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IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

SEAN FARRELL
and
CIARAN MAGUIRE

RULING No.4

AN APPLICATION OF NO CASE TO ANSWER ON THE CHARGE OF ATTEMPTED MURDER

Liam McCollum KC and David McNeill (instructed by the PPS) for the Crown
John Larkin KC and Joseph O'Keeffe KC (instructed by Phoenix Law) for Sean Farrell
Michael Ivers KC and Seamus McIlroy (instructed by Brentnall Solicitors) for Ciaran Maguire

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ROONEY J

Introduction

[1] The defendants, Sean Farrell and Ciaran Maguire, are charged with the following offences:

(a) attempted murder, contrary to article 3(1) of the Criminal Attempts and Conspiracy (NI) Order 1983 and Common Law; and

(b) possessing explosives with intent to endanger life or cause serious injury, contrary to section 3(1)(b) of the Explosive Substances Act 1883.

[2] The particulars of the offences are that, on 18 June 2015, the defendants attempted to murder a member of the PSNI and that they unlawfully and maliciously had in their possession or under their control an under vehicle improvised explosive device ("UVIED") with intent by means thereof to endanger life.

[3] Sean McVeigh, a co-accused, was charged with the same offences. On 8 February 2019, His Honour Judge Fowler KC (as he then was) found Sean McVeigh guilty of attempted murder and possession of explosives with intent to endanger life.

[4] The prosecution seeks to rely on the said conviction of Sean McVeigh ("the McVeigh conviction") and to adduce the conviction through the statutory gateways as provided in articles 72 and 73 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (hereinafter PACE 1989). The statutory equivalents in England & Wales are sections 74 and 75 of the Police and Criminal Evidence Act 1984 (hereinafter PACE 1984).

[5] In my ruling No.3 (an application to adduce the conviction of Sean McVeigh and the timing of the application), I decided that, for the reasons given, the prosecution should postpone its application to adduce the McVeigh conviction until after the defence application of no case to answer on the discrete issue as to whether the evidential and legal constituents of the offence of attempted murder have been proved in this case.

The legal principles relevant to a submission of no case to answer

[6] *R v Galbraith* [1981] WLR 1039 remains the classic exposition of the principles to be applied when determining an application of no case to answer:

> "How then should the judge approach a submission of 'no case'?
>
> (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.
>
> (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
>
> (a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

(b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

[7] In *Chief Constable of the PSNI v Lo* [2006] NICA 3, the Divisional Court discussed the application of the second limb of the *Galbraith* test in the context of a non-jury trial and stated:

> "[13] In our judgment the exercise on which a magistrate or judge sitting without a jury must embark in order to decide that the case should not be allowed to proceed involves precisely the same type of approach as that suggested by Lord Lane in the second limb of *Galbraith* but with the modification that the judge is not required to assess whether a properly directed jury could not properly convict on the evidence as it stood at the time that an application for a direction was made to him because, being in effect the jury, the judge can address that issue in terms of whether he could ever be convinced of the accused's guilt. Where there is evidence against the accused, the only basis on which a judge could stop the trial at the direction stage is where he had concluded that the evidence was so discredited or so intrinsically weak that it could not properly support a conviction. It is confined to those exceptional cases where the judge can say, as did Lord Lowry in *Hassan*, that there was no possibility of his being convinced to the requisite standard by the evidence given for the prosecution.
>
> [14] The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in Galbraith. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution case, 'do I have a reasonable doubt?' The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge

> could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict."

