

Neutral Citation No: [2020] NICA 46	Ref: TRE11327
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	Delivered: 07/10/2020

**IN HER MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND
ON APPEAL BY WAY OF CASE STATED**

JOSEPH PATRICK BARR

Appellant

-and-

PUBLIC PROSECUTION SERVICE

Before: Treacy LJ & Maguire J

TREACY LJ (*Delivering the Judgment of the Court*)

Introduction

[1] This is an appeal by way of case stated from a decision given by Deputy District Judge (Magistrates’ Court) Connolly.

[2] The Appellant was charged with the following offence under section 13 of Part II of the Terrorism Act 2000:

“That, on 5th May 2016 in the County Court division of Fermanagh & Tyrone, wore an item of clothing, namely a beret, sunglasses, a scarf, camouflage jacket, military style jumper and trousers, boots and gloves, in such a way or in such circumstances as to arouse reasonable suspicion that he was a member of a proscribed organisation, contrary to section 13(1) of the Terrorism Act 2000.”

[3] The defence agreed all of the evidence at the outset of the case and made submissions as to the allegedly fatal absence of any proscribed organisation being specified in the charge.

Background

[4] By way of background, on 5 May 2016 police observed several males in paramilitary uniform during the funeral of Michael Barr at Melmount Road in Strabane. This was following a radio transmission that there were members of a colour party driving around with full military uniform during the procession.

[5] A police officer attended at Beechmount Avenue with the junction of Melmount Road at around 09:31. During this time, the officer recorded footage of the funeral cortege from a distance of approximately 200 feet until it passed his location. The Irish flag was draped over the hearse with articles on top of it. During this time, the officer captured footage of a hearse with five persons flanked on either side. These ten persons who all appeared to be male were dressed in clothing the officer described as green camouflage jackets, green scarves, green combat trousers, green belts around the waist, black boots, black gloves, black beret hats and sunglasses. Two other persons were present. Both also appeared to be male. One walked in front of the hearse and the other appeared to be directing the other eleven. Both these individuals appeared to be wearing the same clothing as the other ten people. The prosecution state that this was a colour party. The individuals marched in military formation and performed military manoeuvres.

[6] Another officer at the scene recognised one of the males to be the Appellant, Mr Joseph Barr DOB 28.04.1988. The officer noted that the Appellant was dressed in a camouflage combat jacket and scarf, green combat style trousers and black military boots. The officer noted there was also a black band on his arm. The officer arrested the Appellant under section 41 of the Terrorism Act 2000. He cautioned the Appellant who made no reply. The Appellant was then conveyed to Musgrave Street Custody Suite where his detention was authorised by the custody sergeant. The Appellant's outer clothing was removed and bagged and labelled exhibits DCM1 -DCM7. There is no dispute as to the Appellant's presence at the scene or his identity. The Appellant was later interviewed under caution and then charged with the offence set out above.

[7] The case came on for hearing at Strabane Magistrates Court on 3 August 2018 before Deputy District Judge (Magistrates' Court) Connolly. The prosecution evidence comprising the witness statements and CCTV evidence was agreed. The Appellant had been interviewed under caution by police on 5 May 2016 and on 6 May 2016. At interview the Appellant remained silent apart from to deny that he was a member of a paramilitary organisation.

[8] The witness statements and the Appellant's interviews under caution were read and the CCTV footage viewed by the Deputy District Judge (Magistrates' Court).

[9] The Appellant did not give evidence, nor call any evidence in his defence.

[10] Following consideration of the evidence the Appellant relied on legal submissions. In particular the Appellant submitted that the proscribed organisation had not been specified in the charge and that consequently the charge was defective and should be dismissed.

[11] The Deputy District Judge (Magistrates' Court) made the following findings of fact having read the agreed documentary evidence and watched the CCTV footage and heard the submissions of the representatives:

"a. The allegation is that on 5 May 2016 the defendant wore items of clothing namely a beret, sunglasses, a scarf, camouflage, jacket, military style jumper and trousers, boots and gloves, in such a way or in such circumstances as to arouse a reasonable suspicion that he was a member of a proscribed organisation contrary to section 13 of The Terrorism Act 2000.

b. I have viewed the video footage of the funeral procession. I have considered the submissions of counsel and I have read the prosecution papers including the record of interview. Considering the evidence globally it is clear that this is a republican funeral.

c. The defendant was arrested on 5.05.16. He was interviewed under caution over 5.5.16 and 6.5.16. During the interview he was asked a number of questions in relation to his participation and involvement in the funeral. He was asked about dress and clothing. Was asked about his participation. He was asked about paramilitary style uniforms. He was asked if he was related to the deceased. He was asked if the New IRA were encouraged to attend the funeral. The defendant remained silent during the course of this questioning.

