# Judicial Communications Office

**5 JUNE 2018**

# COURT OF APPEAL DISMISSES APPLICATION TO INTRODUCE FRESH EVIDENCE IN 1977 CONVICTION

## Summary of Judgment

The Court of Appeal today dismissed an application to introduce fresh evidence in the case of James Goodall ("the appellant") who was convicted on 7 November 1977 of causing an explosion on 21 March 1977 and of possessing a firearm with intent to endanger life or cause serious damage to property. He was sentenced to a term of imprisonment of 15 years in respect of the explosives count and 12 years concurrent on the firearms count. His appeal against conviction and sentence was dismissed on 3 March 1978. This appeal was brought by way of a reference from the Criminal Cases Review Commission ("CCRC").

**Background**

Around noon on 21 March 1977 an armed gang entered a factory at Exchange Street, Belfast. A girl and taller man had handguns and held up the staff in an area close to the entrance hall leading to the factory floor. A second smaller man then carried in a bomb which exploded at about 12:20 pm causing approximately £20,000 worth of damage and putting the factory out of production for a fortnight. On 25 March 1977 the appellant travelled from Northern Ireland to Scotland to a football match. On arrival at Stranraer he was arrested and subsequently served with an exclusion order. He was returned to Northern Ireland on 1 April 1977 and at 3.00 pm that day was arrested at Larne Harbour and taken to Castlereagh RUC station where he was interviewed. During his first interview, which lasted 35 minutes, the appellant denied any involvement with the IRA who, he said, considered him "mad". In a second interview which began at 8:10 pm that evening and lasted for 2 hours and 40 minutes, the appellant is recorded in the interview notes as saying "do you want me to admit it" and "all right, I'll admit it to get you off my back". The appellant was cautioned and gave an account to the police officers. He then made a written statement which was read over to him and signed the endorsements.

The statement is endorsed as being recorded by DC Nesbitt and witnessed by DC McCaul. Subsequent ESDA testing revealed that part of the endorsement naming DC McCaul as having witnessed the statement was probably not recorded contemporaneously. The ESDA test did not, however, suggest any other irregularities. In the statement, the appellant admitted to agreeing to "do a wee job" when approached by a man he knew to see. He drove the man and a girl he didn't know to the factory, carried the bomb in and left. At his trial the appellant did not complain about his treatment in custody. He alleged, however, that he made no verbal admissions and that the signatures were not made by him on what was presented as his written statement. The judge found the appellant's evidence entirely unconvincing and although he was unable to read or write the judge concluded that he was "shrewd and cunning, guileful and quick-witted". The trial judge was satisfied that the accused had made the written and oral statements upon which the prosecution relied, that

there was no reason to exclude this admissible and condemning evidence and that the appellant was guilty.

**The CCRC Application**

The application was founded upon an application to admit new evidence. The appellant alleged that his statement in respect of which he was convicted was fabricated and his signature forged. It was further contended that in light of the conditions of his detention, his mental state and vulnerability together with long periods of interrogation and the absence of legal advice and an appropriate adult demonstrated that even had admissions been made by the appellant they would have been obtained in circumstances which did not comply with contemporary standards of fairness.

A document examiner conducted an ESDA examination of the appellant's written statement and found that the following words were likely added at a different time: "*in the presence of D/Const McCaul. Statement commenced at 10-5 PM*". She did not find any inconsistency. The appellant claimed this called into question the safety of the conviction. The CCRC also obtained a report from a Consultant Clinical Psychologist. He interviewed the appellant and questioned whether he had the language skills and intellectual ability required to have crafted the statement that he is purported to have dictated to the officer who recorded it verbatim.

The appellant was interviewed by the CCRC. The note of the interview recorded that he said that he made false admissions and signed a statement but that the statement he heard at trial was not what he had said. He agreed that this was possibly because it was written in words that he would not use. In a statement made to the CCRC on 16 March 2016 the appellant explained that he had made admissions to carrying out the bombing and signed a statement and his memory was that in the statement he admitted planting the bomb. He claimed he was advised by his solicitors that as he had made admissions he should plead guilty but he told a solicitor that he was pleading not guilty because he did not do it. He did not remember much about the trial or the evidence.