[8] In *R v Kevin McLaughlin* [2020] NICA 58, the Court of Appeal referred to the guidance given by Aikens LJ in *R v Goddard and Fallick* [2012] EWCA Crim 1756, on the application of the *Galbraith* test where he said:

> "(2) Where a key issue in the submission of no case is whether there is sufficient evidence on which a reasonable jury could be entitled to draw an adverse inference against the defendant from a combination of factual circumstances based upon evidence adduced by the prosecution, the exercise of deciding that there is a case to answer **does involve the rejection of all realistic possibilities consistent with innocence**. [Court of Appeal's emphasis]
>
> (3) However, most importantly, the question is whether a reasonable jury, not all reasonable juries, could, on one possible view of the evidence, be entitled to reach that adverse inference. If a judge concludes that a reasonable jury could be entitled to do so (properly directed) on the evidence, putting the prosecution case at its highest, then the case must continue; if not it must be withdrawn from the jury."

[9] Returning to this case, the defence submit that there is no evidence that the fundamental elements of the offence of attempted murder have been proved and, accordingly, there are no circumstances in which a court could properly convict the defendant of this offence.

Attempted murder: The legal principles

[10] Article 3(1) of the Criminal Attempts and Conspiracy (NI) Order 1983 ("the 1983 Order") provides that:

> "If, with intent to commit an offence to which this Article applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence."

[11] Article 5(2) of the 1983 Order is also relevant to this application:

> "Where, in proceedings against a person for an offence under Article 3, there is evidence sufficient in law to support a finding that he did an act falling within

> paragraph (1) of that Article [attempted murder], the question whether or not his act fell within that paragraph is a question of fact."

[12] Therefore, it is for the judge to determine whether there is evidence in which a jury could properly find that D's actions did go beyond mere preparation, but it is for the jury to decide that question as one of fact.

[13] For an offence of attempted murder, the prosecution must prove:

(a) That the accused performed an act that was more than merely preparatory.

(b) That he did so with the intention to kill or, in the case of secondary party liability, that he intended to assist a principal to act with the intention to kill.

[14] Accordingly, in this case, the prosecution must prove that the principal in the joint enterprise, namely Sean McVeigh, performed an act that was more than merely preparatory.

[15] The 1983 Order mirrors the Criminal Attempts Act 1981 ("CAA 1981") in England and Wales. In *R v Gullefer* [1990] 1 WLR 1063, Lord Lane CJ stated that, with reference to section 1(1) and section 4(3) of the CCA 1981:

> "The judge's task is to decide whether there is evidence upon which a jury could reasonably come to the conclusion that the appellant had gone beyond the realm of mere preparation and had embarked upon the actual commission of the offence. If not, he must withdraw the case from the jury. If there is such evidence, it is then for the jury to decide whether the defendant did, in fact, go beyond mere preparation."

[16] Lord Lane CJ, did not consider it necessary to examine the authorities which preceded the CAA 1981. However, he did make the following observations:

> "Since the passing of the Act of 1981, a division of this court in *Reg v Ilyas* (1983) 78 Cr App R 17, has helpfully collated the authorities. As appears from the judgment in that case, there seem to have been two lines of authority. The first was exemplified by the decision in *Reg v Eagleton* (1854) 5 Dears C.C. 515. That was a case where the defendant was alleged to have attempted to obtain money from the guardians of a parish by falsely pretending to the relieving officer that he had delivered loaves of bread of the proper weight to the outdoor poor, when in fact the loaves were deficient in weight."

Park B, delivering the judgment of the court of nine judges, said, at p. 538:

> "Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are; and if, in this case, after the credit with the relieving officer for the fraudulent overcharge, any further step on the part of the defendant had been necessary to obtain payment, as the making out a further account or producing the vouchers to the Board, we should have thought that the obtaining credit in account with the relieving officer would not have been sufficiently proximate to the obtaining the money. But, on the statement in this case, no other act on the part of the defendant would have been required. It was the last act, depending on himself, towards the payment of the money, and therefore it ought to be considered as an attempt."

Lord Diplock in *Director of Public Prosecutions v Stonehouse* [1978] AC 55, 68, having cited part of that passage from *Reg v Eagleton* , added:

> "In other words the offender must have crossed the Rubicon and burnt his boats."

