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(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

MARIA BROGAN, PATRICIA O'KANE, LAWRENCE FRANCIS CLAXTON, SEAN BURNS

GILLEN J

[1] In this matter each of the accused stands charged with the offence of facilitating the control of terrorist funds contrary to Section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1989.

[2] In the case of Maria Brogan the particulars of the offences are:

> "That between 8 day of January and 21 July 1999, in the County Court Division of Antrim …. entered into or were otherwise concerned in an arrangement whereby the retention or control by or on behalf of another person of terrorist funds was facilitated, whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise."

[3] In the case of Patricia O'Kane the particulars of the offence are:

> "That on 7 day of June 1999 and 3 day of July 1999, in the County Court Division of Antrim …. entered into or were otherwise concerned in an arrangement whereby the retention of control by or on behalf of another person of terrorist funds was facilitated, whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise."

[4] The particulars of the offence against Lawrence Francis Claxton are as follows:

> "That on 25 May 1999 in the County Court Division of Belfast …. entered into or were otherwise concerned in an arrangement whereby the retention or control by or on behalf of another person of terrorist funds was facilitated, whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise."

[5] The particulars of the offence against Sean Burns are as follows:

> "That between 28 day of January 1999 and 10 March 1999 in the County Division of Belfast … entered into or were otherwise concerned in an arrangement whereby the retention or control by or on behalf of another person of terrorist funds was facilitated whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise."

Applications

[6] The applications now before the court made on behalf of each of the defendants, I understand to be twofold (notwithstanding that the skeleton arguments in the case of O'Kane, Claxton and Burns refer to only one application) namely:

(i) That the charges should be stayed or dismissed by virtue of the delay in this case which it is submitted constitutes an abuse of process in breach of Article 6 of the European Convention of Fundamental Rights and Freedoms 1950.

(ii) An order pursuant to Section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 for the entry of "No Bill" in respect of the Bill of Indictment presented against each of them.

Background facts

[7] The background facts in this matter are as follows:

(i) On various dates in July 1999, consignments of guns, weapon magazines and ammunition were found by the authorities in Great Britain concealed in parcels transported by the US postal services from Florida to the Republic of Ireland via London Heathrow Airport. In all cases the weapons were hidden inside what seemed to be innocuous items such as children's

toys and computer equipment. As a result of these discoveries, four individuals, Conor Claxton, Martin Mullan, Anthony Smyth and Siobhan Brown were arrested, charged, tried and subsequently convicted in the USA, inter alia, of breaching regulations relating to the exportation of firearms.

(ii) It is the Crown case that each of the present defendants was involved in providing money transfers to the defendants or a person closely concerned with the defendants in the USA and that by doing so each was guilty of an offence contrary to Section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1989 ("the 1989 Act").

(iii) The defendants in the present case namely, O'Kane, Brogan and Burns were arrested on 26 November 2002 and following interview each were charged on the following day. Claxton although interviewed about these matters in November 2002 did not become charged as I understand the position until April 2004. After his interview with the police in November 2000, he was released pending a report to the Director of Public Prosecutions.

Abuse of process – delay

[8] I have recently set out the principles that govern applications of this kind in R v Mackin and Others (unreported) (GILF5148 December 2004). As in that case, counsel in the present instance have uniformly approached the matter on the basis that the relevant principles governing the outcome of such applications are set out in Attorney General's Reference No. 2 of 2001 (2004) 1 AER 1049 and accordingly no reference was made in submissions before me to the common law position as set out in Re DPP's Application (1999) NI 106. In the circumstances of this case I consider that that was a reasonable and proper approach to be adopted by both the Crown and defence counsel.

[9] I commence by reminding myself that the purpose of Article 6 of the Convention is to protect all parties and court proceedings against excessive procedural delays and in criminal cases, to prevent a person charged remaining too long in a state of uncertainty about his fate. The function of the law is to enable rights to be vindicated and to provide remedies when duties have been breached. Unless that is done the duty is a hollow one stripped of all practical force and void of all context. In the Attorney General's Reference No. 2 of 2001 (2004 1 AER 1049 A-G's No. 2) Lord Bingham set out the principles at paragraphs 24 and 25 as follows:

> "(24) If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the defendant's Convention right under

art. 6(1). For such breach there must be afforded such remedy as may be just and appropriate (s 8(1) of the Human Rights Act 1998) or (in Convention terms) effective, just and proportionate. The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established. If the breach is established before the hearing, the appropriate remedy may be a public acknowledgment of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless

(a) there can no longer be a fair hearing, or

(b) it would otherwise be unfair to try the defendant.

