IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

JOHN GARY BRESLIN and ARTHUR FORBES

HUTTON LCJ and MacDERMOTT LJ

The appellants were apprehended by the police in front of a house in Strabane. One of them was found to have a drogue bomb under his jacket. In a subsequent search a rifle and ammunition were found in the back garden. The appellants were convicted of possession of explosive substances with intent and possession of a firearm and ammunition. The appellants were sentenced to 18 years' imprisonment concurrent on each count. The judge stated that they had been seduced by the false glamour of the Provisional IRA or some other organisation and had been sent on a mission to murder or injure members of the security forces on the evening in question.

No challenge was made to the convictions but an appeal was brought against the sentence on the basis of the judge's remarks. It was submitted that these indicated that the sentence had been passed on the basis of findings in respect of matters not justified by the evidence and in respect of which the appellants had not been charged or convicted, namely, membership of an illegal organisation and attempted murder and/or conspiracy to murder.

Held, dismissing the appeal, that it was clear that the main intention of the appellants was to endanger life and it would be a matter of mere chance whether the use of the weapons in question resulted in deaths of members of the security forces. Even so, there was nothing in the judge's remarks to indicate that he was increasing the sentences on the basis of extraneous factors not justified by the evidence or because he believed that the appellants were guilty of other offences. In any event, the sentences passed were entirely proper ones for the very serious offences committed by the appellants; it was a well established principle that any such offences committed in the present climate of terrorism should earn heavy deterrent sentences.

The following cases are referred to in the judgment:

R -v- Crossan [1987] NI 355; [1987] 2 NIJB 73

R -v- Cunningham and another [1989] 9 NIJB 12

APPEAL against sentence by John Gary Breslin and Arthur Forbes. The facts appear sufficiently in the judgment.

KJ Finnegan QC AND *B G McCartney* (instructed by *John Fahy & Co*) for the appellants.

P Magill (instructed by the *Director of Public Prosecutions*) for the Crown.

HUTTON LCJ

These are appeals against sentence by John Gary Breslin and Arthur Forbes. At Belfast Crown Court on 15 February 1990 the appellants were each found guilty by His Honour Judge Russell QC on the first count and the third count in the indictment. The first count charged them with possession of explosive substances with intent contrary to section 3(1)(b) of the Explosive Substances Act 1883 and the particulars of the offence were as follows:

"Arthur Gerard Forbes and John Gary Breslin, on the 5 January 1989, in the County Court Division of Londonderry, unlawfully and maliciously had in their possession or under their control an explosive substance, namely an improvised anti-armour hand grenade, with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom or to enable some other person so to do".

The third count charged possession of a firearm and ammunition with intent, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981 and the particulars of the offence were as follows:

"Arthur Gerard Forbes and John Gary Breslin, on the 5 January 1989, in the County Court Division of Londonderry, had in their possession a firearm, namely an AKM self-loading selective fire rifle, 2 magazines and 30 rounds of ammunition, with intent by means thereof to endanger life or cause serious injury to property or to enable some other person by means thereof to endanger life or cause serious injury to property".

On each count each appellant was sentenced to 18 years' imprisonment, the sentences to be concurrent.

The facts giving rise to the convictions were as follows. On the evening of 5 January 1989 police officers saw the 2 appellants talking together on the road outside 15 Melmont Villas in Strabane, County Londonderry. The police officers thought that they were acting suspiciously and a police officer searched the appellant Forbes and

found that underneath his jacket he was carrying a drogue bomb. This is a deadly weapon used by terrorists against police and army vehicles. The drogue bomb or hand grenade in the possession of the appellant Forbes contained approximately 0.5kg of Semtex explosive together with a detonator, and was ready for use.

In the garden at the rear of 15 Melmont Villas was found an AKM assault rifle with a magazine fitted to it together with another magazine, and in total there were 30 rounds of ammunition loaded in the 2 magazines. The rifle was ready for immediate use. 2 masks were also found close to the rifle.

There was forensic evidence which (inter alia) connected fibres found on the rifle and magazine with the gloves which the appellant Breslin was wearing.

In his judgment finding the appellants guilty the learned trial judge stated:

"The inevitable conclusion from the facts established by the evidence is that the accused were either part of the team or were the entire team which had assembled at Melmont Villas for the purpose of launching a bomb and gun attack on the security forces.

I am satisfied to the necessary standards, that is satisfied beyond a reasonable doubt that the accused jointly had possession of the hand grenade specified in count 1 of the indictment and that they jointly had possession of the rifle and the magazine and ammunition specified in count 3 of the indictment with intent.

Having regard to the state of readiness of all of the items I hold that the intent was to enable the accused themselves to endanger life or to cause serious injury to property, and I make no findings on counts 2 and 4 in the indictment."

There was no appeal against the convictions and Mr Finnegan, for the appellants, accepted that the learned trial judge was entitled on the evidence to make the findings in his judgment which we have set out above.

The appeals against sentence are based on the remarks which the judge made in passing sentence. The judge said this:

"It gives absolutely no pleasure to any court to have to send young men to prison but the plain fact of the matter is that you have been seduced by the false glamour of the Provisional Irish Republican Army or some other organisation and were sent on a mission to murder or injure members of the security forces on the evening of the 5 January 1989.

