of time to get out and we rushed out… We split up and I went back down to the house

> and I got back into my working clothes. I then went back to the scrapyard in Dawson Street. I picked up Fra Collins and took him to the dole. I was at the dole between 12 and 12:15 pm. It was about a half an hour before that that we planted the bomb. I didn't know the fellow's name but I knew him to see. I never seen the girl before. The fellow and girl had guns with them and I had none."

[6] At his trial the appellant did not complain about his treatment in custody. He alleged, however, that he made no verbal admissions and that the three signatures, James Goodall, and two sets of initials, JG, were not made by him on what was presented as his written statement. The judgment records that initially he denied signing any document apart from a document relating to his clothing but as his cross-examination proceeded he appeared to accept that he had put his name in block capitals to a statement which the police wrote out in his presence after he said that he was prepared to and did agree to make a statement denying any involvement in the bombing.

[7] The statement upon which the prosecution relied did not contain a signature in block capitals. The trial judge heard evidence from handwriting experts and accepted the evidence on behalf of the prosecution from Mr Austin that the three signatures were consistent with having been made by the author of the various comparison signatures examined. The trial judge rejected the alibi evidence. He found the appellant's father an unconvincing witness. He assessed the other witness as genuine but her evidence was general rather than specific and did not establish that the accused was outside the door of her sister's house at the critical time. The judge found the accused's evidence entirely unconvincing and although he was unable to read or write the judge concluded that he was shrewd and cunning, guileful and quick-witted. He was satisfied that the accused had made the written and oral statements upon which the prosecution relied, that there was no reason to exclude this admissible and condemning evidence and that the appellant was guilty. There is no record of the appeal but the assumption is that the appeal proceeded on the basis of the appellant's instructions as before.

The Reference Application

[8] The application is founded upon an application to admit new evidence pursuant to section 25 of the Criminal Appeal (Northern Ireland) Act 1980 as amended. The first application relates to the statement of Hannah Pocock, a document examiner. She conducted an ESDA examination of the appellant's written statement. She looked in particular at the impression of page 1 left on page 2. The introduction to the statement reads:

> "Statement of James Henry Goodall, 23 yrs, unemployed labourer, 38 Carlisle Road, Belfast taken by D/Const Nesbitt at Castlereagh Police Office on

1st April, 1977. *in the presence of D/Const McCaul. Statement commenced at 10-5 PM*"

She found that the italicised words were not present on the impression on page 2 and were, therefore, likely to have been written at a different time. She did not find any other lack of correspondence between page 1 and the ESDA impression on page 2. The appellant relies on the decision in R v John Joseph Boyle (NICA 29.4.03) to support the submission that this calls into question the safety of the conviction.

[9] In light of the appellant's lack of reading skills and evidence suggesting that both his literacy and numeracy attainments were limited in early life the CCRC obtained a report from Prof John Taylor, a Consultant Clinical Psychologist. He interviewed the appellant with a colleague Dr Breckon. He noted that the appellant had a specific reading disorder that rendered him functionally illiterate and that he had very significant cognitive impairments. As a result he had pronounced difficulties with understanding and remembering complex verbal information. He was likely to have had great difficulty in understanding the nature and purpose of the police interview procedures he experienced in 1977 although it was noted that by the time of that interview he had had a good deal of experience of police questioning and interview procedure. Prof Taylor questioned whether the appellant had the language skills and intellectual ability required to have crafted the statement that he is purported to have dictated to the officer who recorded it verbatim.

[10] In order to determine whether to admit the fresh evidence from Prof Taylor the starting point was to establish what case the appellant was now making about the oral and written statements. In the letter accompanying his application to the CCRC dated 8 September 2009 the appellant's solicitors recorded the appellant's case at trial that the statement in respect of which he was convicted was fabricated and his signature forged. The solicitors further contended that in light of the conditions of his detention and imprisonment in Scotland immediately followed by detention at Castlereagh, his mental state and vulnerability together with long periods of interrogation and the absence of legal advice and an appropriate adult demonstrated that even had admissions been made by the appellant they would have been obtained in circumstances which did not comply with contemporary standards of fairness.

[11] The appellant was interviewed by the CCRC on 28 May 2013. His limited educational achievement was noted. A contemporaneous report of the sentencing stated that his verbal and numeracy skills were those of an average 11 year old. He said that he had been employed in a number of manual jobs both in Northern Ireland and Milton Keynes. He had not been on any training or educational courses since leaving school. The note of the CCRC interview recorded that he could not remember how he coped with the police interviews. He said that he signed for the offence but he had nothing to do with it. He said that he did not understand the questions and would have coped better with an appropriate adult. When asked about his discussions with his lawyers he said that he refused to plead guilty and could not remember giving evidence. He could not remember any instructions to the

lawyers. Towards the end of the interview he said that he made false admissions and signed a statement but that the statement he heard at trial was not what he had said. He agreed that this was possibly because it was written in words that he would not use.