The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances. The prosecutor and the court do not act incompatibility with the defendant's Convention right in continuing to prosecute or entertain proceedings after a breach is established in a case where neither of conditions (a) or (b) is met, since a breach consists in the delay which it has accrued and not in the prospective hearing. If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant. Unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all, it will not be appropriate to quash any conviction. Again, in any case where neither of conditions (a) or (b) applies, the prosecutor and the court do not act incompatibly with the defendant's Convention right in prosecuting or entertaining the proceedings but only in failing to procure a hearing within a reasonable time.

> (25) The category of cases in which it may be unfair to try a defendant of course includes cases of bad faith, unlawfulness and executive manipulation of the kind classically illustrated by Bennett v Horseferry Road Magistrates' Court (1993) 3 AER 138 (1994 (1 AC 42) but Mr Emmerson contended that the category should not be confined to such cases. That principle may be broadly accepted. There may well be cases (of which Darmalingum v State (2000) 8 BHRC 662 is an example) where the delay is of such an order, or where a prosecutor's breach of professional duty is such (Martin v Taurangadc (1995) 2 NZLR 419 may be an example), as to make it unfair that the proceedings against the defendant should continue. It would be unwise to attempt to describe such cases in advance. They will be recognisable when they appear. Such cases will however be very exceptional and a stay will never be an appropriate remedy if any lesser remedy, would adequately vindicate the defendant's Convention right".

[10] In this case Mr Treacy QC who appeared on behalf of the first accused, reminded me of my reference in Mackin's case to the comments of the Privy Council in Dyer (Procurator Fiscal, Linlithcow) v Watson and Another (2004) 1 AC 379 at para 52 where Lord Bingham said:

> "52. In any case in which it is said that the reasonable time requirement … has been or will be violated, the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessary to go further, since the Convention is directed not to departures from the ideal but to infringements of basic human rights. The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which is elapsed as one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case. The Strasbourg case law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary to the contracting state to explain and justify any lapse of time which appears to be excessive.

53. The court has identified three areas as calling for particular enquiry. The first of these is the complexity of the case. It is recognised, realistically enough, that the more complex a case, the greater the number of witnesses, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial and for any appellate hearing. But with any case, however complex, there comes a time when the passage of time becomes excessive and unacceptable.

54. The second matter to which the court has routinely paid regard is the conduct of the defendant …

55. The third matter routinely and carefully considered by the court is the manner in which the case has been dealt with by the administrative and judicial authorities. It is plain that contracting states cannot blame unacceptable delays on a general want of prosecutors or judges or courthouses or on chronic underfunding of the legal system. It is, generally speaking, incumbent on contracting states so to organise their legal systems as to ensure that the reasonable time requirement is honoured. But nothing in the Convention jurisprudence requires courts to shut their eyes to the practical realities of litigious life even in a reasonably well organised legal system. Thus it is not objectionable for a prosecutor to deal with cases according to what he reasonably regards as their priority so as to achieve an orderly dispatch of business. It must be accepted that a prosecutor cannot ordinarily devote his whole time and attention to a single case. Courts are entitled to draw up their lists of cases for trial some time in advance. It may be necessary to await the availability of a judge possessing a special expertise, or the availability of a courthouse with special facilities or security. … But a marked lack of expedition of unjustified, will point towards a breach of the reasonable time requirements, and the authorities make clear that while, for purposes of the reasonable time requirement, time runs from the date when the defendant is charged, the passage of any considerable period of time before a charge may call for greater than normal expedition thereafter."

[11] Mr Treacy drew my attention in the context of this case in particular to the last sentence of that extract.

[12] In the Mackin case I also referred to the comments of the Privy Council in Tan v Cameron (1993) 2 AER 493 and to the comments of Lord Mustill at p. 507d et seq where, inter alia, he said:

> "This is a question to be considered in the round, and nothing is gained by the introduction of shifting burdens of proof, which serves only to break down into formal steps what is in reality a single appreciation of what is or is not unfair."

