IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

RAYMOND GERARD QUIGG

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HUTTON LCJ

This is an appeal against sentence by Raymond Gerard Quigg. At Belfast Crown Court on 14 June 1991 he appeared before His Honour Judge Gibson QC and pleaded guilty to the following 3 counts in the indictment:

" FIRST COUNT

STATEMENT OF OFFENCE

Making property available, contrary to section 10(2) of the Prevention of Terrorism (Temporary Provisions) Act 1984.

PARTICULARS OF OFFENCE

Raymond Gerard Quigg, on a date unknown between the 1st day of July 1987 and the 29th day of October 1987, in the County Court Division of Londonderry, made available to another person or other persons certain property, namely a flat situated at 144 Bluebellhill Terrace, Londonderry, knowing or suspecting that it would or might be applied or used for or in connection with the commission, preparation or instigation of acts of terrorism to which Part III of the Prevention of Terrorism (Temporary Provisions) Act 1984 applied.

SECOND COUNT

STATEMENT OF OFFENCE

Making property available, contrary to section 10(2) of the Prevention of Terrorism (Temporary Provisions) Act 1984.

PARTICULARS OF OFFENCE

Raymond Gerard Quigg, on a date unknown between the 1st day of January 1988 and the 22nd day of March 1989, in the County Court Division of Londonderry, made available to another person or other persons certain property, namely a flat situated at 144 Bluebellhill Terrace, Londonderry, knowing or suspecting that it would or might be applied or used for in connection with the commission, preparation or instigation of acts of terrorism to which Part III of the Prevention of Terrorism (Temporary Provisions) Act 1984 applied.

THIRD COUNT

STATEMENT OF OFFENCE

Making property available, contrary to section 9(2)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989.

PARTICULARS OF OFFENCE

Raymond Gerard Quigg, on a date unknown between the 22nd day of March 1989 and the 31st day of March 1990, in the County Court Division of Londonderry, made available to another person or other persons certain property, namely a flat situated at 144 Bluebellhill Terrace, Londonderry, knowing or having reasonable cause to suspect that it would or might be applied or used for the commission of or in furtherance of or in connection with acts of terrorism to which section 9 of the Prevention of Terrorism (Temporary Provisions) Act 1989 applies".

There is no material difference between the offences charged in the first 2 counts and the offence charged in the third count. However there is a difference in relation to the maximum sentence which could be imposed. Under the 1984 Act the maximum sentence which could be imposed for an offence under section 10(2) was 5 years and under the 1989 Act the maximum sentence which could be imposed for an offence under section 9(2)(a) was 14 years.

The Learned Trial Judge imposed the following sentences: on the first count, 4 years' imprisonment, on the second count 4 years' imprisonment, and on the third count 10 years' imprisonment. The sentences were to be concurrent and therefore the total sentence imposed upon the appellant was 10 years' imprisonment.

On 28 September 1990 the police searched the appellant's flat and found one bullet in the loft. The appellant was arrested and brought for questioning by the police to Strand Road RUC Station. The appellant was frank in his responses to questioning.

The Crown case against the appellant was based upon a lengthy and detailed written statement which the appellant had made to police officers. Briefly summarised, the contents of his statement were as follows. In 1987 he was

approached by a man called Eddie McSheffrey who he knew was in the IRA. McSheffrey asked him if he could use his flat for IRA meetings. The appellant agreed to this request because at that time he supported the IRA. The following night McSheffrey came to the appellant's flat and about 6 other men arrived and had a meeting in the appellant's flat, during which meeting the appellant went down to the bar of the public house which was directly below his flat.

There were about a dozen other meetings in his flat. The appellant never took any part in the meetings and did not know what the men talked about, but he knew that it was to do with the IRA. These meetings stopped when McSheffrey was killed by being blown up by his own bomb.

About 6 months after McSheffrey's death a girl, who the appellant knew was from the IRA, spoke to him and asked him if she could leave some papers and "other things" in his flat. The appellant knew that by referring to "other things" the girl meant arms. The appellant agreed to this suggestion. The next night the girl came to his flat and she was carrying a small and very heavy bucket which she hid in the loft of the appellant's flat.

The next night the girl, who was with 2 other men, asked the appellant if she could leave 2 containers in his flat and he agreed. The appellant saw 2 containers in the back of the girl's car. They were 2-2½ feet in length about a foot broad. He did not know what was in them.

The next night one of the men whom he had seen with the girl the previous night asked him for a spare key for the flat which the appellant gave to him.

