IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

DONAL GREGORY CARROLL AND AILISH CARROLL

MacDERMOTT LJ

This is an appeal against sentence by Donal Gregory Carroll and his sister-in-law Ailish Carroll. On 19 November 1991 at Belfast Crown Court both were convicted by His Honour Judge McKee QC of possession with intent of 2 Kalashnikov rifles and ammunition on 5 February 1991 contrary to Article 17 of the Firearms (Northern Ireland) Order 1981. Donal Gregory Carroll received a sentence of 22 years' imprisonment and Ailish Carroll a sentence of 15 years' imprisonment. He was also convicted on three minor and unrelated charges but the sentences were concurrent with the 22 year term and are of no relevance to the present appeal.

The background facts are fully set out in the careful and detailed judgment of the learned trial judge and can be summarised shortly.

On Tuesday 5 February 1991 a police mobile patrol set up a vehicle check-point at the junction of Milltown Lane and Maghery Road outside Portadown. About 6.30 pm a red Peugeot car was stopped at the check-point when 2 other cars, first a Vauxhall Cavalier and secondly a Nissan Sunny approached. Police approached both vehicles and in the Nissan Sunny were the 2 Carrolls. She was in the driving seat and he was in the front passenger seat. He was seen to be wearing gloves and immediately beside his right thigh were 2 rifles - each had an attached loaded magazine and there was a round in the breech of each rifle. The muzzle of each rifle was taped but that would not have impeded the discharge of the weapon. Neither at the scene nor during numerous interviews at Gough Barracks did either appellant give any explanation of why the weapons were in the car or why they were in possession of the weapons.

Both appellants pleaded 'not guilty' and were tried together with a man called Patrick Gerard McNeice, the driver of the Vauxhall Cavalier. The Crown case against him was that he was engaged in a joint enterprise with the Carrolls and was acting as lead or look-out car. For the reasons set out in his judgment the learned trial judge acquitted McNeice but understandably, indeed, on the facts, inevitably

convicted the 2 appellants who had not given evidence to explain why the rifles were in the car.

There is of course no appeal against their conviction. In passing sentence the learned trial judge saw fit to draw a distinction between the 2 appellants in that he concluded that Ailish Carroll's intent was under the so-called second limb of Article 17 - namely an intent to enable others to endanger life.

For the appellants Mr Arthur Harvey QC (who appeared with Mr O'Hare) accepted that a proper distinction had been drawn between the two appellants but claimed that the sentence of 22 years' imprisonment imposed on Donal Gregory Carroll was manifestly excessive and should be reduced. To maintain a proper differential he submitted that Mrs Carroll's sentence should be reduced in an appropriate manner.

At the outset of his carefully prepared argument Mr Harvey accepted that both appellants were bound to receive lengthy custodial sentences but, he argued, 22 years was too much for this type of Article 17 offence where the weapons were in transit and there was no indication of immediate use.

In the course of his submissions Mr Harvey referred us to a number of cases in this court where sentences in respect of both firearm and explosive offences have been considered. As statements of principle and as guidelines towards a uniform approach to sentencing in criminal terrorist cases they are of the utmost assistance. As Lord Lane said in R v Bibi [1981] 71 CAR 360:

"We are not aiming at uniformity of sentence; that would be impossible. We are aiming at uniformity of approach."

It is however unsound, indeed fallacious, to suggest that because the sentences in those cases did not exceed 20 years a sentence of 22 years is excessive or manifestly excessive. The issue before the Court of Appeal in each of those cases was whether or not the particular sentence was manifestly excessive. Acceptance of a sentence does not imply that a longer sentence might have been excessive and a factual comparison of one case with another is rarely likely to be a meaningful exercise as the imposed sentence reflects the views of the sentencer in respect of both the offender and the offence in the case before him. We have no doubt that in this area it is very difficult to draw comparisons with other cases. Further it must be realised that as terrorist activity continues it is a proper discharge of the judicial function to recognise that fact and to review existing sentencing levels and properly to raise the level of sentencing so that deterrence may in fact occur.

For over 20 years the Province has been plagued by almost continuous terrorist activity. By both bomb and bullet many civilians and members of the security forces have been killed or injured: much property has been destroyed or seriously damaged. In R v Crossan [1987] 2 NIJB Lord Lowry commented that "the sensitivity

of everyone had been dulled by repetition" but that does not mean that the criminal activities of the terrorist will be accepted or tolerated. All right-thinking people abhor such activities, which to continue with the words of Lord Lowry

"pose a grave danger to the whole community, the perpetrators are difficult to bring to justice and the crimes themselves are very wicked crimes indeed meriting severely deterrent and exemplary punishment."