The appellant gave evidence to the Court of Appeal on 2 May 2017. He repeated what he had previously said to the CCRC. In cross-examination he agreed that he had been arrested about four times prior to this. In some cases he had admitted offences and in others denied the offences. He indicated that he would recognise his own signature. He looked at the signatures on the copies of the written statements which were introduced in evidence against him and agreed that the signatures were his. He agreed that he made a statement and that he admitted his involvement in the bombing. He said that he did not tell the police that he had driven the car and did not remember going into the details of the bombing. In re-examination he claimed that he told the trial court the truth. Despite his earlier evidence he said that he could not remember what the advice of his solicitor was. He said that he was not sure if he spoke to his legal team about the signatures on the statement.

The Court also head from the psychologist who had interviewed the appellant. He questioned the reliability of the admission evidence given the lack of an appropriate adult, his cognitive impairments, the effects of his arrest and detention and his language skills in respect of the statement. In cross-examination he accepted that it would be unlikely that the appellant would forget something such as driving his car with a bomb. There was evidence,

however, that he did understand police procedures and was able to make the decision about whether to contest the charge, able to tell his lawyers what happened at the police station and able to understand what he told the police and to tell his lawyers accordingly.

**Consideration**

The prosecution case depended decisively upon the appellant's statement of admission. In this case the appellant made no allegation of ill-treatment at trial. He was offered the opportunity of medical examination by a doctor but declined indicating that he had no complaints of assault or ill-treatment. The Court of Appeal said that there can therefore be no complaint about the decision to admit the statements.

The appellant sought to introduce fresh evidence to challenge the reliability of his oral and written submissions. His case at trial was that he had made no verbal admissions. In his evidence to the Court of Appeal he accepted that he did make verbal admissions but said that he did so to get the police off his back and that the signatures on the statement were his. He claimed that he thought he had informed the trial judge that he had signed a statement admitting his part in the bombing but at the trial he said that the only statement he signed was one denying his involvement. He could not remember whether he had told a solicitor and barrister that he had signed a statement admitting the bombing but if he had done so plainly they would not have been in a position to run the case before the trial judge that the signatures were not his.

The Court of Appeal said the evidence that he signed a statement of admission and made verbal admissions was overwhelming:

> "We are satisfied that the appellant gave false evidence to the original trial court that he had not made oral admissions and that the signatures on his statements were not his. The appellant's case is that he was perfectly able to understand what he had admitted and he has offered no excuse either in his evidence or in the proposed evidence of [the psychologist] for the course he took at trial. It is against that background that we have to consider whether to admit the fresh evidence."

The Court of Appeal said there has been considerable discussion of the admission of fresh medical evidence in cases where the defendant had the opportunity to admit the evidence at his trial, decided not to do so and then sought to introduce it on appeal. The principle in general is that no one is entitled to more than one trial and only in exceptional circumstances will the appeal court receive fresh evidence to enable a defence to be advanced which was not put forward at trial. The Court said the fact that the application in this case comes more than 30 years after the dismissal of the first appeal is likely to be material.

The evidence indicates that the appellant suffered cognitive impairments involving verbal comprehension, working memory and immediate memory for verbally presented information. In light of that the Court of Appeal considered it appropriate to have a Registered Intermediary ("RI") in order to assist in the presentation of his evidence. The Court was satisfied that these arrangements ensured that the appellant gave his best evidence. It said there was no evidence however to suggest that the appellant's cognitive

impairment would have contributed to his failing to understand that he was making a false statement of admission:

> "This was a case in which the appellant stated that he made admissions by way of question and answer which were then recorded by police in writing. We accept that such a process constitutes the making of a statement at the dictation of the appellant. The statement contained considerable detail in relation to the circumstances of the bombing and there is no reason to doubt its broad reliability. In those circumstances we do not consider that we should admit the psychological evidence in the interests of justice. We accept that the evidence is capable of belief but do not consider that in the circumstances of this case it affords a basis for allowing the appeal. In any event if this issue was to be explored it should have been advanced at the trial."

The Court of Appeal accepted that it was possible that the portion of the introduction of the statement referring to the presence of DC McCaul may have been written at a different time. It said, however, that the evidence of the appellant in this case is that the two police officers were present throughout his interviews. There is, therefore, no suggestion that the interviews were received by one police officer only. Secondly, there is no indication that there was any irregularity in relation to the body of the statement and thirdly, there is no evidence to indicate that the interview notes were rewritten. In those circumstances the Court did not consider that the evidence suggesting that the reference to DC McCaul was made at a later stage gives rise to any concern about the safety of the conviction.

**Conclusion**

The Court of Appeal dismissed the application.

**NOTES TO EDITORS**

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (www.judiciary-ni.gov.uk).

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: Alison.Houston@courtsni.gov.uk

# Judicial Communications Office