

Neutral Citation No: [2024] NIMag 1

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Ref: [2024]NIMag 1

ICOS No:

Delivered: 23/12/2024

IN THE MAGISTRATES' COURT IN NORTHERN IRELAND
NORTH ANTRIM

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Complainant

and

1. KRIS MCGRATH (23/023014)
2. JAMIE MCKEE (23/097396)
3. STEPHEN MCNEILL (23/0973397)
4. RICHARD MCCONAGHIE (24/005850)
5. JASON DALE ANDERSON (24/027260)
6. NICHOLAS GREENFIELD (24/035377)

Defendants

SENTENCING REMARKS

DISTRICT JUDGE (MC) KING

Background

[1] On 25 September 2021 the two parades, a morning one in Londonderry followed by an afternoon parade in Ballymoney, which form the background of this case took place. In respect of both parades the usual Parades Commission requirements were met with the purpose being stipulated as "commemoration of the amalgamation of the Loyalist Association of workers and local defence groups and associations in 1971." The wider context being what has been described as "a decade of centenaries" during which the events from the Home Rule Crisis through to Partition were marked. I am unaware of any discussion of half century commemoration events.

[2] The Londonderry parade was captured on video by Constable Bannon and exhibited as JB1 with still images from same being JB2. The Ballymoney parade was recorded on video by Constable Snape and exhibited as DS1.

[3] It is clear from those exhibits that both parades were identical with parade participants dressed in loyalist paramilitary garb from the early 1970s including olive drab caps, dark glasses and combat shirts. In addition, participants wore armbands with the UDA crest surmounted with a scroll reading "Ulster Defence Union Est 1899" and above another scroll this time reading "Reconstituted Sept 1971." Some Poppy wreaths were also carried with UDA "Battalion" identifiers.

[4] The parades comprised of uniformed men marching along public roads in formation accompanied by a band and colour party.

[5] Each of the defendants were present at the Londonderry parade and identified by police, with McGrath, Anderson, Greenfield, McConaghie and McKee also being present and identified as being present by police at the Ballymoney parade.

[6] Police exercising powers under the Terrorism Act 2000 searched the home of the first named defendant McGrath on 3 October 2021. Parts of the uniforms worn at both parades, including some armbands, were discovered. These items were photographed by Higher Crime Scene Investigator John Carson and exhibited as JC3.

Hearing

[7] Each defendant faced one complaint in respect of each parade they participated in, accordingly, every defendant faces two complaints save the third named defendant McNeil who faces a single complaint in respect of the Londonderry parade alone. Each of the complaints allege an offence contrary to section 13 (1) of the Terrorism Act 2000:

"13. Uniform [and publication of images].

(1) A person in a public place commits an offence if he—

(a) wears an item of clothing, or

(b) wears, carries or displays an article,
in such a way or in such circumstances as to arouse
reasonable suspicion that

he is a member or supporter of a proscribed
organisation."

[8] The penalty on summary conviction is up to six months imprisonment and/or a fine up to level five (£5,000.00).

[9] The UDA is listed as a proscribed organisation in Schedule 2 of the 2000 Act.

[10] The particulars of each complaint is specific to each defendant and references the items or articles which the Crown say offend against section 13.

[11] This matter was listed for contest before me at North Antrim Magistrates' Court in the afternoon of 25 November 2024. Prior to that hearing both defence and prosecution skeleton arguments were provided. The defence accepted the entirety of the prosecution case and proceeded on submissions developing the skeletons.

[12] Accordingly, in addition to the facts identified in the "Background" section of this judgement I found the following facts:

[13] In respect of Kris McGrath on 25 September 2021 at both the Londonderry and Ballymoney parades he wore a military style cap, sunglasses, a scarf, military style jumper, military style belt and gloves.

[14] At the same parades Jamie McKee wore a military style cap, military style jumper, gloves, sunglasses and a UDA armband.