The other line of authority is based on a passage in Stephens Digest of the Criminal Law, 5th ed (1894), article 50:

> "An attempt to commit a crime is an act done with intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted.
>
> As Lord Edmund-Davies points out in *Director of Public Prosecution v Stonehouse*, at p. 85, that definition has been repeatedly cited with judicial approval: see Byrne J in *Hope v Brown* [1954] 1 WLR. 250 , 253 and Lord Parker C.J. in *Davey v Lee* [1968] 1 QB 366. However, as Lord Parker CJ in the latter case points out, at p. 370G, Stephen's definition falls short of defining the exact point of time at which the series of acts can be said to begin.
>
> It seems to us that the words of the Act of 1981 seek to steer a midway course. They do not provide, as they might have done, that the *Reg v Eagleton* test is to be followed, or that, as Lord Diplock suggested, the defendant must have

> reached a point from which it was impossible for him to retreat before the actus reus of an attempt is proved. On the other hand the words give perhaps as clear a guidance as is possible in the circumstances on the point of time at which Stephen's "series of acts" begin. It begins when the merely preparatory acts come to an end and the defendant embarks upon the crime proper. When that is will depend of course upon the facts in any particular case."

[17] The CAA 1981 followed a report from the Law Commission on *Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement* (Law Com no.102). It is noteworthy that the Law Commission did not recommend a test based on "proximity" (ie whether D's act is sufficiently "proximate" to the substantive crime to be properly described as an attempt to commit it). The Law Commission also rejected a test that restricted attempts to the "last act."

[18] As stated in Smith, Hogan and Ormerod's Criminal Law (17th Ed) at para 11.2.2.2:

> "The test in the CAA – doing an act more than merely preparatory – was designed to focus not on when the commission of the offence begins, but on when mere preparation ends. The CAA test is more suitable than the common law proximity test in one respect. The test of "proximity" suggested that the attempter had to come "pretty near" to success; yet, where the attempt is to do the impossible (as where D's attempts to murder using sugar that they believed to be poison) success is an infinity away. The CAA test is not explicitly designed to change the scope of the offence. If any change has been made, it is to extend the scope of the offence because, it now criminalises the "middle ground" between mere preparation and a proximate act, which was not caught at common law."

[19] Furthermore, in Smith, Hogan and Ormerod's Criminal Law (17th Ed) at para 11.2.2.3 under the heading "Interpreting the CAA Test – beyond mere preparation", the learned authors state as follows:

> "Every step towards the commission of an offence, except the last one, could properly be described as "preparatory" to the commission of the offence. When the assassin crooks their finger around the gun trigger, that is an act preparatory to pulling it. If the section were to be interpreted in that narrow fashion, only the last act would amount to an attempt – a result which the CAA was designed to avoid. The CAA has not been read in that manner. An act can be more than merely preparatory and,

> therefore, sufficient to constitute an attempt without being the last act before the substantive offence is complete. D may be guilty of attempted murder where they have not yet fired the gun and they can be guilty of attempted rape, though he has not physically attempted penile penetration.
>
> The key word in interpreting the CAA is 'merely.' Not all preparatory acts are excluded, only those that are merely so. When does an act cease to be merely preparatory so that it does satisfy the actus reus element? The answer, it seems, must be when D is *engaged in the commission* of the offence which they are attempting – as Rowlatt J put it many years ago, when D is 'on the job.' The question whether D is in the 'executory stage' of committing the offence is another way of describing this."

[20] In my judgment, the sections highlighted above in Smith, Hogan and Ormerod's Criminal Law (17th Ed) provide considerable assistance in the interpretation of the CCA 1981 and the equivalent legislation in this jurisdiction, namely the 1983 Order.