The appellant did not see these men very often in his flat, but he knew that they had been in the flat because they moved the ottoman from the bottom of his bed to get into the loft. The men would have been in his flat maybe twice a week. He did not know exactly what was in the loft because he could not himself get into it.

On one occasion he saw 2 men in his bedroom in the flat and he saw a rocket launcher, in 2 parts, leaning against the wall of his bedroom. Around this time there was a rocket attack on Bishopsgate and the appellant remembered asking himself if the rocket was used in that attack.

Some time after he had seen the rocket launcher in his flat he saw a coffee grinder in his flat which was there for about 3 days. He knew that it belonged to the IRA men and he thought that it was for them to make something, but he did not know what it would be used to make.

The appellant said that he could not explain the bullet found in the loft of his flat other than that the IRA men must have left it behind them. They had not been in his

flat for about 6 months prior to his arrest. They had used the flat regularly about once or twice a week up to that time. The appellant ended his statement by saying:

"I am not a member of the IRA and I can see now that they used me. I am truly sorry for having got involved in this. I was stupid and there is no way it will happen again".

However in the interviews conducted by the police with the appellant before he made his written statement he gave the following answers. He said that he sympathised with the IRA and that he willingly kept the stuff for the IRA. He said that he thought he was helping the Republican cause by hiding the stuff in his flat and that he was proud to do it at the time. He said that his loyalties lay with the IRA but he was not a member of the IRA. He realised that the rocket launcher which he let the IRA store in his flat was used to kill and maim. He was asked by the police if he was scared of the IRA men who stored things in his flat. He said that he was not and that he was not forced to store the things. When he was asked if he was afraid in any way he replied that he was just afraid of being caught. At one stage in the interviews he was asked how he now felt about the IRA using his flat and he replied that he could see now that they used him and he felt very bitter about that.

It is relevant to refer to the following matters relating to the appellant and to his personal background and circumstances.

The appellant is a dwarf now aged 44 years. He is a little less than 4 feet in height and has the physical characteristics of a dwarf with an exceptionally large head and abnormally short limbs. At birth his dysmorphic features were immediately recognised and given a diagnosis of "Amsterdam Dwarf Syndrome". The appellant was the third youngest in a family of 9 children consisting of 7 sisters and 2 brothers. Until 1982 the appellant lived at home in the Brandywell district of Londonderry with his parents and some of his sisters until both his parents died from cancer in 1982.

Whilst at school the appellant was repeatedly teased because of his appearance and he left school at 15 without any formal academic qualifications.

After the deaths of his parents the appellant continued to live in the family home with a number of unmarried sisters until he left to live in a flat on his own which was directly above a public house near Leckey Road in Londonderry.

After leaving school he had a number of jobs, and since 1971 he has worked in a belting company as a storeman, where he was responsible for checking the quality fittings of fan belts. It appears that he did this job well and prior to his arrest he was in receipt of a wage of about £130.00 per week.

In his medical report Dr Michael Curran, a consultant psychiatrist, describes the personality of the appellant as follows:

"Mr Quigg describes himself as a person who is lacking in confidence. He tries as best he can to pass himself as normal in company in spite of his appearance. The people in Londonderry recognise him by sight and as a result he is not particularly teased by children in the street. It is only when he enters unfamiliar situations when people stare at him causing him to feel uncomfortable.

For some years Raymond had an active interest in local charity groups. He was often asked to dress up as a boxer and pretend to fight, then knock out someone much bigger than himself for amusement. After living so long in his parents' home with his family he felt insecure when moving into a flat 4 years ago on his own. The loneliness caused him to go for long walks during the evenings, then seek solace and company in the pubs where the atmosphere was much livelier.

Eventually Raymond began to drink heavily on most nights in a Bar close to his flat. It was there that he began to socialise and mix with others who were unemployed and with less money than himself. Drinking became his primary activity.

Fortunately the alcohol dependence did not interfere with his work. There are no reports of any periods of absences from his job.

Raymond has never had a girlfriend. He admits that he certainly has an interest in females but an opportunity has not presented for any steady liaison.

Raymond would not have any close intimate friends of his own except for his colleagues in work or those he has met in bars".

Dr Curran also stated in his report:

"Mr Quigg's intellectual functioning from my estimations would lie in the slightly below average range. He would have the ability to discern right from wrong in various situations.

There is no evidence of any psychotic or affective disturbance in his mental state but he is obviously under considerable pressure at present reflecting about his immediate future.

He lived until 4 years ago in a protective, respectable home environment. Since that time there is evidence of a marked social drift and increasing dependency on alcohol".