d. On 6.5.16 at around 19.03 hrs in the interview under caution the defendant was asked about his membership and support of the activities of the New IRA. He was asked if he was a member of the IRA or the New IRA as it is being called. He denied being a member of the IRA. He denied being a member of any illegal organisation. He was asked when he joined the IRA and how long he had been in the IRA. He was interviewed about the video footage and he exercised his right to silence.

e. I have considered that the defendant may have remained silent on legal advice and I have to balance that with the adverse inference that I draw from it.

f. There is no dispute in relation to identification in this case.

g. I have been invited to consider the case on the papers and video footage. I have heard legal submissions from counsel. The defendant has chosen not to give evidence which is his right. Looking at the case as a whole I am satisfied beyond reasonable doubt that an objectively reasonable person observing the accused dressed in this clothing at this funeral would suspect that they were members of or supporting a proscribed organisation, in this case, a republican paramilitary group.

h. Although the New IRA are not specifically identified on the face of the summons, taking a common sense approach, it is clear from the prosecution papers and, in particular, the interview under caution, that the paramilitary group in question is the New IRA.

i. I have had regard to Lord Bingham in the case of *R v Z* where he states that the IRA encompasses bodies which are part of, or an emanation of it and operate under its name. In particular, labels such as “official, provisional, continuity, real (and in this case New IRA) are irrelevant when considering whether a person or group of people belong to an organisation styling itself as the IRA.”

[12] Accordingly, the Appellant was convicted.

[13] Following conviction the Appellant asked and the Deputy District Judge (Magistrates’ Court) agreed to certify the following point of law for the opinion of the Court of Appeal:

“Was I correct in law in convicting the Defendant of wearing an item of clothing in such a way or in such circumstances as to arouse reasonable suspicion that he was a member or supporter of a proscribed organisation, contrary to section 13 of the Terrorism Act 2000, when the charge as preferred against the Defendant did not specify any proscribed organisation?”

Legislation

[14] Part II of the Terrorism Act contains provisions dealing with proscribed organisations at sections 3–13 inclusive.

[15] The relevant parts of Section 13 of the Terrorism Act 2000 read as follows;

“13. Uniform

(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.
...”

[16] Proscription is defined by section 3, Part II of the Act as follows:

“3. Proscription

(1) For the purposes of this Act an organisation is proscribed if-

(a) it is listed in Schedule 2, or

(b) it operates under the same name as an organisation listed in that Schedule.”

[17] Proscribed organisations are listed in Schedule 2 to the Act. Schedule 2 currently lists fourteen proscribed organisations linked to Ireland or Northern Ireland and the list includes the Irish Republican Army (IRA).

Arguments Presented

[18] The Appellant’s counsel in their submissions referred to six cases reported between 2005-2014 involving offences related to proscribed organisations. He notes that in every one of these cases the alleged proscribed organisation is named and conversely that there is no reported case involving proscribed organisations in which that organisation is not named in the charge.

[19] He refers to Rule 6 of the Magistrates Courts Rules SR (NI) 1984 which provides as follows:

“Wording etc of documents

6.(1) Every complaint, summons, warrant or other document made or issued for the purpose of, or in connection with, any proceedings before a magistrates’ court for an offence shall be sufficient if it describes the specific offence with which the accused is charged, or of which he is convicted, in ordinary language avoiding as far as possible the use of technical terms, and gives such particulars as may be necessary for giving reasonable information as to the nature of the charge.”

[20] He says that this rule is a reflection of the age old principle that every defendant “must have sufficient details of the charge he is facing for the charge to be lawful”. Avory J, referring to a criminal information in *R v Surrey Justices, ex p Witherick* [1932] 1 KB 450 at 452, [1931] All ER Rep 807 captured the point in issue quite succinctly:

“It is an elementary principle that an information must not charge offences in the alternative, since the defendant cannot then know with precision with what he is charged ...”

[21] Counsel asserts that the Prosecution made a fatal error by charging the Appellant in the way it did. By so framing the charge in the way that it did, without specifying the organisation, meant that the Appellant was effectively faced with multiple alternative offences in the one charge – there is the IRA or one of its iterations of course but, importantly, there are other republican organisations. By failing to select any proscribed organisation at all, the Appellant did not know and could not have known with precision with what he was charged.

[22] Mr McCollum QC appeared on behalf of the Respondent. He argues that the language in the statute is clear. The offence is committed if a person wears clothing “in a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.”

[23] He says there is nothing in the wording of section 13 to suggest that a material particular of the offence is that an organisation must be specified by name, the only requirement is that it relates to a proscribed organisation.

[24] He asserts that there is nothing in the wording of section 13 of the 2000 Act, or indeed in any of the preceding legislative provisions dating back to 1973 where there is any reference to an offence only being committed if it related to, for example, “a

specified proscribed organisation” or “a named proscribed organisation” with regard to the schedule.