[21] A useful statement of principle is provided by the Court of Appeal in *MS* [2021] EWCA Crim 600 at para 34:

> "34. It is important in our judgment not to lose sight of the considerable differences that exist between the various offences which may be attempted (essentially the entire criminal calendar, with some clear exceptions such as attempting to commit the crime of conspiracy, (section 1(4)(a) Criminal Attempts Act 1981) and "compassing" the Monarch's death), along with multiple different ways in which even similar or identical offences are attempted. The facts of the cases considered above serve to demonstrate the sheer variety of both circumstances and offending. This results in highly fact-specific decisions as to whether the steps taken by the accused were no more than merely preparatory. Mr Williams, in support of his submissions that there needed to be "*geographical proximity*", raised the analogy of the offence of attempted murder, and suggested that it would be inconceivable that an individual could properly be said to have attempted murder at a distance of 85 miles from the intended victim. Depending always on the facts, the proximity of the accused to an intended murder victim may be critical in determining whether the steps taken by the accused were more than preparatory. In many cases when a sole

> offender contemplates murder (or an assault) by way of a direct physical attack, an attempt to commit the crime will only occur when the perpetrator and victim are in close proximity, when the action necessary (the *actus reus*) for attempting to kill or harm takes place (although we stress there will be undoubted exceptions to this sweeping generalisation). Similarly, in an attempted armed robbery of the kind contemplated in *Campbell*, proximity to the target premises, along with an evinced intention to enter, may be critical. Distance, or rather proximity, therefore, may be an important factor for attempted crimes of that kind. But no single factor, including proximity, constitutes a uniform test that applies to all species of offences. Child abduction by a person connected with the child is an entirely different offence to murder, assault and robbery. The action necessary for an attempted parental abduction, as in the instant case, may have been "*embarked upon*" at a considerable distance from the port or airport. For child abduction, geographical proximity does not have the same relevance as with other alleged crimes. Whether, *prima facie*, steps had been taken as part of the execution of the plan which were sufficiently close to the final act will always depend, therefore, on the ingredients of the offence and the facts of the case."

[22] In order to assist in the interpretation of Article 3 of the 1983 Order, I have also considered Blackstones 2025, at paras A5.76-A5.78 and Archbold 2025, paras 3-133 – 33-134. I make the observation that, some of the cases to include *Geddis* [1996] Crim LR 894, *K* [2009] EWCA Crim 1931 and *Mason v DPP* [2009] EWHC 2198 (Admin) appear to adopt a narrow approach to the interpretation of merely preparatory acts and are arguably inconsistent with recent decisions.

Relevant evidence

[23] The defendants are charged with the attempted murder of PSNI officer, Maria Young. At the commencement of her evidence in this trial, Mrs Young adopted the contents of both her witness statement and interviews as her evidence in chief. The following is recorded in her statement:

> "So from where I was standing at the window you're talking what maybe 5, 6 feet from where I was to what I could see in front of me and I could see this, this figure on the ground crouched down working at underneath Robin's car on the driver side at the front where the driver seat would be but underneath the car. And I think I just took like now like it seems forever but it was probably just

> milliseconds for me to register actually what I was seeing and seeing so closely and I just started to rap at the window, so much so that I've caused bruising to the knuckles on my hand. I rapped at the window really hard and the figure that was on the ground looked up at the window and then just the best way I can say just legged it out the driveway."

[24] As emphasised by the prosecution, Mrs Young was subjected to scant cross-examination. In reply to questions from counsel on behalf of Ciaran Maguire, Mrs Young's evidence was that "this man was on the ground first, I knocked the window, with reflexes he swung around and then legged it."

[25] Again, as stated by the prosecution, there is no challenge to Mrs Young's evidence that she *interrupted* the person planting the UVIED, who it is submitted panicked and quickly ran away. The CCTV evidence (NK1) further corroborates this account. The evidence is that the device placed under Mr and Mrs Young's car was a skilfully constructed UVIED comprising a detonator, battery, 321grams of high explosive and a copper cone designed to cause maximum damage to the car and its occupants.

[26] The prosecution also referred the court to the reconstruction footage (AWC1) which demonstrated the devastating effect following detonation of the device on the vehicle and the mannequin inside.

