

THE QUEEN

-v-

STEPHEN MURNEY

HER HONOUR JUDGE PHILPOTT

- [1] The accused is charged on counts 1 and 5 with collecting or making a record of information likely to be useful to terrorists, contrary to Section 58(1)(a) of the Terrorism Act 2000.
- [2] He is charged on counts 2,3,4 and 6 with publishing or communicating information about a police constable likely to be useful to terrorists, contrary to Section 58A(1)(b) of the Terrorism Act 2000.
- [3] He is further charged on count 7 with possessing documents or records likely to be useful to terrorists, contrary to Section 58(1)(b) of the said Act.
- [4] Count 1 relates to the collecting of images on 5 June 2012 as the Olympic Torch passed through Newry City Centre. The accused took photographs of police officers who were policing a protest in support of Republican Prisoners and against searches in Maghaberry Prison which was taking place at the same time. The accused was part of this protest and was the Public Relations Officer for Eirigi who had organised the protest.

- [5] Count 2 relates to the publication on 5 June 2012 on the accused's Facebook page of those images.
- [6] Counts 3 and 4 relate to the publication of photographs on 26 August 2011 and 17 July 2012 showing the accused being stopped and searched by police and in particular a Sergeant Wright who is known to the accused.
- [7] Count 5 relates to the collecting and making a record of the policing of 12 July Parade 2012 in Newry City which showed the faces of police officers who were present.
- [8] Count 7 relates to the possession of photographs of police officers on duty in Newry and Belfast and a minute long video of a car journey along the A1 past a police operation where the police had stopped and searched a bus believed to be carrying explosives. Children were passengers on this vehicle. A further video showed police officers policing a protest with the camera going up and down police lines. This material was found on foot of a search of the accused's home carried out under a search warrant on 29 November 2012.
- [9] The evidence outlined above was agreed between the Prosecution and Defence. An agreed statement of facts was presented to the court as outlined above and the court viewed the police footage of the accused attempting to take footage of what was happening where the bus had been stopped on the A1. The court also viewed the photographs and other video footage referred to in the prosecution case. There was an issue between the Prosecution and the Defence as to whether the accused had said "there's your cordon" meaning that they had been looking for the police cordon and the defence contention that what had been said in the car was "now it's recording. I was unable myself to hear precisely what was said and I listened to the short recording a number of times. It did sound more like cordon to the court but that was after I had been told by prosecuting counsel what each side believed

was being said. I found it difficult to distinguish what was said independently therefore I find myself unable to decide beyond reasonable doubt that the words said were “there’s your cordon”.

[10] It is the view of this court that this piece of evidence is of no significance. The issue is whether or not the accused was justified in attempting to record these police operation at all.

[11] The accused was called and gave evidence that he had a reasonable excuse for the collection, possession and publication of this material under Section 58(3). This provision is further interpreted in Section 118 which states “if a person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume the defence is satisfied unless the prosecution proves beyond reasonable doubt it is not. Therefore if the accused raises in evidence that he had a reasonable excuse for his actions it is for the Prosecution to negative this.

[12] In evidence the accused told the court that he was the Public Relations Officer of Eirigi, a Republican Political Party, which was working towards a socialist Republic.

[13] Eirigi, the accused told the court, was not affiliated to any armed group nor did it support violence. It did support the Human Rights of Prisoners.

[14] The organisation contested elections and protested against marches by other sections of the community which they did not believe should be allowed to take place.

[15] Amongst the photographs taken by the accused were the policing of their protest at the Olympic torch run on 5 June 2012 and the 12 of July Parade in Newry in 2012 and Armed Forces Day in Belfast.