[13] It was common case that the law now is that a person subject to a charge within the meaning of Article 6(1) when he is substantially affected by the proceedings taken against him (see Eckle v Federal Republic of Germany (1982) 5 EHRR 1). This will usually be "the earliest time in which a person is officially alerted to the likelihood of criminal proceedings against him … that period will ordinarily begin when a defendant is formally charged or served with a summons". (see A-G's Reference No. 2 at para. 27). In the case of Maria Brogan, Patricia O'Kane and Sean Burns the relevant date is 27 November 2002 when they were charged. As I have already indicated the dates in the case of Claxton were somewhat different although Mr McDermott, the solicitor who appeared on his behalf today, submitted that having become alerted to the potential for prosecution he was in the same category as the other three.

[14] Before applying these principles of law to these cases, it is necessary to return to the factual background in relation to each of the accused. The Crown case against each of the accused is as follows:

Maria Brogan

[15] It is alleged that between 8 January 1999 and 21 July 1999 Maria Brogan made money transfers amounting to approximately £37,000 from a Halifax account in the joint names of herself and her brother Michael Brogan two accounts held by Michael James Brogan at First Union National Bank and Mellon PSFS in the United States of America. There were something of the nature of 15 transactions made over this eight months period with relatively large sums made on each occasion. This account was closed, although it is not known by which party, on 30 July 1999, four days after the arrest of Conor Claxton, Martin Mullan and Siobhan Brown in the United States of America. On 23 March 1999 Michael Brogan sent $3,000 by wire transfer to Siobhan Brown and on 26 March 1999 he sent $2,800 by wire transfer to Conor Claxton. Whilst in the United States the evidence is that Michael Brogan

associated with Conor Claxton and Martin Mullan. A fingerprint matching that of Conor Claxton was found on a tape from an intercepted parcel containing two handguns. Once of the intercepted parcels contained three handguns and a quantity of ammunition concealed in a child's toy described as Tonka Mighty Fire Truck. Three such toys were purchased on 14 April 1999 at Toys R Us in Fort Lauderdale with a bank card held by Martin Mullan. It is the Crown case that it must be inferred that the purchase of the weapons was financed from terrorists funds and that Maria Brogan, by making transfers through the Halifax account to her brother was concerned in an arrangement whereby control of such funds was facilitated. The Crown asked the court to infer that the closing of the account four days after the arrest of these men is indicative of the fact that once the balloon went up, efforts to close down the causal link were made and consequently the account in Northern Ireland was closed.

[16] The substance of this argument was set out in a letter of 18 May 2004 by the Department of the Director of Public Prosecutions sent to the solicitors acting on behalf of the accused Brogan.

Patricia O'Kane

[17] The Crown case against the accused O'Kane is that between 7 June 1999 and 3 July 1999 she made three lodgements in Northern Ireland to a First Trust bank account of Martin Mullan totalling £8,860. On 9 July 1999 Martin Mullan sent $2,000 by wire transferred to Conor Claxton. Martin Mullan was involved with others including Conor Claxton and Siobhan Brown in the purchase of firearms in the United States of America and their postage to addresses in the Republic of Ireland. In addition she was present at the time of the arrest of Martin Mullan in Philadelphia when she attempted to dispose of two postal receipts bearing the same addresses as two of the intercepted parcels. The Crown submit that it must be inferred that the purchase of the weapons was financed from terrorist funds and that Patricia O'Kane, by making lodgements into Martin Mullan's account, was concerned in an arrangement whereby the control of such funds was facilitated.

Lawrence Claxton

[18] On 25 May 1999 Lawrence Claxton purchased at the First Trust Bank, Andersonstown, Belfast two foreign draft cheques each in the amount of $7,905 payable to Tony Smith. These two cheques were later paid into the bank account of Anthony Smith in the United States. It is noteworthy that on 27 May 1999 Conor Claxton sent $4,344.35 by wire transfer to Anthony Smyth. The accused claimed to the police that he was unaware of the sums of money involved or the identity of the persons to whom the draft were being sent. He said that he had been summoned by the local bank manager at a time when he was at work to complete this transaction because his brother

did not have an account there. He was simply doing this on behalf of his brother and paid no attention to the money or the person to whom it was being sent. But this was not sold until after these events. In terms therefore he says he was unaware that this money was being sent by him to someone who shortly thereafter was charged with using funds for terrorist offences.