This approach to terrorist crime is not peculiar to Northern Ireland and we would readily adopt the observation of Farquharson J, as he then was, delivering the judgment of the Court of Appeal in England in R v Assali [1986] 8 CAR(S) 364:

"Terrorism is 1 of the most evil things which the public throughout the world has to contend with at the present time: evil because, as we all know, the acts of terrorism which take place from time to time put the innocent at risk of serious injury or death. It is the practice of this Court, and no doubt courts elsewhere, where persons are convicted of acts that involve terrorism, to pass severe sentences."

In R v Cunningham and Devenney [1987] the Lord Chief Justice spelt out the proper approach to sentencing in a terrorist case saying:

"This leads us to emphasise that courts in Northern Ireland in sentencing for actual or inchoate crimes of violence by terrorists should, as a general rule, while the present campaign of terrorism continues, pass sentences to give effect primarily to the principles of deterrence (of the accused and also of other potential offenders), retribution and prevention. Personal mitigating circumstances of the offender and considerations of rehabilitation must necessarily give way to the application of these principles though some allowance to a minor degree may be made in respect of them."

To return to the present case. At the heart of Mr Harvey's submission was the proposition that the learned trial judge was not entitled to sentence Gregory Carroll on the basis which is set out at page 33 of the transcript:

"I find myself quite satisfied beyond reasonable doubt that on 5 February 1991 Gregory Carroll was on an enterprise which was intended to accomplish the shooting of some victim in the very near future - perhaps later that night."

Mr Harvey developed his argument claiming that a sentence of 20 years or more should be confined only to those cases where there were factors which "demonstrated potential evil and immediacy of intent".

He submitted that in this case the facts pointed away from any immediacy of intention and argued that this was a case of weapon transportation for no immediate

purpose. He emphasised several points (a) the barrel of each weapon was taped and so unlikely to be used (b) the car was the family car of Ailish Carroll and Mr Harvey argued that it was unusual for terrorists on an active operation to use their own car which might be recognised - it was more usual to find hijacked or recently purchased vehicles being used (c) Mrs Carroll was inappropriately dressed in that she was wearing high heeled shoes, and (d) no shot was fired.

We do not agree that these matters point to a comparatively low-level possession in this case. The fact that the family car was used and that Mrs Carroll was dressed as she was point strongly to it being a matter of urgency to get these particular weapons to some place. The fact that they were not concealed in the boot of the car or elsewhere also points to the conclusion that this was not a simple weapon transfer from one safe place to another and the fact that both were loaded with a round in the breach points strongly towards an immediate rather than a future use. The fact that the muzzles were taped is in our view immaterial and in no way makes a weapon safe or unusable. The fact that the guns were not used in the face of a considerable police presence points only to Carroll being a realist.

Neither appellant gave evidence as to his or her intention and so the learned trial judge had to form his own conclusion. We have only the cold typescript to aid us but the judge heard the case and so could get the "feel" of it. He reached the conclusion which we have already stated - that in our opinion was a perfectly proper conclusion and justified by the evidence and one which we share. This case had none of the hallmarks of a transportation case. It highlights the open and audacious manner in which terrorists are prepared to act if it suits their purposes so to do. It looks like, and was, a case of moving weapons for use at some early time. The fact that the precise use or purpose cannot be established matters not - the offence lies in being in possession with an intent to endanger life.

Mr Harvey argued, as we have mentioned, that a sentence in excess of 20 years should be confined to cases where there was evidence of the nature of the attack which was within the intention of the possessor because it was only then that the Court could fully appreciate the background. It is true that cases of possession with intent come in a vast array of different forms and that the Court will always want to know as much about the background as possible. But the gravity of the offence lies in the nature of the possession and the nature of the weapon possessed - whether the weapon is to be used to kill A, B or C (for that is the purpose of a Kalashnikov rifle) - matters little. Further the sentencing court has to ascertain the sentence appropriate to the instant case and that task is not simplified by asking if the case would have been worse and so deserving a larger sentence if more had been known about the background. Indeed in this case if more had been known about the purpose for which those weapons were to be used a much longer sentence might have been appropriate. It is well to remember that the maximum sentence for the offence is life imprisonment, which reflects the opinion of Parliament that this is one of the more serious offences in the criminal calendar. To date there have been comparatively few Article 17 sentences in excess of 20 years but that does not mean that longer

sentences, 25 or 30 years or life imprisonment would be wrong in principle or excessive. Each case depends on its own facts and a factor in sentencing is that if the existing level of sentences for a particular offence is failing to deter then the level of sentencing may well have to rise.

We turn back from these general propositions to the facts of the present case. In simple language it was a "bad" Article 17 case and we do not consider that 22 years in respect of Gregory Carroll was excessive let alone manifestly excessive and we dismiss his appeal.

As far as Ailish Carroll is concerned the learned trial judge made a substantial distinction in her favour. He was entitled to do so and in our view 15 years is a proper sentence in her case. Her appeal is also dismissed.