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Judgment: approved by the Court for handing down | *Delivered:* **13/03/08**

*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

-v-

JAMES EDWARD TAYLOR
AND KEITH CHARLES NEILLY

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DEENY J

[1] James Edward Taylor lived in 2004 at 156 Lincoln Courts, Waterside, Londonderry. On 29 September 2004 police officers were directed to those premises and conducted a search there. They located a wall safe upstairs in the dwelling. A police officer opened this wall safe using the defendant's date of birth as the code. Inside he found two pipe bombs. They are the basis of the first count on the indictment. The defendant Taylor pleaded guilty to this count when rearraigned on 26 November 2007 i.e. of possession of explosive substances with intent, contrary to Section 3(1)(b) of the Explosive Substances Act 1883, to endanger life or cause serious injury to property in the United Kingdom or to enable some other person so to do.

[2] The second count on the indictment which related to the same devices was to be left on the books not to be proceeded with without the leave of this court or the Court of Appeal. The same is true of counts 4, 6 and 8 on the indictment in respect of Taylor and subsequently of counts 1 and 3 in respect of the defendant Keith Neilly.

[3] The police also found in the same safe a Colt self loading .45 revolver. There were also seven .45 pistol cartridges and six fired .38 Smith and Wesson cartridge cases. On 26 November 2007 the accused Taylor pleaded guilty to possession of that revolver and those cartridges and cases with intent by means thereof to endanger life or cause serious injury to property or to enable some other person by means thereof to endanger life or cause serious injury to property contrary to Article 17 of the Firearms (NI) Order 1981. This was the third count on the indictment. A further search conducted by military personnel located in the garden shed of the house three improvised "blast

incendiary" devices and five improvised explosive devices. These were the subject of the fifth count on the indictment of possession of explosive substances with intent, again contrary to Section 3(1)(b) of the Explosives Substances Act 1883. Taylor pleaded guilty to this count also on 26 November 2007. The seventh count to which he also pleaded guilty referred to the same devices but in September 2004 whereas count 5 referred to 1 October 2004.

[4] The searches yielded a number of other items which included lengths of copper and steel pipe and fireworks. There were balaclavas, a number of mobile phones and forensic latex gloves. Among the other material was a piece of paper with the model and registration number of a motor vehicle and the name of the owner of the vehicle, Mr Fiachra McGuinness, who is the owner of the car and the son of the well known leader of Sinn Fein and Deputy First Minister. Taylor pleaded guilty to the ninth count on the indictment which was that he collected or made a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, contrary to Section 58(1)(a) of the Terrorism Act 2000.

[5] It is relevant to note that as well as the wall safe found upstairs in the dwelling house there was a further wall safe in the living room of the dwelling house. It was there for a sufficiently long period of time for the wallpaper of the room to have been papered over it but with perforations to allow the insertion of a key and the opening of the safe. Furthermore a picture had been hung over the downstairs safe, hiding it from view.

[6] Taylor told police that a bag had been left with him on an earlier occasion by someone from the Ulster Defence Association. He indicated that he had been afraid to refuse to keep the items. They were taken away on a later date returned to him again. The rather tenuous suggestion of duress was not ultimately pursued by him. He admitted to making the improvised explosive devices.

[7] Under the kitchen sink in the dwelling bin liners were found. Subsequent forensic examination disclosed the fingerprints of the defendant Keith Charles Neilly on one of these. His fingerprints were found on another bag also, and the evidence linked him to the contents of the upstairs safe. He pleaded guilty to count 2 on the indictment i.e. possession of the two pipe bomb devices referred to in count 1 contrary to Section 4(1) of the Explosive Substances Act 1883 i.e. that he had them under such circumstances as to give rise to a reasonable suspicion that he did not have them in his possession or control for a lawful object. He similarly pleaded guilty to count 4 on the indictment which was possession of the Colt revolver and ammunition contrary to Article 23 of the Firearms (NI) Order 1981 in that the circumstances gave rise to a reasonable suspicious that he did not have them

in his possession for a lawful object. He too had an address at Lincoln Courts at the time in question.

[8] The prosecution drew Taylor's record to the attention of the court. He had a conviction for burglary in 1985 and for two other offences in 1986 but nothing further until his conviction on 6 November 2007 on his plea of guilty to assisting offenders. I was told that this involved the disposal, after the event, of the weapon used to murder Darren Thompson, on the same day as this search. The Crown submitted that Taylor's pleas to these counts could not be described as being at the earliest opportunity, a factor which has been identified as important by the Court of Appeal. They drew attention to a number of decisions while submitting that none of them were definitive or on precisely the same facts.