Burns

[19] The case against Burns is that set out in the letter of the DPP to his solicitor of 7 June 2004. The Crown case is that on 29 January 1999 Sean Burns sent $9,290.07 to Conor Claxton in the United States of America by way of Western Union wire transfer and on 9 March sent $1,580.28 to Conor Claxton by the same means. In the course of interviews with the police Sean Burns admitted making the wire transfers and claims that the money represented the proceeds of sale of Conor Claxton's business which Claxton had left with him. When Conor Claxton's apartment was searched by the US authorities a letter was found purporting to be from the Belfast Institution of Higher Education. It stated that Conor Claxton was in receipt of $40,000 of funding to conduct research in Florida concerning the effect on tropical wildlife of commercial and non-commercial destruction of their natural environment. This was signed by S T Burns, head of biochemistry. This was found to be a fraudulent document. A fingerprint matching that of Conor Claxton was found on a tape from an intercepted parcel containing two handguns. The Crown suggested therefore that it must be inferred that the purchase of the weapons was financed from terrorist funds and that Sean Burns, by making wire transfers to Conor Claxton, was concerned in an arrangement whereby the control of such funds was facilitated. I should add that there will be evidence that Sean Burns the defendant was a student at the Belfast Institute of Higher Educational although of course he denies having sent this letter to Conor Claxton.

Submissions on delay

[20] Mr Treacy QC and acting on behalf of Maria Brogan, submitted as follows. If the case is permitted to proceed, the accused will be questioned and will be expected to answer questions concerning money transfers over five years ago and in circumstances where it was not raised with her until three years after the relevant transfers had taken place even though he urges the authorities have been aware of the transfers since July 1999 (the chronology of events submitted by the Crown revealed that as early as November 1999 production orders were served on the Halifax Plc in relation to the account of Michael James Brogan and in November 1999 in relation to Maria Brogan. In March 2000, an official at the Halifax was interviewed with reference to Maria Brogan's cash transfers to the USA. He submits that even though the accused was charged on 27 December 2002, she has still not been

committed for trial, committal papers only having been served on 28 April 2004. (Crown counsel told me that committal will take place relatively soon and that a trial may take place sometime after Easter 2005). Mr Treacy argued that the delay was insufficiently explained and meant that one of the mischiefs of Article 6 – namely to avoid a person charged remaining too long in a state of uncertainty about her fate – existed in this case.

[21] He relies on the quotation I have already outlined from Dyer's case to the effect that the time between the investigation and the charge should not be left out of account. He urges that the police knew what they were looking for, that they had material in their possession on foot of the production order which could have laid to an earlier arrest and earlier conclusion of these proceedings.

[22] Relying on A-G's Reference No. 2, he submits that in the first place this is a case that falls within category A adumbrated by Lord Bingham in that she cannot have a fair trial because of the delay and the delay is so great that prejudice can be inferred.

[23] Alternatively he says that even if a fair trial can be attained, this is a category 'B' case. He draws my attention to the fact that after her arrest in November 2002, she spent several days in custody, and although thereafter was on bail stringent bail terms were imposed including a residence requirement, reporting restrictions and surrender for passport. He urges on me that this is a woman with a completely clear record who has been employed a senior dental nurse. Since the date of being charged, she originally was suspended from her work and even though has returned in February 2003, she is very restrained in the number of duties she is permitted to do including an inability to complete a course of qualifications. She has had to travel to attend court for monthly remands and all in all he says that her job and her duties have been seriously affected. This he argues brings it within category B.

[24] Finally he says that in any event there is no appropriate remedy to deal with someone such as this accused short of a stay or dismissal. She has a clear record and therefore there is little public interest in proceeding in this matter.

Patricia O'Kane, Lawrence Claxton and Sean Burns

[25] Counsel on behalf of Patricia O'Kane and Sean Burns and Mr McDermott solicitor on behalf of Claxton, relied on the submissions made by Mr Treacy on the question of delay. I have already adverted to a difference in the case of Claxton insofar he was not charged until April 2004 even though he was interviewed in November 2002. His solicitor submitted that once he

became alerted to the potential for prosecution, the reasonable time periods should start run.