It is relevant that in his opinion at the end of his report Dr Curran states:

"As a person Raymond has always tried to pass himself as normal in spite of his dysmorphic features. This desire for acceptability and importance may explain his agreement and bravado when allowing his flat to be used as a meeting place for the IRA".

Before passing sentence the Learned Trial Judge heard evidence from a detective officer who had interviewed the appellant. The detective officer told the court that in the opinion of the police the appellant was not an active member of a paramilitary organisation, and he also stated that the police view was that the chances of the appellant re-offending were highly unlikely. In reply to a question from the judge the detective officer stated that organisations such as the IRA could not exist without people such as the appellant, who are prepared to support them and store weapons for them.

Soon after being charged the appellant was allowed bail. On 4 October 1990 he went to the Northlands Centre, a centre for treatment of alcoholism where he completed a residential programme. He moved to a new flat on leaving the centre in mid-January 1991 and he has not taken alcohol since that time.

It is apparent that the Learned Trial Judge gave very careful consideration to the sentence which he should impose on the appellant and he set out his reasons clearly and at length for passing the total sentence of 10 years which he did impose.

We set out portions of the judge's remarks in sentencing:

"The defendant in this case has pleaded guilty to 3 counts of making property available for terrorism. The property was a flat situated at 144 Bluebellhill Terrace, Londonderry, and the gravamen of the offences is compounded not only by their association with terrorism but by the fact that they took place over a period of approximately 3 years. Moreover the defendant is a mature man of 43 who knew what he was doing, who knew that the flat was to be used by the IRA and who himself support the IRA. His statement to the police (which begins at page 4 of the papers) shows that he was a willing helper, supplying not only a flat but quite ready to do whatever he was asked in that flat on behalf of the IRA. He states that on most occasions he did not know what was in various containers left in the flat, but he would be remarkably unintelligent if he had not formed a very good idea of at least the general nature of the contents of the various packages and containers. Even more sinister is that on one occasion a rocket launcher was left in his flat. He saw this and he was fully aware of the nature of such an horrendous weapon. There is not the slightest suggestion that he was under any form of pressure whatsoever and indeed his statements to the police smack almost of an eagerness to assist the IRA. It is obvious that a person such as the defendant must know when they allow the IRA and similar paramilitary organisations to use their property, that the use of that

property will ultimately endanger life or cause serious damage to property or perhaps even worse.

As against those matters which fall within what might be termed the public domain, it is my clear duty to balance other matters which are personal to the defendant as I have been asked to take a wholly exceptional view in this case. Those matters which are personal to the defendant may be summarised as follows".

The Learned Trial Judge then set out the matters personal to the appellant, a number of which we have set out above, and the trial judge then continued at page 3 of his remarks:

"The sixth matter is his physical handicap; he is a dwarf and I refer to the medical report dealing with that issue. Clearly he deserves and receives considerable sympathy for his physical condition, but as the sentencing Court I must be careful not to allow sympathy for his physical condition to colour the correct approach, as a matter of law and justice, to the crimes which he has committed. I make one further comment. If, for example, the rocket launcher which he allowed the IRA to store in his flat had been used successfully there could well be other people who would be similarly disabled or perhaps even worse; dead. Seven, there is the question of his problems with alcohol. I've considered them carefully. Again one can only feel sympathy with the defendant, but there is not the slightest suggestion in the papers or in my reading of the defendant's activities, that alcohol played any part whatsoever in his commission of the offences or in his desire to help the IRA. At all material times he knew full well what he was doing. He carried on his activities for some 3 years and he must have been fully aware of the possible consequences to other quite innocent people of his assistance to the IRA. The eighth matter is Doctor Curran's report. I have read it carefully and I am interested in the comment on the last page: 'The defendant wanted them to stop, but did not have the strength of character to confront these people'. I do not accept that for one moment. If one turns to his own statement to the police there are various references which give the correct flavour to this case. Generally I refer to page 4 where the defendant says, after being asked by a known IRA man (apparently an Eddie McSheffrey) being asked whether the IRA could use his flat: 'These were to be IRA meetings. I said yes, I supported the IRA at that time'".