[27] Major Adam Conlin (ATO), gave evidence on 11 April 2024. He stated that there were a number of steps required to arm the explosive device. His evidence was that the device had a 'safe to arm system', where the person would be required to click the safe to arm switch. If a light did not go on at that stage, then the device was safe to arm. Thereafter, the person would have to set the time delay switch. Next, the person would turn on the arming switch and the device would be functional. Major Conlin also confirmed that the device had not been attached to the vehicle and was on the ground. The defence submit that, it is apparent from the evidence of Major Conlin that the activation of the device would have required the following steps, namely: (i) attachment of the device to the car; (ii) the setting of the "safe to arm" switch to the operational position (and, as soon as advice was "safe to arm") only then; (iii) the setting of the time delay; and (iv) the setting of the arm switch to the "on" position.

[28] As considered in more detail below, the defence submit that these steps (and certainly those at (i)-(iii) above) can only be categorised as *merely preparatory*. The argument is advanced that, from the evidence of Major Conlin, at least four *preparatory steps* had still to be completed before there could properly be said to be an attempt within the meaning of Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983.

The prosecution's submissions

[29] The prosecution submit that the person who planted the UVIED was Sean McVeigh. This was the specific factual finding of Judge Fowler QC, who convicted Sean McVeigh of attempted murder and possessing explosives with intent to endanger life or cause personal injury (see *R v McVeigh* [2019] NICC 8). It is submitted that if the prosecution prove that Sean Farrell and Ciaran Maguire played an active and knowing role in this operation, their part in the joint enterprise of the attempted murder will have been complete at a point when McVeigh left the car with the UVIED in his possession in order to place it under Mr and Mrs Young's vehicle.

[30] The prosecution accepts that some of the acts in which the defendants were engaged were merely preparatory, namely devising or agreeing to the plan to plant the explosive device, taking possession of the device and stealing the vehicles to transport the explosive device. The merely preparatory acts would have included transporting the explosive device to the intended target, driving both vehicles in convoy and checking for an escape route. However, the prosecution submit that at the point when Sean McVeigh exited the vehicle with the UVIED in order to place it under Mr and Mrs Young's vehicle, his intention was to murder, and he had moved beyond the mere preparation stage. In effect, he was clearly 'on the job' to use the words of Rowlatt J. It is submitted that McVeigh's acts are an attempt since they form part of a series of acts in the commission of the substantive offence, if he had not been interrupted. The activation of the device would have taken place, but for the fact that he was disturbed during the commission of the crime and was forced to abandon the device and flee from underneath the vehicle.

Discussion

[31] The question as to whether the acts in question amount to attempts as opposed to being merely preparatory will often be one of fact and degree and the answer will not always be obvious.

[32] As stated by Potter LJ, in *R v Qadir* [1998] Crim LR 828:

> "There is always a difficulty in deciding what constitutes a sufficient actus reus when a charge of attempt is in contemplation…The statutory test does not give any substantial guidance upon where the line is to be drawn as between acts merely preparatory and the point of embarkation upon the commission of an actual crime. That is, a task which can only be judged on the facts and in all the circumstances of the case. The jury are the ultimate judges of fact in the context of the judge's rulings on the law. Thus, it is for the judge to rule whether the act relied on is capable of constituting more than an act merely preparatory to the substantive crime alleged to have been

> attempted, and it is for the jury to decide whether in the particular circumstances before them it was, indeed, a more than merely preparatory act."

[33] As detailed above, the defence submit that the prosecution must prove that McVeigh performed an act that was more than merely preparatory and that he did so with the intention to kill. On the evidence before the court, the defence argue that no act was performed by McVeigh which was more than merely preparatory. Accordingly, if the constituent elements for attempted murder have not been established by the evidence then, following the decision in *The Chief Constable of PSNI v Lo* [2006] NICA 3, there are no circumstances in which the court could be sure that McVeigh was guilty of attempted murder or, in the case of the defendants as secondary parties, that they intended to assist McVeigh to act with the intention to kill. In support of his submission, the defendant relies heavily on the decision of the Court of Appeal in *R v Jones* [1990] 3 All ER 886, and the guidance offered by Taylor LJ as to the construction of section 1 of the CCA 1981.

