Judicial Communications Office

28 May 2020

COURT DISMISSES APPEAL AGAINST 1998 CONVICTION

Summary of Judgment

The Court of Appeal[1] today dismissed an appeal by John Hill against his conviction for offences relating to a loyalist attack on the Golden Hind Bar in Portadown in 1997.

Factual Background

In the summer of 1997, tensions between the UVF and LVF resulted in a decision that a group of UVF men should drive to Portadown to wreck the Golden Hind Bar (which was a stronghold of the LVF) and murder a leading LVF figure if he was there. A detailed account of the preparations for the attack was contained in the statements of Gary Haggarty, an assisting offender who subsequently pleaded guilty to 202 criminal charges including 5 murders. Haggarty enlisted the support of John Hill ("the appellant") and three others. On 20 August 1997 they drove in a convoy of 20/30 cars to Portadown and about 30 men then entered the Golden Hind bar causing damage and shouting that they were the Tiger's Bay UVF. The bar was then set alight. A member of the public informed the police. A number of patrol cars pursued the UVF vehicles stopping two of them on the M1 motorway. One was the vehicle containing Haggarty, the appellant and three others. They and seven men in the other vehicle were arrested, charged in respect of their participation in the incident and pleaded guilty.

The incident was referred to in the Public Statement published by the Police Ombudsman ("PONI") in respect of his investigation into the murder of Raymond McCord junior. He stated that on 19 August 1997 an informant told Special Branch about a UVF meeting attended by senior UVF members. The informant advised that the attack was planned to take place the following evening at the Golden Hind but this intelligence was not disseminated to local police. There was, however, dissemination of general information noting that six premises in the Portadown area, including the Golden Hind, could be the scene of a confrontation between the UVF and the LVF. The PONI indicated that the duty inspector was not given details of the time of any proposed attack or what individuals would be involved. The subsequent arrests were reactive on the part of the police rather than proactive. Because of a lack of information the inspector was not in a position to mount a police operation prior to the attack. The Ombudsman concluded that by their failure to act appropriately in the dissemination of information Special Branch allowed a situation to develop in which life and property were put at risk. He concluded that this situation arose because of collusion, which is a failure to take preventative action in respect of anticipated crime.

When arrested the appellant was wearing a gold UVF ring and had a UVF tattoo on his body. At interview he explained that the people in the car were lifetime friends and that he was most friendly with Haggarty as he knew him from school. He said he had a couple of drinks before going to Haggarty's house on the evening of the attack as it was his birthday. He claimed he got into the car and then fell asleep until he was stopped by police. He denied being a member of the Tiger's Bay UVF. He pleaded not guilty at arraignment but was re-arraigned and entered a guilty plea on 8 May

[1] The panel was the Lord Chief Justice, Lord Justice Treacy and Sir Donnell Deeny. The Lord Chief Justice delivered the judgment of the court.

1998 to offences of arson, possession of firearms with intent, criminal damage and intimidation. The appellant was sentenced to a custodial sentence of three years. His ground of appeal against conviction was that as a result of failures of disclosure he was denied the opportunity to pursue an application for a stay of the proceedings on the grounds of abuse of process.

The Application for New Evidence

The appellant applied pursuant to section 25(1)(c) of the Criminal Appeal (Northern Ireland) Act 1980 to adduce in evidence an affidavit sworn by him on 25 August 2017. In this, he claimed the offences were instigated, planned and directed by Mark Haddock and Gary Haggarty, both of whom he now believed were working at the material time for the RUC Special Branch. He said he asked Gary Haggarty why he had been ordered to attend a meeting place on 20 August and was told that: "I need you there and you have to come". The appellant asserted he was aware that Gary Haggarty was responsible for an "unrelenting campaign of murder and serious punishment attacks" and said it was in this context that he felt he had no choice but to comply with the demand. He said he intended to contest the charges at the time but whilst in prison, Gary Haggarty put him under pressure to accept a deal whereby they knew what sentence they would get before they pleaded guilty.