The trial judge then referred to other portions of the statement, which we have also summarised above, and with reference to the rocket launcher the judge said at page 5:

"Now I can think of many weapons, but perhaps one of the most horrendous is a rocket launcher. Doctor Curran has seen fit to report that in his view the defendant wanted it stopped and yet there is not the slightest inkling or any suggestion, even when he sees a rocket launcher, of any protest or of any disagreement or of any attempt to dissuade those persons responsible for placing the

rocket launcher in his flat, to take it away. I gave Doctor Curran's report the weight it deserves. Nine, his family background. Again I thank his brother for attending court and giving evidence which I have listened to very carefully and which I have taken into account. I accept that the defendant comes from a respectable background. I accept that there has been no involvement with any paramilitary organisation - with terrorism throughout his entire family. Those are the main points that were referred to. There were some others, but I have dealt only with the main points. I have, however, taken everything into consideration that was said very ably by Mr O'Donaghue on the defendant's behalf and by those witnesses who gave evidence, and I've also paid careful attention to the contents of the various documents that were handed into court. Those are all the matters which are personal to the defendant, and it is my duty to balance them against the public aspects of the case.

I have come to the conclusion that the case is aptly summarised by the words of the Lord Chief Justice in the case of R -v- James Francis O'Reilly, where giving the judgment of the Court of Appeal it was stated that: 'It is self-evident that terrorist organisations cannot carry out explosions which in many cases cause deaths and grave injuries unless there are persons who store or move explosives for them'. The moving of explosives does not apply to the defendant. Storing of weapons capable of causing horrendous injuries and even death does apply to the defendant, in the sense that he allowed the use of his flat for such purposes.

I consider this case to be one of the worst of its kind that I have encountered. The defendant was only too eager to assist the IRA. He sympathised with their aims. His activities continued over a period of years, and he was prepared to allow them to store weapons such as rocket launchers. I have been asked to take a wholly exceptional view of the case. A wholly exceptional view of this case is out of the question. Justice must be done. The case quite clearly calls for an immediate sentence of imprisonment. Equally clearly, and I stress this, it calls for a sentence which will deter others from assisting terrorists in the manner that the defendant did. I am, however, constrained in respect of counts 1 and 2 in that the maximum period of imprisonment that can be imposed under section 10(2) of the 1984 Act is one of 5 years; whereas under section 9(2)(a) of the 1989 Act the maximum period of imprisonment is 14 years.

On counts 1 and 2 I sentence the defendant to 4 years' imprisonment. And on count 3 I sentence him to 10 years' imprisonment. All such sentences to run concurrently".

The grounds of appeal are as follows:

"1. The sentence imposed by the Learned Trial Judge was manifestly excessive and wrong in principle in that he failed to give sufficient weight to the following:-

(a) the previous good character of the accused. Apart from some minor convictions in the Magistrates' Court a considerable time ago the defendant had not presented before the courts. The defendant had been in employment for 21 years with the same company and despite his involvement in these offences, remained a highly respected member of that workforce;

(b) the behaviour of the accused to the commission of these offences. Substantial evidence was given to the Crown Court to the defendant's severe alcoholism prior to and during bail by the High Court pending his trial, and in that period underwent a successful course for his alcoholism and re-established ties with his family that had broken down over a number of years;

(c) the genuine remorse expressed by the defendant for his involvement in these offences;

(d) the fact that prison will represent an unduly harsh regime for the defendant given his dwarfism;

(e) the fact that the police accept that the defendant is no longer a danger to the community or the police;

(f) that the foregoing represented exceptional circumstances to the extent that use of a heavy, deterrent sentence in this case was wholly inappropriate and that in following the decision of R -v- James Francis O'Reilly [1989] 2 NIJB 41, the Learned Trial Judge failed to have sufficient regard to those exceptional circumstances".

In sentencing the appellant the Learned Trial Judge was faced with a difficult task. That task involved taking account of the gravity of the offences and their connection with terrorism, and also taking account of the highly exceptional personal circumstances of the appellant.

As we have stated it is apparent that the judge approached this matter with great care and gave the sentences much thought, and this court understands why he thought that his duty required him to pass a total sentence of 10 years.

Before turning to consider the sentence in the particular circumstances of this case, we think it desirable to make some general observations in respect of the sentencing of persons for offences in connection with terrorism.

In this Province terrorists bring death and destruction to innocent people on an almost daily basis. Weapons like rocket launchers cause death and terrible injuries.

Where a terrorist, or a person like the appellant who has assisted terrorists, comes to be sentenced by a court, his counsel (very properly, because it is their professional

duty) and also his family and friends concentrate on the circumstances of the accused, and on what effect the sentence will have on him and his family. But there is another group of persons whom the courts must always have in mind, and these are the victims of terrorism who, unlike the accused, are totally innocent. They are the victims of terrorists, the police officers, the soldiers, and the civilians who will be mutilated or killed by rocket launchers, by land mines, by booby-trapped bombs, or by firearms, and whose widows and children will be left to grieve for their deaths. For this reason this court has stated that sentences for terrorist offences must be severe and must constitute a deterrent to other potential offenders.