The Crown submissions

[26] Mr Millar on behalf of the DPP submitted as follows. He said that the case was voluminous in terms of the papers involved and was based, inter alia, on a lengthy paper trail of documentary evidence compiled in Northern Ireland, the Republic of Ireland, Great Britain and the USA. The principals arrested in USA in July 1999 were put on trial in Florida in the Spring of 2000. That trial concluded on 27 September 2000, but all the materials were placed in storage in the USA and were not collated and shipped to Northern Ireland until 6 November 2002. The defendants in the present case were arrested on 26 November 2002 and following interviews three of them were charged. He presented me with a detailed chronology. He urged on the court that I should look at the totality of the circumstances. The accused were on bail after their arrests within a few days. Prior to their arrests, the chronology revealed that enquiries were going on but were largely driven by the USA investigation. There were ongoing discussions with the FBI in all four jurisdictions. The authorities in Northern Ireland needed the assistance of the FBI in America in order to obtain all the necessary material arising out of the trial and this simply was not produced and forwarded to Northern Ireland until 2002. Contributory factors to this delay included the need to await the sentencing of the four accused in the USA which occurred in September 2000, thereafter the need to move at a pace dictated by the FBI in the USA and the requirement to review all the US documentation in order to identify persons who would be able to assist in Northern Ireland. Moreover I am told that the USA was still considering whether or not they might prosecute persons outside the USA and indeed consider extradition. This contributed to the papers being held within the USA. Moreover due to attacks on the USA on September 11, 2001 the FBI notified the PSNI that all their resources were now centred on internal USA matters and that the PSNI would be notified when it was practical to proceed with US enquiries. It was not until May 2002 that the investigation recommenced. It was only on 26 July 2002 that the process of obtaining and transporting exhibits from the USA to Northern Ireland commenced. Exhibits continued to arrived until November 2002. On 26 November 2002 planned arrests of suspects took place.

[27] Between November 2002 and June 2003 the matter was dealt with and considered by the PSNI and the file sent to the DPP in June 2003. The file remained with the DPP between June 2003 and April 2004 when a provisional date was set for a preliminary enquiry. Crown counsel urged on me to consider the overall size of the case and whilst as he said, he could not rule

out some slippage, it did require a detailed sift of sensitive material and careful directions.

Conclusions

[28] I have come to the conclusion that there has been no breach of the Article 6 reasonable time requirement. This was a difficult, sensitive and prolonged enquiry in the United States of America. The explanations given to me as to why the police in Northern Ireland were unable to receive and collate the voluminous information and documentation from the United States of America seems to me reasonable and does not give me grounds for real concern. These were circumstances quite beyond the control of the PSNI and consideration by the US authorities of other prosecutions, extradition and the advent of the September 2001 bombing all served to frustrate enquiries by the authorities in Northern Ireland at the earliest possible moment. The threshold approving a breach of the reasonable time requirement is a high one not easily crossed and where circumstances such as these arise, I consider that a court should be slow to lose touch with the reality of what is possible and not possible in any given circumstance. The more complex a case, the heavier the burden of documentation will be involved and the longer the time which must be necessarily taken to prepare it adequately.

[29] Thereafter the period in which the files were in the possession of the PSNI and analysed until June 2003, whilst lengthy, again does not seem to me to have crossed the threshold of a breach of the reasonable time requirement.

[30] I am of the view that prosecution authorities must bear in mind the passage of any considerable period of time before charge and that this in itself may call for greater than normal expedition thereafter. Consequently it was incumbent on the DPP to bear in mind the delay that had passed, but accepting as I do the difficult and complex nature of these matters and the voluminous material which had to be sifted and considered, I am not satisfied that the DPP in this matter have breached the high threshold necessary to be established in order to sustain a breach of the reasonable time requirement. It must also be borne in mind that part of the delay at least between 28 April 2004 and the contested committal proceedings on 24 September 2004 was due to the defence considering the papers, instructing senior counsel and then all parties agreeing on a date for the hearing. All of the accused were released on the first application for bail in December 2002, the Crown having previously indicated no object to bail. The public interest requires that determination of criminal charges such as this should have searching and comprehensive investigation and I am not satisfied that anything beyond that occurred in this instance.