[12] In a statement made on 16 March 2016 in connection with this reference the appellant explained that he had been arrested before this but had never previously been to Castlereagh. He said that he found it very hard to cope in Castlereagh but could not remember everything about it although he was already exhausted and worn out from detention in Scotland. He said that he told the police that he did not do the bombing and told them what he had been doing on the day of the bomb.

[13] He went on to explain that he had made admissions to carrying out the bombing and signed a statement and his memory was that in the statement he admitted planting the bomb. He said that he only signed the statement to get the police off his back. He also said that he told them that he was not guilty but that he would sign the statement to get them off his back. He said that anything he signed would have been read over to him by the police officers. He said that he did not think that the statement read to him by his solicitor at trial was the same as the statement which had been read to him at the police station. He was advised by his solicitors that as he had made admissions he should plead guilty but he told a solicitor that he was pleading not guilty because he did not do it. He did not remember much about the trial or the evidence.

[14] The appellant gave evidence to this court on 2 May 2017. He said that when questioned he initially told police that he had nothing to do with the bombing. That is consistent with the police record of the first interview. He said that as the questioning went on he wanted to get the police off his back so he made admissions. He cannot read or write. He remembers there was a written statement which police wrote out and that he was asked questions. There were two police officers in the room at the time. That, of course, is relevant to the issue of whether DC Mc Caul was present while the admissions were made. Police asked questions about the bombing and he answered. Police read the statement over to him and he signed it because he wanted to get out. He remembered signing the statement in the station interview room. He said that he told them a load of nonsense to get them off his back.

[15] He said that he talked to a solicitor the next day. He told the solicitor what had happened. He remembered going through the statement with his lawyer. He told the lawyer that he did not think that was the statement that he had made. He told the lawyer that he had signed the statement. He remembered the case coming to trial. His lawyer told him to plead guilty and he would get 10 years. He did not remember what he said in the witness box and was not sure that he remembered denying that he made any statement.

[16] In cross-examination he agreed that he had been arrested about four times prior to this. In some cases he had admitted offences and in others denied the offences. He indicated that he would recognise his own signature. He looked at the

signatures on the copies of the written statements which were introduced in evidence against him and agreed that the signatures were his. He agreed that he made a statement and that he admitted his involvement in the bombing. He said that he did not tell the police that he had driven the car and did not remember going into the details of the bombing.

[17] He said that he told his solicitor and barrister that he had nothing to do with the bombing but appeared not to remember whether he had told them that he had made admissions and signed the statement. He could not remember whether he told the judge that the signature on the statement was not his. He was not sure why he would say that it was not his signature other than to say that he would not usually sign "James Goodall". He thought that he told the judge that he had made a statement admitting the bombing and that he had told his lawyer what had happened in the police station although he then indicated that he could not remember. He accepted that he knew what he was admitting when he made the admissions to police. In re-examination he claimed that he told the trial court the truth. Despite his earlier evidence he said that he could not remember what the advice of his solicitor was. He said that he was not sure if he spoke to his legal team about the signatures on the statement.

[18] We heard *de bene esse* the evidence of Prof Taylor who first examined the appellant on 7 April 2015. There was limited controversy about his conclusions. The appellant is functioning intellectually in the low average range. His reading ability is extremely poor and he is functionally illiterate. He has very significant cognitive impairments in terms of verbal comprehension, working memory and immediate memory for verbally presented material. These may affect his ability to understand the nature and purpose of police interview procedures or appreciate the significance of any answers he might give. For those reasons he might be considered to lack capacity to be interviewed without appropriate support.

[19] DC Nesbitt described the statement of admission as being taken at the appellant's dictation. The appellant's evidence was that during the taking of the statement he was asked questions as he went along. Prof Taylor considered that he would have had difficulty understanding fully the significance of what he was admitting. Prof Taylor considered that the effects of the psychological pressures of his detention in Scotland and subsequent re-arrest were likely to have exacerbated his cognitive limitations. Prof Taylor questioned the reliability of the admission evidence given the lack of an appropriate adult, his cognitive impairments, the effects of his arrest and detention and his language skills in respect of the statement.