The Court said these assertions directly contradicted the account given by the appellant at interview when he described those in the car as his lifetime friends and Haggarty as the person to whom he was closest. In considering whether to admit this evidence the Court said it must have regard in particular to whether the evidence appeared to be capable of belief and whether there was a reasonable explanation for the failure to adduce the evidence at the trial:

> "In light of the fact that this evidence was adduced for the first time 20 years after the events in question and directly contradicted what had been said at the time by the appellant we considered that the affidavit on its own was not capable of belief. We indicated that we were not prepared to admit the affidavit evidence but offered the appellant the opportunity to give evidence in order to deal with the obvious discrepancies. The appellant chose not to do so. In those circumstances we leave out of account the contents of the affidavit."

The Claim

The appellant's case was put on both a narrow and wider basis:

- Entrapment: The narrow basis was that these were crimes which Haggarty and Haddock together with other senior UVF figures promoted and the appellant was directed by Haggarty to take part in the operation. It was asserted that Haggarty and Haddock were at the material time providing information to the police and that their status as police informants was such that the incitement of others to participate in criminal activity instigated by them was sufficient to establish entrapment and rendered the proceedings against the appellant an abuse of process.

- Abuse of Process: The wider argument started on the premise that in order to defeat terrorism in Northern Ireland during the Troubles the security forces engaged in the recruitment of those in a position of power within republican or loyalist terrorist organisations. In order to protect those assets Special Branch withheld intelligence from

investigative teams in the RUC and turned a blind eye to evidence suggesting criminal activity by such sources. That created a culture of impunity. Those recruited were encouraged to progress through the ranks of the organisations in order to increase their access to useful intelligence.

The Court said that such practices were the subject of the Stevens Inquiry which understood collusion to include the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder. It also referred to the inquiries conducted by Judge Peter Cory into allegations of collusion in 2004 which adopted a similarly broad definition. Judge Cory stated that army and police officers must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or supplying information to assist them in their wrongful acts or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes thereby shattering all public confidence in these important agencies. Both Stevens and Cory concluded that collusion was widespread and systematic.

The appellant's argument proceeded on the basis that Haggarty was an obvious example of someone who was supplying information to the police while at the same time committing serious terrorist offences. It was submitted that in respect of Haggarty and any other person in a similar position involved in this offence it was necessary for the Court to conduct a disclosure exercise taking into account every act of unlawful conduct that such a person was linked with and make an assessment by inference of whether pre-authorisation was given or protection from prosecution conferred after the fact. If the person was given free rein to commit crimes or order others to do so and then avoid prosecution that was state created crime regardless of whether each individual crime was sanctioned in advance. That was the wider abuse of process claim.

Entrapment

The Court outlined what amounts to entrapment for the purpose of establishing abuse of process in paragraphs [16] – [21] of its judgment. The common theme is that the state should not instigate the commission of criminal offences in order to punish them. Recent case law[2] indicated that there was a distinction between the actions of state actors and non-state actors and accepted that it was not inconceivable that given sufficiently gross misconduct by a private citizen it would be an abuse of process for the state to seek to rely on the product of that misconduct.

The Court conducted a careful disclosure exercise in respect of the intelligence available to police about the conduct of this crime at the request of the appellant. It said the police became aware on 19 August 1997 that a decision had been made on 15 August 1997 to carry out the crime. There was no instigation of the crime by the police nor was there any inducement to carry it out. Some intelligence was provided by Special Branch to local police about the potential for violence between groups of UVF and LVF members but the particular intelligence concerning the crime received the day before its commission was not transmitted. The Court noted that the failure of Special Branch to provide the specific intelligence which would have enabled local police to mount an action to intercept the commission of the crime was described by the PONI as evidence of collusion in accordance with the