[31] If I am wrong in that conclusion, ie that there in fact was a breach of the reasonable time requirement, I am satisfied in any event that there is no

reasonable why a fair trial could not be obtained here. All of the accused had these matters drawn to their attention on later than 2002 and given the large sums of money that were involved and the nature of the transactions which in each instance involved large sums of money, I do not believe that they are prejudice in any material way in their recollection. An illustration of this is the detailed accounts given by both Claxton and Burns as to the circumstances in which the transfers were made. Maria Brogan was involved in a very substantial number of transfers in a comparatively short time and prima facie the reasons for those transfers should not be difficult to recollect. Similarly so far as Ms O'Kane is concerned, if the Crown evidence is right, she was associating with the accused Mullan and therefore that is a period of time that ought to be relatively fresh in her recollection. There is a great deal of documentation which can assist all parties in this case and the Crown case will depend to a substantial extent on the documentation/paper trail. In any event the courts in this jurisdiction are well versed in dealing with any delay before juries. A judge hearing this case will remind himself of the fact of delay and its potential impact on the formulation and conduct of the defence and on the prosecution's discharge of the burden of proof. It will be incumbent on any judge to make clear that the only way of ensuring a fair trial and countering the potential prejudice to the defendants is by a conscientious concern for the burden and standard of proof. I am satisfied that any difficulties in recollection on the part of the witnesses or on the part of the accused can be adequately dealt with in this context.

[32] I also now of the view that had I been required to consider whether this case came within the very exceptional category of circumstances adumbrated in category (B) of A-G's Reference No. 2 such a submission would have failed. There was no evidence before me of bad faith, unlawfulness or executive manipulation. Moreover I do not consider there is any prosecutor's breach of professional duty. I do not find that the delay in this case constitutes the kind of flagrant breach of Article 6 rights as it was obvious in the case of Darmalingum v State 8 BHRC 662 where the appellant in that case had the shadow of the proceedings hanging over him for about 15 years. In that instance the delay was caused by the inaction of the police and the DPP's office at a time when the prosecution had comprehensive confessions on all counts. The delay in this case is nowhere of the same order.

[33] Further, I make it clear that had I had to determine the matter, I would come to the conclusion that the circumstances of this case are such that any breach of a reasonable time requirement which I might have made (and which I have found does not exist) would not have justified a staying or dismissal of these proceedings. These are extremely serious offences which are alleged involving terrorist matters. I draw attention to what I said in the Mackin case at paragraph 14:

> "I remain acutely conscious that the public interest requires that such matters be investigated thoroughly and that those against whom there is appropriate evidence should be properly tried. Our system of justice and public confidence in that system depends upon that process albeit that those found innocent at the end of that process invariably have suffered to some extent."

Had I been of the view that there had been a breach of the reasonable time requirement in this case, I would have considered that the appropriate remedy for all of these accused is that category of remedies adumbrated by Lord Bingham in A-G's Reference No. 2 in paragraph 24. I see no reason why such remedies are inadequate notwithstanding the difficulties laid out in this matter by counsel before me.

[34] I pause to observe one further comment in relation to Claxton's case. I am not of the view that the time requirement in his case commenced from the time of his interviews in November 2002. I do not believe that the circumstances of his case are such that at that time the mischief of Article 6 could be invoked. In terms I do not believe that his interviews and subsequent release put him into that state of uncertainty about his fate which is the situation where someone is charged. Accordingly I found no breach of the reasonable time requirement in his case on that ground also.

No Bill Application

[35] The principles governing such an application are to be found in R v Adams NILRJ Bulletin No. 5 1978. In that case Lowry LCJ said at page 1:

> "Section 2(3) of the Grand Jury (Abolition) Act (Northern Ireland) 1969 gives a presiding judge power to order an entry of 'No Bill' in the Crown book in respect of any indictment presented to the court if he is satisfied that the depositions or, the case may be the statements of the witnesses intended to be examined do not disclose a case sufficient to justify putting upon trial the person against whom the indictment is presented. If such an entry is ordered, the entry must be made before the accused is arraigned, the accused must be discharged but such discharge shall not prevent or prejudice any other indictment (whether or not founded on the same facts or evidence) being presented at another court.