[20] In cross-examination Prof Taylor accepted that the appellant understands what people say if presented in simple language. It would be unlikely that he would forget something such as driving his car with a bomb. He was capable of recognising his own signature. He was able to indicate to his lawyers that the signature was his own. He was able to tell his lawyers if the statement in general terms was what he told the police and not invention. He was not suggestible. There was evidence that he did understand police procedures. He understood that he had admitted his

involvement in this bomb. Prof Taylor considered that he was able to make the decision about whether to contest the charge, able to tell his lawyers what happened at the police station and able to understand what he told the police and to tell his lawyers accordingly.

Consideration

[21] The prosecution case depended decisively upon the appellant's statement of admission. The admissibility of such statements pursuant to section 6 of the Northern Ireland (Emergency Provisions) Act 1973 ("the 1973 Act") was considered by this court in R v Brown and Others [2012] NICA 14 where the statutory test was set out in paragraph [11]:

> "(1) In any criminal proceedings for a scheduled offence a statement made by the accused may be given in evidence by the prosecution in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of subsection (2) below.
>
> (2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, prima facie evidence is adduced that the accused was subjected to torture or inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies them that the statement was not so obtained, exclude the statement or, if it has been received in evidence, shall either continue the trial disregarding the statement or direct that the trial shall be restarted before a differently constituted court (before whom the statement shall be inadmissible)"

[22] In this case the appellant made no allegation of ill-treatment at trial. His first interview lasted 35 minutes. In the course of his second interview that evening lasting 2 hours and 40 minutes he made the alleged verbal and written admissions. He was offered the opportunity of medical examination by a doctor on 1 and 3 April 1977 but declined indicating that he had no complaints of assault or ill-treatment. During his period in custody prior to appearing in court he signed on four occasions between 1 April 1977 and 4 April 1977 confirming that he had no complaints to make against any police officer. He made no case at trial that he was affected by the period of time that he had spent in Scotland. For the reasons set out in Brown there can be no complaint about the decision to admit the statements.

[23] In order to advance his application the appellant sought to introduce fresh evidence to challenge the reliability of his oral and written submissions. His case at trial was that he had made no verbal admissions. In his evidence to this court he

accepted that he did make verbal admissions but said that he did so to get the police off his back. In the course of his evidence at the trial he denied that the signatures on the statement and the two sets of initials were his. He accepted in this court that the signatures were his.

[24] In his evidence to this court he thought that he had informed the trial judge that he had signed a statement admitting his part in the bombing but at the trial he said that the only statement he signed was one denying his involvement. He could not remember whether he had told a solicitor and barrister that he had signed a statement admitting the bombing but if he had done so plainly they would not have been in a position to run the case before the trial judge that the signatures were not his. In order to advance that case his lawyers had retained the services of a handwriting expert.

[25] The evidence that he signed a statement of admission and made verbal admissions is overwhelming. In fact he now claims that he did so but maintains that he told the police a load of old nonsense. The first indication of the case which he now makes in relation to the statement was contained in his interview with the CCRC on 28 May 2013. It is notable that not even in his solicitors' letter of application dated 8 September 2009 was there an acceptance that he had made the verbal and written admissions which he has now accepted in evidence to this court.

[26] We are satisfied that the appellant gave false evidence to the original trial court that he had not made oral admissions and that the signatures on his statements were not his. The appellant's case is that he was perfectly able to understand what he had admitted and he has offered no excuse either in his evidence nor in the proposed evidence of Prof Taylor for the course he took at trial. It is against that background that we have to consider whether to admit the fresh evidence.

[27] The admissibility of fresh evidence in criminal appeals is governed by section 25 of the Criminal Appeal (Northern Ireland) Act 1980:

> "25. - (1) For the purposes of an appeal, or an application for leave to appeal, under this Part of this Act, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice-
>
> (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the Court necessary for the determination of the case;
>
> (b) order any witness to attend and be examined before the Court (whether or not he was called at the trial); and

[from 14 July 2008 not confined to a witness who was compellable at the trial, so that the Court can compel testimony from persons such as jurors or lawyers]

(c) receive any evidence which was not adduced at the trial.

(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to-

(a) whether the evidence appears to the Court to be capable of belief;

(b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and

(d) whether there is a reasonable explanation for the failure to adduce the evidence at the trial."