[34] In *Jones*, the Court of Appeal upheld the defendant's conviction of attempted murder where he climbed into the victim's car and pointed a loaded sawn-off shotgun at him before he was disarmed in a struggle that followed. Applying *Gullefer*, the Court of Appeal held that it was open to the jury to regard this as attempted murder.

[35] In his judgment, Taylor LJ provided a useful guide as to the interpretation of section 1(1) CCA 1981 with regard to the relevant factual circumstances and the distinction between preparation and attempt. At page 890, he stated as follows:

> "The words 'an act which is more than merely preparatory to the commission of the offence' would be inapt if they were intended to mean "the last act which lay in his power towards the commission of the offence".
>
> Looking at the plain natural meaning of section 1(1) in the way indicated by Lord Lane CJ, the question for the judge in the present case was whether there was evidence from which a reasonable jury, properly directed, could conclude that the appellant had done acts which were more than merely preparatory. Clearly, his actions in obtaining the gun, in shortening it, in loading it, and put on his disguise and in going to the school to be regarded as preparatory acts. But, in our judgment, once he got into the car, taken out the loaded gun and pointed it at the victim with the intention of killing him, there was sufficient evidence for the consideration of the jury on the charge of attempted murder. It was a matter for them to decide whether they were sure that those acts were more than merely preparatory. In our judgment, therefore, the judge was

> right to allow the case to go to the jury, and the appeal against conviction must be dismissed."

[36] The defence submits that comparing the circumstances in this case to those in *Jones*, the acts attributed to McVeigh cannot be equated to "pointing a loaded gun." The defence argues that the equivalent act in this case to pointing a loaded gun would be attaching the explosive device to the car and then arming it to detonate. In other words, the actus reus of an attempt to kill would only be performed when the explosive device was attached to the car (ie taking the gun out), activating the "safe to arm" switch (ie loading the gun) and setting the "arm" switch from "off" to "on" (ie pointing the gun).

[37] For the reasons given below, I disagree with this analysis. Firstly, with reference to the facts in *Jones*, it is significant that the court upheld the defendant's conviction of attempted murder, despite an argument by defence counsel that the defendant had at least three further acts to do before the commission of the offence, namely removing the safety catch, putting his finger on the trigger and pulling it. Similarly, in this case, McVeigh had further acts to complete before commission of the offence, such as attaching the device to the car, setting the "safe to arm" switch to the operational position and activating the device. Such acts, in my judgment, equate to the final preparatory acts and last act in the commission of the offence of attempted murder. However, before he reached this stage, McVeigh had embarked on a plan to murder. Although a few steps were necessary to commit this offence, he had plainly gone beyond the merely preparatory stage. In essence, McVeigh was in the stage of execution of this plan and his acts were sufficient to constitute an attempt to commit murder.

[38] As stated in Smith, Hogan and Ormerod's Criminal Law (17th Ed) at paras [18] and [19] above, an act can be more than merely preparatory and, therefore, sufficient to constitute an attempt without being the last act before the substantive offence complete. Every step towards the commission of an offence, except the last one, could properly be described as "preparatory" to the commission of the offence. In *Jones*, the pointing of a loaded shotgun at a victim was clearly a preparatory act, but also sufficient to constitute an attempt to commit the substantive act. As stated above, it was not necessary to go further and establish that three further acts were required, namely removing the safety catch, placing one's finger on the trigger and then pulling the trigger.

[39] It is worth repeating the wording of Article 3(1) of the Criminal Attempts and Conspiracy Order 1983 which provides:

> "If, with intent to commit an offence to which this Article applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence."