> Formerly the Grand Jury required to be satisfied to be satisfied that there was a prima facie case before finding a true bill. Here the onus is reversed because the trial ought to proceed unless the judge is satisfied that the evidence does not disclose a case sufficient to justify putting the accused on trial."

[36] Mr Treacy QC drew my attention to R v Greenaway 2003 NIR 5 which is authority for the proposition that in construing the terms of the present charges, I should observe the canon which Section 3 of the 1998 Human Rights Act provides namely:

> "So far as is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights."

In this context I have considered Sheldrake v Department of Public Prosecutions 2004 3 WLR 976 which is authority for the proposition that the justifiability and fairness of provisions which impose a burden of proof on a defendant in a criminal trial has to be judged in the particular context of each case and the court's task is to decide whether Parliament has unjustifiably infringed the presumption of innocence, that the overriding concern must be that a trial should be fair, and the presumption of innocence is a fundamental right directed to that end. In Sheldrake's case, the House of Lords concluded, when dealing with offences contrary to Section 11(1) of the Terrorism Act 2000, that whereas sub-section (1) might cover conduct which was not blameworthy or such as properly to attract criminal sanctions, Section 11(2) which provided a defence for a person charged under sub-section (1) provided he proved certain matters, was to be read as imposing an evidential instead of a legal burden upon defendants. Even though this was not the intention of Parliament when enacting the 2000 Act, it was the intention of Parliament when enacting Section 3 of the 1998 Human Rights Act (see para. 53 of Sheldrake's case). For the purposes of these proceedings I have come to the conclusion that S. 11(2) of the 1989 Act, which provides a defence for an accused to prove that they did not know and had no reasonable cause to suspect that the arrangement related to terrorist funds, must be interpreted as placing on the defendant an evidential burden only. Consequently if the accused raises this issue, it will be for the prosecution to negative. If sufficient evidence is adduced to raise the issue, it will be for the prosecution to show beyond reasonable doubt that the defence is not made out by the evidence. To do otherwise would in this case raise the very mischief which Sheldrake's case sets out to remove from the Terrorism Act 2000, namely that a person who had perfectly innocently become concerned in an arrangement to provide money transfers to persons such as those convicted in this instance in the USA could be faced with a legal burden of proving their innocence.

Consequently I intend to approach this matter on the basis that this is most certainly not an offence of strict liability, and that at most there is an evidential burden on the defendants with the burden still on the prosecution to show beyond reasonable doubt that the defence is not made out by the evidence.

[37] I have already set out the Crown case in this instance in each case. I shall now deal with the submissions of each of the accused in term together with my conclusions:

Maria Brogan

[38] Mr Treacy submitted that this case is different from all the others in that Ms Brogan is alleged to have sent money from a Halifax account jointly held with her brother and that the recipient of the money, namely her brother, was not one of those convicted of any offence in the USA. He asserts that there is no evidence whatsoever of any guilty knowledge on her part. It was his submission that there was no evidence that this defendant had any reason to know what was going to happen to the money after she had sent it to her brother with no evidence being present as he said of "a dodgy bank account" as opposed to a legitimate bank account. He assert that she was in no different position from anyone else who might have passed money to Michael Brogan. In essence it is his assertion that this case amounted to no more than suspicion or speculation and that there is no basis upon which any reasonable inference could be drawn to connect her with the offence and therefore he seeks a No Bill finding.

[39] I have come to the conclusion that I must reject Mr Treacy's application for the following reasons:

[40] There were a large number of transfers, something in the range of 15 in all, between January and July of 1999. These were for large sums in virtually all instances. If the prosecution evidence is to be believed, and I must take it at its height in such an application, this money was transferred to someone who was closely associated with the miscreants in the USA. Not only was the money transferred from the precise account into which she had transferred it, but the transfers occurred during the very time span that she was transferring the money. The coincidence of time and place does not end there because if the prosecution evidence is to be believed, the account from which the money was being transferred in Northern Ireland ie. Coleraine was closed four days after the arrest of Conor Claxton, Martin Mullan and Siobhan Brown in the United States of America. Whilst there is no evidence as to who closed that account, nonetheless it would not have been done without some notice being afforded to the defendant. As yet no explanation has been given by this defendant albeit that this was on the advice of her solicitor who, during interviews with the police, objected to questions of this

nature being put to her. Overall, Mr Millar on behalf of the prosecution, indicates to me that during a period of seven months transactions exceeding £45,000 were being transferred to persons connected with these terrorist offences in the USA and £37,000 of that £45,000 emanated from Ms O'Kane. There is a clear connection between Michael Brogan and the four accused in America. Whatever the eventual strength or weakness of the prosecution case, I consider that at this stage there is prima facie evidence that the accused can be connected to the offence with which she is charged.