[9] I received helpful submissions from Mr Billy McCrory QC for the defendant Taylor. He explained that the present charges had previously been on one bill on a indictment with a murder charge against his client and against another man. He successfully applied in 2006 to Mr Justice Hart on the basis that this was a misjoinder. The murder trial came before Mr Justice Treacy in September 2007. Ultimately the murder charge was withdrawn when his client pleaded guilty to retrieving and disposing of the weapon after the murder. He was sentenced to 7 years imprisonment for that.

[10] While this explains why his client would not wish to plead guilty to the counts before the court it does not in my view entitle him to claim that he was then pleading guilty at the earliest opportunity. However I accept Mr McCrory's secondary submission made at his plea on 18 January that he is entitled to some credit for the plea and I do allow him that credit. Taylor is 42 years of age and lives with his partner. He has two children by an earlier relationship. He was in steady employment as a painter and decorator prior to these matters. I take into account all of counsel's submissions.

[11] He acknowledged that very long sentences had been imposed by the courts for not wholly dissimilar cases but that these authorities dated from the 1980s and early 1990s and in current circumstances the same rigour should not be applied by the court. Some support for that view comes from the sentences imposed in *R v. Donnelly and McCafferty* [2005] NICC 27 *and R v. Grant and Madden* [2005] NICC 35. Counsel sought to argue that the possession was not of long duration but the accused had admitted to making these devices some time over the previous summer. Furthermore he was unable to offer any explanation of an innocent kind for this man having two safes in his home, one, in particular, which was disguised. He submitted that all the offences were clearly relating to conduct over the same period of time and all sentences should run concurrently one with the other and with the sentence of 7 years imposed by Mr Justice Treacy. No submissions against that proposition were advanced to the court.

[12] I take into account the decision of the Court of Appeal in *Attorney General's Reference No 1/2006* [2006] NICA 4 but note that the facts are very different. The facts bear some similarity to the case of the *Queen v. Colin Harbinson[2007] NICC 23* which I heard myself. In light of the authorities before me I imposed a sentence equivalent to 12 years imprisonment but there the accused had actually fired the hand gun in question. It is clear there is no evidence of that before me today. I have received a social history report from the Probation Board for Northern Ireland but there is no proposal there or from counsel for a custody probation order.

[13] James Edward Taylor, please stand, you were in possession of a lethal revolver and potentially deadly explosive devices. You also had a document which would assist terrorists in identifying a target for attack. These are serious charges. Persons who are in possession of weapons must be deterred from doing so. It is my duty to take into account in your favour the matters that have been brought to the court's attention by your counsel and in particular your plea of guilty. I note that though the items you possessed were indeed significant and deadly they could not be described as an arsenal as found in some of the reported cases. I have taken into account the recent sentences of my brethren although noting that none is on all fours with this case. I conclude that the sentences should be as follows:

> On the **1st count** 6 years imprisonment.
> On the **3rd count** of possessing the firearm and ammunition I impose a sentence of 10 and a half years imprisonment.
> On the **5th count** 7 years imprisonment.
> On the **7th count** 7 years imprisonment.
> On the **9th count**, which has a lower maximum than either counts 1 and 3 or count 2, a sentence of 3 years imprisonment.

In the light of the established principles all these sentences shall run concurrently and concurrent with the sentence passed by Mr Justice Treacy. You may sit down.

[14] Keith Charles Neilly I note that you have a record for a number of offences in the 1990s but as your counsel pointed out they have all been confined to the magistrates' court and the most serious sentence was of 1 month's imprisonment in a young offender's centre. Crown counsel accepted that in your case the Crown view had not crystallised until the start of this trial. Mr Irvine who led Mr Johnston for you therefore submitted that you were entitled to substantial credit for your plea in the circumstances. He pointed out that although you had left school with no qualifications you had been in constant employment since then until your remand in custody for these offences; first of all as a stitcher in Desmond's shirt factories and when that closed in scaffolding. You are 27 years old. You have a partner of 6 years

by whom you have a 4 year old son. While on bail you have been caring for the son as your partner is in full time employment. While there was no allegation of prosecutorial delay these charges have been hanging over you for three years.

[15] Counsel legitimately draws attention to the fact that you are pleading guilty here to the lesser charge of possession in suspicious circumstances and that must also be taken into account. You did spend a considerable period in custody awaiting these charges but were then released after the misjoinder application. You remained in the jurisdiction and attended at the court on all occasions. I have had the benefit of a pre sentence report from the Probation Board for Northern Ireland in respect of you. The probation officer did not feel able to propose a sentence on you which involved the Probation Service. It can be seen that there are substantial distinctions to be drawn between you and your older co-accused. However it does seem to me that what you have pleaded guilty to must necessitate a custodial sentence as I find with Taylor. Balancing the various factors I have concluded that the appropriate sentence

On **counts 2 and 4** is 4 ½ years in each case.

Those two sentences are to run concurrently.