[15] Stephen McNeill at the Londonderry parade wore a military style cap, military style jacket, sunglasses and a UDA armband.

[16] Richard McConaghie at both the Londonderry and Ballymoney parades wore a military style cap, military style jacket, sunglasses and a UDA armband.

[17] Jason Dale Anderson at both the Londonderry and Ballymoney parades wore a military style cap, military style jacket, sunglasses and a UDA armband.

[18] Nicholas Greenfield at both the Londonderry and Ballymoney parades wore a military style cap, military style jacket, sunglasses and a UDA armband.

Decided Cases

[19] I have been referred to *Pwr v DPP* [2022] UKSC 2, *Barr v DPP* [2020] NICA 46, *Rankin v Murray* (2004) SLT 1164 and the unreported Northern Ireland case of *R v Mallon & Hawthorne*.

[20] From the jurisprudence surrounding section 13(1) it is settled law that there should be a strict liability interpretation of that section. Paras [54], [55], [56] and [57] of *Pwr* make this clear. For the avoidance of doubt, I refer to para [58] in its entirety:

"Our conclusion is that section 13(1) is a strict liability offence. There is no extra mental element required over

and above the knowledge required for the wearing or carrying or displaying of the article to be deliberate. The strong presumption as to mens rea is rebutted by necessary implication- in the words of Lord Nicholls in *B v DPP* the implication is 'compellingly clear' - because of the words used, the context and the purpose of the provision."

[21] I was also assisted by the discussion of section 13(1) by Treacy LJ in *Barr*. At paragraph 36:

"...The legislation targets activity which would generate a reasonable suspicion of support for or participation in prohibited groups. That is the mischief it is designed to address."

Discussion

[22] Paras [23] and [24] of the Crown skeleton argument details the nature of the UDA and I do not intend to rehearse what is contained within those paragraphs save to confirm that the organisation was proscribed by the then Secretary of State, Sir Partick Mayhew from midnight on 10 August 1992 using powers contained in the Northern Ireland (Emergency Provisions) Act 1991 as amended by the Northern Ireland (Emergency Provisions) Act 1991 Amendment Order 1992. A quick calculation discloses that by 25 September 2021 the UDA had been a proscribed organisation for 29 years, one month and 15 days. This is significantly more than 50% of the preceding 50 years.

[23] Para [3] of the skeleton argument advanced by counsel for McGrath is a neat precis of the position adopted by all defendants:

"The style of garb shown, the fact that the parade was lawfully applied for to coincide with the 50th anniversary of the founding of a then legal organisation points the parade being a commemoration of a then legal organisation and not support for a currently proscribed illegal organisation."

[24] I reject this argument. At some stage in a currently proscribed organisation's history they were not proscribed. As in the UDA's case, a period of terrorist criminality by an organisation will trigger a decision to proscribe, should supporters of the organisation wish to subvert section 13(1) all they would have to do was to pick a moment in time before proscription and manufacture a foundation myth to commemorate. Given the rationale for this provision identified by Treacy LJ this argument cannot succeed.

Conclusion

[25] The elements of the section 13(1) offence are threefold: that the accused was in a public place; that he wore an item of clothing or wore, carried or displayed an article and he did so in such a way or in such circumstances to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.

[26] This is a strict liability offence in the sense that the wearing, carrying or display must be deliberate.

[27] The UDA is currently and at the material time a proscribed organisation.

[28] Having reviewed the agreed evidence, especially the evidence taken at the parades, the behaviour of each of the defendants can do nothing but arouse a reasonable suspicion that they were either a member of the UDA or a supporter of the UDA. I make no distinction in respect of the defendant not wearing the UDA armband - he was in the midst of a sea of armband wearing marchers and dressed in a quasi-military uniform clearly participating in exactly the same manner as those around him.

[29] I am satisfied beyond reasonable doubt that in respect of each defendant every element of every complaint alleged is proven. Accordingly, each defendant is convicted of every complaint on the summons he faces.