- [16] Further photographs were taken of police at Ardmore Police Station and the officers stopping and searching the accused on two different occasions which were published on his Facebook page.
- [17] The accused stated in evidence that he wasn't hiding when taking the photographs and that he was standing right in front of the officers.
- [18] The accused accepted that he was asked to stop video recording by a police officer. He told the court that he did stop recording and that he did not believe there was a verbal exchange between him and the police officer, nor was he arrested or given any explanation as to why he could not record or take photographs. The accused further stated in terms that when he was recording or taking photographs there were press photographers taking photographs and that no-one warned them or took their cameras off them.
- [19] The accused stated that the photographs relating to him being searched were to illustrate police harassment and were also sent to the CAJ (Committee for the Administration of Justice).
- [20] The accused stated that his reason for videoing police presence on the A1 was because a bus had been stopped coming from Dublin and he had been contacted by parents of the children travelling on the bus to see if his organisation could be of any assistance. He stated that he was told that the bus was being searched for explosives and that the children were terrified and some of them were wetting themselves. He told the court he was asked to go and see if he could help. He stated that he intended to try and capture what was happening on camera and to try and assist the people stopped in some way.
- [21] He was not able from his vantage point to photograph the bus.

- [22] The accused stated that he was not taking videos or any other photographs for terrorist purposes but to report what was going on.
- [23] He further stated that it was not to annoy or wind up police but that what he was doing was part of his job for Eirigi (which is Irish for Rise Up) as the organisation's Public Relations Officer. Although in the view of this court there is no doubt that he knew that the taking of photographs and video recording police lines would annoy the police and may well have made some officers apprehensive.
- [24] The accused also stated in evidence that he did not support the police. He was asked in cross-examination was he trying to get people to withdraw their support from the PSNI. The accused stated that was an aim of his organisation. He stated "We do, we highlight and we expose the unchanged nature of policing".
- [25] When asked if he regarded the police as an illegitimate force he said "We do, yeah".
- [26] The accused was further asked by Mr Chambers "Do you regard yourself as having to adhere to the laws of this country?" He answered "I am a political activist, I just do my political work unfortunately I can't decide laws".
- [27] He told the court that he knew he was obliged to follow the laws of this Country even though he objected to them.
- [28] The accused was asked in cross-examination had he in particular taken Sergeant Wright's photograph to annoy him. He denied that assertion by Mr Chambers. However he had to accept that the following comments were printed on his Facebook page on 26 August 2011. "Sergeant Wright (baldy one) isn't a happy camper. He gripped me earlier today and was whinging about his photo being put up on the internet. He said he'd see me about it,

well and a few other petty remarks. He must be annoyed that he's been caught in the act of harassing republicans. If he annoys me I'll annoy him - thug".

Mr Chambers put to him directly: "You were putting this photo up of Sergeant Wright to annoy him". The accused replied "No, I was doing that to highlight harassment".

[29] It was further put to the accused that he knew the taking, possession and publishing of photographs of police officers on duty was illegal. The accused stated he did not think he was doing anything wrong. He was specifically asked "You never took these photos, possessed these photos, published these photos to assist paramilitaries who might want to go out and kill police officers". The accused didn't accept this stating he was taking the photos to "highlight harassment".

[30] It was put to the accused that he did know he was doing something wrong. Mr Chambers put to him that a Mr David Campbell told him when they were communicating on the accused's Facebook page that the next time the police tried to stop and search him that he should take a video of it. The accused replied "Can't do that or I would be charged with gathering information that would be of use to terrorists".

The accused further replied: "We've explored all the avenues of recording it, if you blatantly do it you will have your phone confiscated under anti-terror legislation or as you said find yourself in Maghaberry on an info gathering charge".

The accused said he did not remember this conversation. It is quite clear that at this time the accused did know of the inherent dangers of collecting information of this nature. However just because you are aware that you may be breaking the law does not of itself mean that you are so doing.

- [31] Although he told the court he did not know how to pixilate the faces of police officers it was put to him that he had had it carried out previously. He accepted that he had previously got two other people he knew to pixilate images of police officers and on another occasion the faces of young men who were confronting the police.
- [32] It appeared to this court that the accused was careful with his answers and would not admit for example that he knew taking photographs of police could be an issue or that he wanted to annoy Sergeant Wright; even though irrefutable evidence of these facts were put to him.
- [33] However he mentioned throughout his evidence that the purpose of his collecting, possessing and publishing those photographs and video images of police and police operations was to illustrate what he believed to be police harassment and overhanded policing (heavy police presence at protests).
- [34] He said he had taken and published the photographs of his stop and searches to show to the CAJ.
- [35] It was clear from his cross-examination that the Prosecution accepted that the accused had sent details of having been stopped and searched by Police to the CAJ.
- [36] The prosecution argue that in terms he is not in the same position as a press photographer who has this material in his possession and publishes it. That press photographs of the police are pixilated, though it is true to say that not all such photographs and recordings are pixilated.
- [37] Mr McDonald submitted that there is clearly no pixilation when officers in charge of cases speak to the press in front of court buildings or after sentences are announced.

