Neutral Citation no. [2007] NICC 41 | *Ref:* **TREC5971**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **6/11/07**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

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THE QUEEN

v

JAMES EDWARD TAYLOR
and
GRAHAM RICHARD HARKNESS

_____

TREACY J

[1] James Edward Taylor you have pleaded guilty on the Third Count to assisting an offender contrary to Section 4 of the Criminal Law Act NI 1967 ("Section 4") the particulars of the offence being that:

> "On 29 September 2004, in the County Court Division of Londonderry, knowingly or believing an arrestable offence namely murder had been committed without lawful authority or reasonable excuse did an act with intent to impede the apprehension or prosecution of the offender namely assisted in removing evidence from the scene".

[2] Graham Richard Harkness you have pleaded guilty on the Second Count to possession of an article for the purposes of terrorism contrary to Section 57 of the Terrorism Act 2000 ("Section 57") the particulars of the offence being that:

> "On 29 September 2004, in the County Court Division of Londonderry, had in his possession an article

> namely a motor vehicle in circumstances which gave rise to a reasonable suspicion that his possession was for a purpose connected to terrorism."

[3] The context of the present charge is that initially both Accused were charged with the murder of 22 year old Darren Paul Thompson on 1 October 2004. The deceased was fatally shot at close range, above the left eye, at Woodbourne Park Londonderry on the said date at approximately 7.30am whilst on his way to work. In their submissions the Crown stated that though the deceased was himself "completely innocent" he was the victim of a UVF/UDA feud. However, the Court was not presented with any evidence in support of the contention that this was the result of a feud although it certainly bore all the hallmarks of a chilling, well-planned and ruthlessly executed paramilitary style murder resulting in the death of a completely innocent young man.

[4] The trial of these Accused for the murder of Darren Thompson commenced before me, without a jury, on 6 September 2007. A substantial amount of evidence had been called when on 25 September 2007 the Second and Third Count were added to which Harkness and Taylor respectively pleaded. The Crown then applied not to proceed with the murder count.

[5] The basis upon which Taylor pleaded guilty to assisting an offender was that he knew a terrorist offence had taken place and that he was present, close to the scene to assist in the removal of evidence, that is, the gun, from the scene. The maximum sentence for this offence is one of 10 years, Mr McCrory QC, on behalf of Taylor, submitted that whilst a terrorist offence had taken place and that he had removed the gun from the scene he had no prior or specific knowledge. On any showing, however, Mr Taylor played an important role knowing or believing that a murder had been committed he removed the gun from the scene with the intention of impeding the apprehension and prosecution of the offender.

[6] The basis upon which Harkness pleaded guilty to the offence of possession an article for the purpose of terrorism contrary to Section 57 of the Terrorism Act 2000 were set out in an agreed note as follows:

> "The Accused Harkness' plea is accepted on the basis that he owned and was stopped in possession of a vehicle, and at the time he was stopped the circumstances gave rise to a reasonable suspicion <u>that the vehicle had been used for a terrorist purpose</u>.
> There is no evidence that he knew the <u>exact</u> purpose.
> The Crown in the acceptance of this accused's plea accept that in its opinion the fibre evidence could no

> longer establish a direct link between the murder and the said vehicle."

[7] As with the offence to which Taylor pleaded guilty the relevant statutory maximum at the time was 10 years imprisonment.

[8] The Crown, when asked, did not seek to distinguish between the Accused in terms of culpability although I must myself consider the matter in terms of the offences to which they have pleaded guilty.

[9] Taylor, as far as you are concerned you pleaded guilty at the earliest opportunity, you are 42 years of age and have no relevant record. The Court was referred to a number of cases none of which purported to lay down any kind of benchmark. In my view the nature and degree of the assistance in this case places it at the highest end of culpability.

[10] Harkness, like Taylor, you pleaded guilty at the earliest opportunity, and you are 29 years of age. You have a record albeit for offences of a different character – some 39 offences in total. You have a good work record and have been living with your partner to whom a child was born some months ago. Being stopped in possession of a vehicle in circumstances giving rise to a reasonable suspicion that the vehicle had been used for a terrorist purpose is an extremely serious offence whether or not the accused knew the exact terrorist purpose.

[11] It is clear that terrorist organisations cannot carry out operations which in many cases may result in murder or other grave crimes unless there are persons who provide the kind of assistance contemplated by Section 57 or by Section 4. When a person is convicted or pleads guilty in this terrorist context and it is undisputed that he committed the offence actively and willingly the Court which sentences him should pass an appropriately deterrent sentence which as well as punishing the accused is intended to deter others.

[12] The Court of Appeal in *R v Quigg* [1991] 9 NIJB 38 at pp 51-52 made some general observations in respect of the sentencing of persons for offences in connection with terrorism which are apposite in the present context -

> "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 . . . 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."

[13] Taking everything into account (including the probation reports) I consider that in each case the appropriate sentence is one of 7 years.