However, in relation to terrorist offences, as in relation to other criminal offences, the judge passing sentence should also have regard to the nature of the charge against the accused and to the circumstances of the case.

In the present case we consider that the judge allowed himself to be unduly influenced by the judgment of this court in R -v- O'Reilly [1989] 2 NIJB 41, and did not give due regard to the point that that was a case where the accused was charged with possession of explosives with intent to endanger life (an offence which carries a maximum sentence of life imprisonment), whereas in the present case, although the appellant had originally been charged by the police with the possession of a rocket launcher with intent to endanger life, that charge was not proceeded with and the indictment charged him with the less grave offence of making property available for use in connection with terrorism.

In passing sentence the Learned Trial Judge said at page 6:

"I have come to the conclusion that the case is aptly summarised by the words of the Lord Chief Justice in the case of R -v- James Francis O'Reilly, where giving the judgment of the Court of Appeal it was stated that: 'It is self-evident that terrorist organisations cannot carry out explosions which in many cases cause deaths and grave injuries unless there are persons who store or move explosives for them'. The moving of explosives does not apply to the defendant. Storing of weapons capable of causing horrendous injuries and even death does apply to the defendant, in the sense that he allowed the use of his flat for such purposes".

In delivering the judgment of this court in R -v- O'Reilly I stated at 62:

"It is self-evident that terrorist organisations cannot carry out explosions which in many cases cause deaths and grave injuries unless there are persons who store or move explosives for them. Parliament has provided that the maximum sentence for the offence of possession of explosives with intent is imprisonment for life. Where a person is convicted of possession of explosives with intent and it is clear, as in this case, that he has committed the offence actively and willingly, then the court which convicts him, unless there are very exceptional circumstances,

should pass a very heavy deterrent sentence which as well as punishing the accused is intended to deter others".

But making a flat available for members of a terrorist organisation who the tenant subsequently discovers store a rocket launcher in it is a different and less grave offence than the offence of actually possessing the rocket launcher with intent. Therefore, as we have stated, we think that the judge failed to recognise fully the distinction between the offence dealt with in R -v- O'Reilly and the offences in the present case.

Mr Finnegan QC, for the appellant, further submitted that the Learned Trial Judge should not have taken note of the fact that a rocket launcher was stored in the flat. But we consider that this criticism is invalid. Where a judge sentences for an offence he is entitled to take into account the surrounding circumstances, even if those surrounding circumstances point to, or relate to, the commission of another offence which is not charged. For example, if a person is guilty of making his flat available for use in connection with terrorism, the judge is fully entitled to pass a heavier sentence if that person knows that the persons using the flat are plotting murder, than if he knows that the persons using the flat are planning robberies. Or if a person is guilty of possession of a revolver with intent, the judge is fully entitled to pass a heavier sentence if the accused was planning to use the revolver to carry out a murder, than if he was planning to use the revolver to carry out a robbery. But the sentence must be in the appropriate range for the offence actually charged and the judge is not entitled to sentence as if the accused were guilty of the graver offence with which he is not charged.

We further consider that the physical condition and the personal history of the appellant were so exceptional that the Learned Trial Judge should have taken them into account more than he did. The judge stated at page 3 of his remarks:

"He is a dwarf and I refer to the medical report dealing with that issue. Clearly he deserves and receives considerable sympathy for this physical condition, but as the sentencing court I must be careful not to allow sympathy for his physical condition to colour the correct approach, as a matter of law and justice, to the crimes which he has committed".

In cases which have a link with terrorism (and particularly where the accused has himself been a gunman or a bomber or has been an active participant in the storing or transporting of guns or explosives) personal circumstances can very rarely permit a judge to reduce the deterrent sentence which otherwise should be passed.

But we think that the fact that this appellant is a dwarf, with all the difficulties and problems which that condition has involved and does involve (difficulties and problems which we are satisfied he will face in increased measure in prison) make this a wholly exceptional case. Therefore we consider that the sentence should be

reduced to take account of these matters. Although we fully understand the reasons which led the learned trial judge to impose the total sentence of 10 years, we consider that in the wholly exceptional circumstances to which we have referred the sentence was substantially too high, and we consider that it should be reduced to a total of 5 years. In relation to the 3 offences the sentences will be as follows, on the first count, 3 years, on the second count, 3 years, and on the third count, 5 years, the sentences to be concurrent.

**Guidelines - General Application**