It is only because you were seen and accosted that your plans were foiled. On each count of the indictment the sentence is 1 of 18 years' imprisonment which will run concurrently."

Mr Finnegan submitted that the remarks made by the learned trial judge in passing sentence demonstrated that he had made findings in respect of 2 matters which were not justified by the evidence before him and which had not been charged against the appellants. One matter was that they were members of the Provisional Irish Republican Army or of some other illegal terrorist organisation. The other matter was that they were engaged in a conspiracy or attempt to murder members of the security forces. Therefore Mr Finnegan submitted that having convicted the appellants of the 2 offences charged in the first and third counts of the indictment the judge sentenced them on the basis that they were guilty not only of those 2 offences but were guilty also of membership of the Provisional Irish Republican Army or a similar illegal organisation, and were guilty also of an attempt or conspiracy to murder members of the security forces. Mr Finnegan submitted that such an approach to sentencing the appellants was clearly wrong in principle and, furthermore, that the judge's belief that the appellants were guilty of conspiracy or attempt to murder must have caused him to impose the sentences of 18 years' imprisonment, which were appropriate for the offence of attempt or conspiracy to murder members of the security forces but which were above the tariff for the offences of possession with intent of an explosive substance and a firearm. Accordingly counsel submitted that the sentences of 18 years' imprisonment should be reduced.

The Court does not accept these submissions for 2 reasons which are inter-related. The first reason is that the appellants were properly convicted of possession of the drogue bomb and rifle with intent themselves to endanger life or to cause serious injury to property, and it is clear that their primary intent was to endanger life. When a drogue bomb is thrown at, and an AKM rifle is fired at, the security forces with intent to endanger life it is a matter of mere chance whether members of the security forces are injured or killed. We are satisfied that this is all that the learned trial judge meant when he said: "You ... were sent on a mission to murder or injure members of the security forces", and that in sentencing he had no thought of increasing the sentences beyond those which were appropriate for the 2 offences of possession with intent because he considered that the appellants were guilty of the offence of conspiracy to murder or attempt to murder.

We are also satisfied that when the judge said: "You have been seduced by the false glamour of the Provisional Irish Republican Army or some other organisation", he had no intention of increasing the sentences because of this, but his intention was simply to point out to these 2 young men whom he was sending to prison for lengthy terms of imprisonment, and to their families, that their lives had been ruined through their being seduced by the false glamour of the Provisional IRA.

The second reason why the Court do not accept Mr Finnegan's submissions is that the sentences of 18 years were entirely proper sentences to pass for the very serious offences charged in the first and third counts, and there is no valid basis for the suggestion that the judge must have had regard to extraneous matters in order to impose such sentences. In a number of recent judgments this Court has made it clear that those convicted of possession of firearms and explosives with intent to endanger lives for a terrorist cause should receive very heavy deterrent sentences. In R v Cunningham and Devenney (as yet unreported) this Court stated at 5:

"This leads us to emphasise that courts in Northern Ireland in sentencing for actual or inchoate crimes of violence by terrorists should, as a general rule, while the present campaign of terrorism continues, pass sentences to give effect primarily to the principles of deterrence (of the accused and also of other potential offenders), retribution and prevention. Personal mitigating circumstances of the offender and considerations of rehabilitation must necessarily give way to the application of these principles though some allowance to a minor degree may be made in respect of them."

In that judgment the court also cited the following passage from the judgment of Lord Lowry LCJ in R v Crossan [1987] 2 NIJB 73 at 77:

"This community has now for many years been undergoing what amounts to a state of siege, and crimes of the sort we have dealt with this morning have been a common occurrence. 30 years ago, and also 51 years ago, there were outbreaks of violence committed by organisations and involving a number of explosions and shootings, attacks on the community and on the security forces, but these attacks were of nothing like the same extent and were carried on for nothing like the same length of time as the current crop of violence. In those days the kind of sentences we are dealing with here would have been regarded as absolutely commonplace, because the enormity of the crimes committed made a full impact on society and on the courts. This, to some extent, is not true now, because the sensitivity of everyone has been dulled by repetition, but in reality we have to remember that the crimes are even more prevalent than during the periods we have recalled and the attacks on the security forces have certainly not abated in any degree; indeed, they have in some respects increased. They pose a grave danger to the whole community, the perpetrators are difficult to bring to justice and the crimes in themselves are very wicked crimes indeed meriting severely deterrent and exemplary punishment. Those are reflections which cause us to say that this sentence of 20 years and the other sentences imposed, which are graded in proportion, are not manifestly excessive or wrong in principle."

This Court then stated in their judgment in R v Cunningham & Devenney that the opinion expressed in R v Crossan should govern the approach of courts in this jurisdiction when passing sentences in respect of terrorist crimes.

Accordingly we are satisfied that the learned trial judge had regard only to the circumstances of the 2 offences for which the appellants were convicted in passing sentence, that the sentences were entirely proper, and that there is no ground for reducing the sentences imposed by him. Therefore the appeals are dismissed.