[2] Council for the Regulation of Healthcare Professionals v The General Medical Council and Saluja [2006] EWHC 2784 (Admin)

approach adopted by the Stevens Inquiry and the Cory Report. The Court said this was not surprising:

> "Intelligence was critical in the fight against terrorism in this jurisdiction and the disclosure of precise intelligence had to be balanced with the need to take into account the risks to the informant should the source of the information become known to the terrorist groups. Although Special Branch had specifically asked the UK Government to provide a legal framework within which the management of intelligence could operate as far back as 1985 no such framework was provided until the Regulation of Investigatory Powers Act 2000. Until then Special Branch were left to make their own assessments about the public interest. This was a case where the decision to commit the crime was taken by a group of senior UVF personnel among whom were persons who provided information about terrorist activity to the police. That did not make this a state created crime and neither did the conduct of the Special Branch by failing to pass on relevant intelligence."

The Court said the entrapment argument advanced on behalf of the appellant cannot succeed. It said the crime was instigated by non-state actors and the appellant's admissions in interview indicated that he was entirely familiar with the background of those with whom he was associating. There were clear indications that if he was not a member of the UVF he supported its broad aims. Even if there had been some pressure to participate in this offence the appellant "ought not to be able to take advantage of the pressure exerted on him by his fellow criminals in order to put on when it suits him the breastplate of righteousness". The Court concluded that this was plainly a case where the appellant was provided with an unexceptional opportunity to commit a crime which he duly accepted. The failure to disclose the participation of informers in the commission of the crime did not deprive the appellant of any opportunity to stay the proceedings on the basis of entrapment.

Abuse of Process

The wider argument on abuse of process did not depend upon entrapment. The Court referred to the Stevens Inquiry, the Cory Report and the Report of Sir Desmond da Silva into the murder of Patrick Finucane which looked at the relationship between police and members of the security forces with those involved in terrorist organisations who have provided information which in some cases has been responsible for the saving of lives. It was submitted that these reports supported the view that police and security forces enlisted the assistance of those involved in terrorist organisations and at the very least were happy to see them rise to positions of seniority within those organisations. It was claimed that in order to protect those resources and use them to maximum benefit there was evidence of a practice or policy of preventing the dissemination of relevant intelligence material which might assist investigators in establishing the guilt of those responsible and turning a blind eye to the commission of terrorist crimes by those sources within their terrorist organisations.

At the request of the appellant, the Court carried out a review of the intelligence material relating to the circumstances of the offences in this appeal. That established the involvement of informers in the promotion and commission of the crimes and the failure of Special Branch to disseminate information to local police. In order to deal with the abuse of process case the appellant submitted that it was necessary for the Court to examine the previous offending of any relevant person in this offence who had an intelligence relationship with the police in order to examine whether in relation to other such offending a culture of impunity had been established. The submission was that if such a culture had been established the prosecution of those involved in this offending was an abuse of

process even though police neither instigated nor induced the commission of the offences nor gave any express undertaking or authority in respect of participation in the offence by the source.

A court has power to stay proceedings where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. The Court said this was a case in which it was satisfied that there was no instigation or inducement by the police nor was there any manipulation of the appellant:

> "The argument is that because some of those involved in the commission of the crime may have had a culture of impunity it must follow that others who willingly accepted this unexceptional opportunity to commit a crime should no longer be prosecuted. If the proposition were correct it is difficult to see that it would not also apply to those who were the providers of information to the security forces. In other words the submission would change the culture of impunity, if established, into a get out of jail free card for all. We consider that such an outcome would inevitably undermine public confidence in the criminal justice system and bring it into disrepute. The wider argument on abuse of process is in our view without substance and no further disclosure in respect of it is required.

Conclusion

The Court concluded that the conviction is not unsafe and dismissed the appeal.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://judiciaryni.uk).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF
Telephone: 028 9072 5921
E-mail: Alison.Houston@courtsni.gov.uk