- [38] In this case Sergeant Wright had had a photograph of himself printed by the Press showing the injuries he received after going to deal with an incident of domestic violence which wasn't pixilated.
- [39] In terms Mr Chambers argued that a press photographer was in a different position than a political activist or a Public Relations Officer of Eirigi. The prosecution argued that the accused took these photographs to annoy the police and that was not a legitimate reason for taking them. It is correct to say that in the decision of the House of Lords in R -v- G and J [2009] UKHL 13 that to annoy the prisoner officers was not a reasonable excuse for the possession of material likely to be useful to terrorist. The material in that case was much more obviously of a nature that was designed to assist terrorists and it was the only reason given for the possession of the said material.
- [40] Mr McDonald argued that it cannot be right that this legislation demands a different standard for a press photographer or journalist than a political activist who has possession of the same material.
- [41] This material in the view of this court could assist terrorists. Once that threshold has been reached the question is was the material collected, retained and published without reasonable excuse.

The accused has to raise sufficient excuse and then it falls upon the prosecution to prove beyond reasonable doubt that the accused does not have a reasonable excuse for the collection, possession and publication of the material.

- [42] How parades and protests are policed would, in the view of this court, be something that could be of interest to a political activist. The taking of the photographs of Sergeant Wright may well have annoyed him and no doubt made him feel uneasy but the question for the court is what was the primary

purpose for taking them. The next question for the court is whether that purpose amounted to a reasonable excuse.

[43] There is no evidence before this court that Eirigi supports violence, or has argued for violent action to be taken against the police or that the organisation is directly linked to those that support terrorist activity. The accused was not challenged on an evidential basis that he supported violence or terrorism or the violence perpetrated by those in custody or as to what part of the prison regime he objected to, nor what changes he wanted to see in the prison system or why he wanted those changes. The only evidence before the court is that the accused supports Human Rights for prisoners which in the opinion of the court does not advance the Prosecution case.

[44] There is also in terms an assertion by the Prosecution that he at the very least objects to the current Police Force and in real terms he dislikes police officers generally. The accused has said he is neutral in relation to the police. In the view of this court that is simply not true and is not supported by the rest of this evidence referred to herein above. Indeed Mr Chambers on behalf of the Prosecution cross-examined the accused on the basis of information he had given the CAJ about being stopped and searched.

[45] The accused did not answer questions put to him at police interview simply saying "no comment". The court must consider whether or not to draw an adverse inference from the failure of the accused to give to the police at the time the explanation he has given in evidence to this court. The accused stated he had acted on legal advice. It is well established that seeking refuge in legal advice will not prevent an inference from being drawn against an accused by the court. On the facts of this case I am not drawing an inference against the accused as to do so is not in the opinion of this court justified by the strength of the prosecution evidence.

- [46] The accused has been in touch with the CAJ about what he regards as harassment due to being stopped and searched, this appears to have happened on a frequent basis.
- [47] The photographs the accused has had taken when he was being stopped and searched do not show any inappropriate behaviour by the police. They do establish that he has been stopped and searched, and it is not in the context of this case unreasonable that he should wish to have photographic evidence of this.
- [48] When the issue was raised, in submissions by Mr McDonald QC, as to the accused taking similar pictures as those taken by press photographers and used by journals, Mr Chambers in terms submitted that the Public Prosecutions Service would consider that journalists generically would have a reasonable excuse.
- [49] In the opinion of this court there cannot be a different standard under the law based on who the prosecution decide are appropriate to observe conduct of the police within the community and those who are regarded as unsuitable. Each case must be judged, regardless of personality or employment status, on its individual evidential basis.
- [50] The prosecution must prove beyond reasonable doubt that the accused had in his possession information likely to be useful to terrorists and that he had no reasonable excuse for his actions.
- [51] In the view of this court the prosecution have not discharged that burden to the requisite standard, that is beyond reasonable doubt and therefore the accused is entitled to an acquittal on all counts.