Patricia O'Kane

[41] Mr McDonald QC on behalf of this accused drew my attention not only to the legal principles of R v Adams (supra) but also took me through a detailed analysis of the factual situation in that case. I consider that applications such as these are all fact sensitive and the court must be wary not misuse precedent cases and fail to recognise that the primary purpose of precedent is to provide principles upon which other cases can be assessed. I do not find the factual situation in the Adams case of any assistance in considering Ms O'Kane's case. Mr McDonald went on to argue that in this case the Crown have not yet on the papers proved that the signatures on the three lodgements which form the basis of the charges against his client, although signed by a person as Patricia O'Kane was in fact this accused. In other words there is no handwriting evidence connecting her handwriting to that of the person who signed these lodgements. He also asserts that there is again no evidence of the requisite mens rea at the time that she made these lodgements. It is his submission that the later evidence upon which the prosecution rely namely her presence in Florida with Martin Mullan at a time when Mullan purchased the toys in which the firearms were secreted, her presence with him at the time of his arrest in Philadelphia and her attempt to dispose of postal receipts bearing the same address as of two of the intercepted parcels have no bearing on her mens rea at the time of the alleged commission of these offences. I do not agree. I consider that a court cannot blind itself to evidence which occurs after the date of commission in order to through light on the mens rea at the time of the commission itself. All the facts which I have outlined above, lend weight to the proposition that Patricia O'Kane who signed the three lodgements was this accused. At this stage of the case I would be blinding myself to reality if I concluded that there was no legal or factual relationship between her presence in the USA with Martin Mullan coupled with her attempt to dispose of the postal receipts had absolutely no relationship with the fact that between 7 June and 3 July 1999 some person by the name of Patricia O'Kane made three lodgements in Northern Ireland to a First Trust Bank account of Martin Mullan totalling £8,860. On 9 July 1999 Martin Mullan sent £2,000 by wire transfer to Conor Claxton and on 14 April 1999 toys similar to those in which the weapons were found were purchased with a bank card held by Martin Mullan. I consider

that these cumulative facts are sufficient to persuade me that I should refuse this application for a "No Bill" at this stage.

Lawrence Claxton

[42] As I have already outlined the evidence against Lawrence Claxton is that he purchased at the First Trust Bank, Andersonstown on 25 May 1999 two foreign draft cheques each in the amount of $7,905 payable to Tony Smith who was one of the four people convicted of the offences in the USA. These two cheques were later paid into the bank account of Anthony Smith in the USA. His version of events namely that he was telephoned to come to a bank by a local bank manager and simply signed forms on behalf of his brother which he thought might be for rent or a mortgage without being aware of the sum involved or the person to whom money was being sent does not outweigh in my view the coincidence of time and place involved in these criminal offences in the USA. That accumulation of facts persuades me that there is sufficient evidence on the papers produced on behalf of the Crown to conclude that the "No Bill" application should be refused.

Sean Burns

[43] I have already outlined the facts relevant to the case of Sean Burns. Counsel on his behalf submitted that there was nothing suspicious about what he did and he was yet another innocent dupe unwittingly being involved in this situation where over a period of seven months a number of people were involved in transactions exceeding £45,000 being transferred to persons related to terrorist offences. He asserts he knows nothing of the letter which was found in Conor Claxton's apartment containing bogus assertions of research funding notwithstanding the letter was signed S T Burns. His version is that the money was given to him by Claxton, was told that it was the proceeds of the sale of a business, that he took the money in the belief that the proceeds were legitimate, that Claxton had told him he was going to America and was to wire the money across to him and that he did so when requested. Whilst he has given an explanation, I am not satisfied that the accumulation of all these facts are such as to persuade me that there is no sustainable evidence against him to connect him with these charges and accordingly I dismiss his application for a "No Bill" in this matter.