[40] In the interpretation of Article 3(1), the key focus must be on acts which are "merely preparatory." Plainly, not all preparatory acts are excluded, only those which are interpreted to be "merely preparatory." Smith, Hogan and Ormerod asked the relevant question, namely when does an act cease to be merely preparatory so that it does satisfy the actus reus element? The answer put forward by the learned authors is that it "must be when D is engaged in the commission of the offence which they are attempting – as Rowlatt J put it many years ago, when D is 'on the job.' The question whether D is in the "executory stage" of committing the offence is another way of describing this."

[41] As stated by the Court of Appeal in *R v Qadir*, "the statutory test does not give any substantial guidance upon where the line is to be drawn as between acts merely preparatory and the point of embarkation upon the commission of an actual crime. That is a task which can only be judged on the facts and in all the circumstances of the case."

[42] Turning to the facts of this case, up until the time when McVeigh arrived at the Youngs's house in the VW vehicle, he had engaged in merely preparatory acts, to include the planning of the attack and the transportation of the explosive device. However, McVeigh then left the VW vehicle with a viable explosive device and with the intention to kill. At that stage, he had engaged in the commission of the substantive act, or to use the words of Lord Lane CJ in *Gullefer*, he had embarked on the crime proper. In my judgment, McVeigh had moved beyond the "merely preparatory" stage. Certainly, further preparatory steps were required in the executory stage of committing the offence, to include the last act of activating the explosive device. But, once he got out of the VW vehicle and particularly when he was crouched under the Young's vehicle with the viable explosive device, McVeigh had embarked on a plan to murder. Although a few steps were necessary to commit this offence, he had plainly gone beyond the mere preparation of this plan. McVeigh was in the stage of execution of this plan and his acts were sufficient to constitute an attempt to commit murder. The perpetrator and the victim were in close proximity and, as stated by the Court of Appeal in *MS* [2021] EWCA Crim 600 at para 34:

> "…steps had been taken as part of the execution of the plan
> which were sufficiently close to the final act."

[43] The prosecution submit that the reason the device was not activated was the fact that, fortuitously, Mrs Young became alerted by a noise and disturbed McVeigh in the process of planting the bomb. In my view, if a person, with an intention to kill, is interrupted in the executory stage prior to the last act necessary to commit the substantive offence, he is still guilty of attempt since he has performed an act that was more than mere preparation for committing that offence.

[44] A decision relevant to the facts of this case is *R v Litholetovs* [2002] EWCA Crim 1154, where the Court of Appeal held that the defendant had committed a sufficient act to be guilty of attempted arson by pouring petrol on the victim's door. He had been interrupted and whilst still in the area he returned and was arrested. He was

found to have a cigarette lighter in his possession and materials necessary for rolling his own cigarettes. The Crown argued that by pouring the petrol over the door the defendant had embarked upon the commission of the actual offence. It was argued for the defendant that it would be the lighting of the petrol which constituted the offence, and unless it could be shown that some step had been taken towards achieving that end, for example by the production and operation of the cigarette lighter, the offence of attempted arson had not been made out. In upholding the conviction of the jury, the Court of Appeal agreed that the act of pouring the petrol on the door was more than a merely preparatory act and it was unnecessary to prove that the defendant had to go further by producing and operating the cigarette lighter he was carrying.

Decision

[45] For the reasons give above, I refuse the defence application of no case to answer and the acquittal of the defendants on the charge of attempted murder and particularly the discrete issue that the evidential and legal constituents of the offence of attempted murder have not been proved in this case. I reject the defence argument that the steps taken by Sean McVeigh in the deployment of the explosive device were merely preparatory. It is my decision that when McVeigh got out of the VW vehicle with the viable explosive device and particularly when he was crouched under the Young's vehicle with the explosive device, McVeigh had embarked on a plan to murder. Although a few steps were necessary to commit this offence, he had plainly gone beyond the mere preparation of this plan. McVeigh was in the stage of execution of this plan. Steps had been taken as part of the execution of his plan which were sufficiently close to the final act and, accordingly, his acts were sufficient to constitute an attempt to commit murder.