[25] He considers the implications of the Appellant’s arguments in relation to the clear purpose of the legislation to prohibit paramilitary displays by proscribed organisations and notes:

“31. If the appellant’s argument was correct, then it would be possible for participants to avoid culpability in the following scenarios:

Where there is sufficient evidence of reasonable suspicion that a person is a member or supporter of a proscribed organisation but insufficient evidence of precisely which proscribed organisation the person is a member or supporter of.

Where there is evidence of an association with more than one proscribed organisation.”

He asserts that:

“It would not be consistent with the aims of the legislation if there was clear evidence on which an objective observer could say that they had a reasonable suspicion that the participant was a member or support of a proscribed organisation or of one proscribed organisation or another, but because they could not specify which, no offence would be committed.”

[26] In relation to the possibility raised by the Appellant that his dress could have indicated membership and support for a non-proscribed organisation he says:

“45. The appellant also raises that there are ‘other republican organisations’ at paragraph 33 of the appellant’s skeleton argument. If by this submission the appellant means that there are other republican organisations which are not proscribed, there is no evidence of the involvement of any such organisation on the papers or on the CCTV. No such case was made by the defendant at trial nor was such a submission sought to be made on the basis of the evidence before the Court. The appellant cannot raise such a matter without either evidence of same or that a sufficient inference could be drawn from the available evidence amounting to a reasonable doubt.”

[27] Finally, in relation to the alleged lack of specificity of the charge and the question whether it complies with Rule 6 of the Magistrates Courts Rules (NI) 1984 he states:

“36. The only specific requirement under Rule 6(3) is that the description of the offence shall contain a reference to the section of the Act, [and] this has been complied with in the present charge.

37. In the present case it is submitted that the offence charged does state the specific offence with which the accused was charged and convicted, namely section 13(1) of the 2000 Act. The charge also specifies such particulars as are necessary for giving reasonable information as to the nature of the charge under Rule 6(1). The charge contains a complete list of the items of clothing worn together with each of the elements of the offence required by section 13(1). The only “defect” complained of is that the charge does not specify the name of the proscribed organisation as per Schedule 2.”

Discussion

[28] It is clear law that statutes must be interpreted to give effect to the purpose that Parliament intended them to have.

[29] It is clear from the terms of section 13(1) of the Terrorism Act 2000 that the intention of Parliament is to prevent public displays of power by proscribed organisations through the use of clothing, emblems and other items which they might display in public. The person commits the offence if the display is done “in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.”

[30] The Schedule to the Act lists 14 proscribed organisations including the “Irish Republican Army”.

[31] Section 3 of Part II of the Act deals with proscription:

“3. Proscription

(1) For the purposes of this Act an organisation is proscribed if-

(a) it is listed in Schedule 2, or

- (b) it operates under the same name as an organisation listed in that Schedule.”

[32] The Courts have interpreted Section 3 broadly for reasons explained by the House of Lords in *R v Z* [2005] 2 A.C. 645 when it described the “general approach” to proscription utilised in the legislation at paragraph 19:

“The general approach was to proscribe the IRA using a blanket description to embrace all emanations, manifestations and representations of the IRA whatever their relationship to each other, including the Provisional IRA.”

[33] The Court considered the meaning of sections 3(1)(a) and 3(1)(b) at paragraph 22A-C as follows:

“It may very well be that the Real IRA and other groups within the IRA family are separate in their membership and distinct in their aims, but this is precisely the type of unfathomable enquiry which subsections (1)(a) and (b) of section 3, read together, were intended to preclude ... Subsections (1)(a) and (b) ... in my opinion ... impose a single composite test, is this the body listed in the Schedule or a part or emanation of it or does it in any event operate under the name of an organisation listed in the Schedule? ...”

[34] The Deputy District Judge (Magistrates’ Court) in the present case had referred to the “circumstances” in which the Appellant wore the clothing specified in the charge against him. The Appellant wore it in the context of a funeral. At the centre of the funeral was a coffin covered in the Irish flag. The coffin was flanked by two sets of five men all dressed in similar clothes. The men answered to directions from a further person dressed similarly and walking behind the coffin. These individuals marched in military formation and performed military manoeuvres.

[35] The presentation of the Appellant dressed in the way he agreed he was dressed, and in circumstances where he engaged with others around him in the ways described, could not but have aroused a reasonable suspicion that he was a member of a proscribed republican organisation, namely the IRA.

[36] The legislation does not require the suspicion to be precise in relation to factions. If it were otherwise it would be extremely difficult to utilise the Act to prevent public displays of paramilitary power because the internal workings of these organisations cannot be known by observation alone. 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. It would be wrong

to require a degree of specificity in the charges which would prevent the legislation from achieving its purpose.

Conclusion

[37] We are content that the Deputy District Judge (Magistrates' Court) was entitled to reach the decision he did on the evidence before him and that his decision complies with the requirements of the legislation and the guidance in previous case law. It follows that the certified question set out at para [13] above must be answered in the affirmative. Accordingly, we dismiss this appeal.