[28] There has been considerable discussion of the admission of fresh medical evidence in cases where the defendant had the opportunity to admit the evidence at his trial, decided not to do so and then sought to introduce it on appeal. The principle was established in the Court of Appeal in R v Shah (Zoora Ghulam) (EWCA 30 April 1998) where Kennedy LJ said:

"Mr Fitzgerald submits that even if a defendant puts forward a lying defence the interests of justice may require this Court to permit him or her to put forward a different defence if persuasive evidence is available by the time the case reaches the Court of Appeal. We recognise that in some situations that may be the case, but we see little room for the operation of such a principle in a case of murder where a defendant has freely chosen to deny responsibility for the acts or omissions which caused the death. If his choice was forced upon him by his illness then of course the position is quite different, but in general no one is entitled to more than one trial … [O]nly in exceptional circumstances will this Court receive fresh evidence to enable a defence to be advanced which was not put forward at trial."

[29] In R v Neaven [2006] EWCA Crim 955 Rix LJ reviewed all of the authorities in relation to the medical cases and drew from those authorities the following guidance:

> "(1) That the obligation on a defendant to advance his whole case at trial, and the scepticism directed towards tactical decisions, remain fundamental.
>
> (2) That it therefore takes an exceptional case to allow it to be in the interests of justice to admit and give effect to fresh evidence, not relied on at trial, designed to promote a new defence of diminished responsibility. However, subject to this,
>
> (3) Each case turns on its own facts. Therefore,
>
> (4) Where the evidence of mental illness and substantial impairment is common ground or otherwise clear and undisputed, it may be in the interests of justice (in the absence of opposition from the appellant himself — see *Kooken*) to admit it.
>
> (5) This is especially so if the potential vice of tactical decisions is met by undisputed evidence that such decisions were affected by the defendant's illness itself."

In our view these principles apply where a defendant chooses to run a false case before the trial court and then seeks to introduce fresh evidence on appeal. The fact that the application, as in this case, comes more than 30 years after the dismissal of the first appeal is often likely to be material.

[30] The evidence indicates that the appellant suffered cognitive impairments involving verbal comprehension, working memory and immediate memory for verbally presented information. In light of that this court considered it appropriate to have a Registered Intermediary ("RI") in order to assist in the presentation of his evidence. That ensured that the appellant's evidence was taken at a pace suitable for him and the questions were put in a straightforward manner on an issue by issue basis. Where there was any doubt we had the assistance of the RI. We are satisfied that these arrangements ensured that the appellant gave his best evidence. There is no evidence, however, to suggest that the appellant's cognitive impairment would have contributed to his failing to understand that he was making a false statement of admission. At its height the evidence suggests that he may not have appreciated the serious consequences of the admissions.

[31] In his written statement of admission he identified the use of his car, the position of two accomplices within the car, the circumstances of the journey to the factory, the mode of access to the factory, what was said to the occupants of the

factory and the manner in which he planted the device. He denied that he had admitted these details and this case must be that they were made up by the police officers who were interviewing him. That was a case which was rejected by the learned trial judge and there is no basis upon which we could interfere with that finding subject to the ESDA issue.

[32] This was a case in which the appellant stated that he made admissions by way of question and answer which were then recorded by police in writing. We accept that such a process constitutes the making of a statement at the dictation of the appellant. The statement contained considerable detail in relation to the circumstances of the bombing and there is no reason to doubt its broad reliability. In those circumstances we do not consider that we should admit the psychological evidence in the interests of justice. We accept that the evidence is capable of belief but do not consider that in the circumstances of this case it affords a basis for allowing the appeal. In any event if this issue was to be explored it should have been advanced at the trial.

[33] The report of Ms Pocock demonstrates that the portion of the introduction to the statement referring to the presence of DC McCaul did not appear on the impression on page 2 of the statement and accordingly must have been written on a different surface. We accept that it is possible that it was written at a different time.

[34] The appellant relies upon the decision of this court in R v John Joseph Boyle (NICA 29 April 2003). In that case an ESDA examination demonstrated that the notes from the relevant interview were in a different form when the underlying pages were subject to ESDA examination. It followed, therefore, that the notes must have been rewritten despite the evidence of the police officers that this was not the case. Unsurprisingly this court concluded that in those circumstances reliance upon the notes for alleged verbal admissions was unsafe.

[35] We consider that this case is different. First, the evidence of the appellant is that the two police officers were present throughout his interviews. There is, therefore, no suggestion that the interviews were received by one police officer only. Secondly, there is no indication that there was any irregularity in relation to the body of the statement and thirdly, there is no evidence to indicate that the interview notes were rewritten. In those circumstances we do not consider that the evidence suggesting that the reference to DC McCaul was made at a later stage gives rise to any concern about the safety of the conviction.

Conclusion

[36] For the reasons given the application is dismissed.