

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

DAVID ADAMS, ROBERT CRAWFORD, PAUL STITT,

GERARD BRADLEY and PATRICK DONAGHY

CARSWELL LJ

The 5 appellants brought the appeals before us against the sentences imposed by MacDermott LJ on 18 May 1995 at Belfast Crown Court. At the commencement of the hearing Adams and Crawford withdrew their appeals, and the other 3 appellants proceeded.

The 5 men pleaded not guilty to all charges against them in an indictment containing 7 counts, as follows:

Count 1: conspiracy to murder a person unknown;

Count 2: conspiracy to cause an explosion;

Count 3: possession of an explosive substance with intent;

Count 4: possession of firearms and ammunition with intent;

Count 5: hijacking a vehicle;

Counts 6 and 7: false imprisonment of Mr and Mrs Curley.

They elected not to challenge the prosecution evidence, save in so far as was necessary for Bradley and Donaghy to put forward their case that they were not sufficiently au fait with the substance of the conspiracy to be found guilty on counts 1 to 4. The effect was to shorten the course of the trial to a material extent, but it still occupied 6 court days. The judge found Adams, Crawford and Stitt guilty on all counts, and Bradley and Donaghy guilty on counts 5, 6 and 7. He was not satisfied

beyond reasonable doubt of the guilt of Bradley and Donaghy on counts 1 to 4, and found them not guilty on those counts.

The sentences imposed were as follows:

Adams and Crawford

Count 1: 25 years' imprisonment;

Count 2: 24 years;

Count 3: 24 years;

Count 4: 24 years;

Count 5: 8 years;

Count 6: 10 years;

Count 7: 10 years.

Stitt

Counts 1 to 4: 22 years' imprisonment on each.

Count 5: 8 years;

Counts 6 and 7: 10 years on each.

Bradley and Donaghy

Count 5: 8 years' imprisonment;

Counts 6 and 7: 10 years on each.

All sentences were to be concurrent.

The charges arose out of incidents which took place on 9 and 10 February 1994. Police officers went to the junction of Belmont Avenue and Belmont Avenue West, Belfast just before 7 am and saw a yellow Ford Escort van parked, with the appellant Stitt sitting in the driver's seat. Stitt was wearing overalls and gloves. When he was removed from the van a Webley and Scott automatic pistol fell out on to the road. The magazine was attached and contained 3 rounds. There was no round in the

chamber. A loose round was found on the driver's seat. In the front footwell of the van was an AKM rifle. A magazine containing 27 rounds was attached, the weapon was cocked and there was a round in the chamber. As the judge found, the weapon was ready for immediate use. A mobile telephone was found in the front of the van. On the back of Stitt's left hand the number 741799 was written, and on the palm of that hand the number recorded by a police officer as U374610775, preceded by 1 or 2 other letters.

Adams and Crawford were on the footpath near to the front passenger door of the yellow van when the police arrived. They attempted to run off and were apprehended. Adams was wearing overalls under a jacket and had with him 2 pairs of gloves. He gave a false name and address, but no explanation of his presence in the area. He was seen to be carrying a long object in his hand as he ran from the yellow van. He went under the front of a parked red van, and when he was pulled out there was found near to him another AKM rifle, with a magazine attached containing 24 rounds. It was also cocked, with a round in the chamber. Also near to Adams police found a coffee jar bomb, an improvised anti-personnel grenade, containing some 370 grammes of Semtex explosive. It could be armed for use by the simple operation of inserting the wired-up detonator through the hole in the lid. The tape used in 1 of the joints in the bomb mechanism came from a roll found in a bag in the front of the yellow van.

Crawford ran off and after pursuit was found hiding in the rear yard of a nearby house. He was wearing overalls and gloves and gave a false name and address. He had a battery for a mobile telephone in his possession and said that he had "ditched" the telephone itself. On the palm of his hand was written the same numbers 741799. A Yale key was found in his possession, which fitted the front door of a house 99 Grace Avenue, in the Bloomfield area of Belfast. In this house, which had recently been rented, were found some items of food, dirty cups and 2 magazines suitable for use with the AKM rifles. It appears clear that it was the conspirators' intention to make use of it as a safe house.

The learned judge found that Adams, Crawford and Stitt were acting in concert and that each was in possession of the pistol, rifles and coffee jar bomb. He said that he had no doubt that their purpose was to attack someone with the array of lethal weapons in their possession and that the attack was imminent. These findings have not been challenged.

Another party of police went to 55 Upper Meadow Street, in the New Lodge area of Belfast, just after 8.15 the same morning. There they found the appellants Bradley and Donaghy sitting in the living room. They had been holding the occupants of the house, Mr and Mrs Curley, since about 10.20 the previous evening. They had entered the house with another man, who had a gun in his hand and informed the Curleys that they were from the IRA. The third man took away Mr Curley's van, the yellow Ford Escort van in which Stitt was found at Belmont. Bradley and Donaghy

stayed with them until the police arrived next morning. Mr and Mrs Curley were frightened but not physically ill-treated.

The Curleys' telephone number was 741799. In the house was a mobile telephone, which did not belong to either of the Curleys, whose number was 0374 610975. A battery suitable for use in that telephone was found in a pocket of a leather jacket, which also contained Bradley's driving licence. The learned judge concluded that the purpose of the mobile telephone was to provide the capacity for Adams, Crawford and Stitt to keep in touch with those in 55 Upper Meadow Street and that the number 741799 written on the hands of Stitt and Crawford was the telephone number of the house in which the Curleys were held, the object being for the men in Belmont to be able to tell those in 55 Upper Meadow Street when the attack had been carried out and they could leave the house. He held that the whole operation was a carefully planned murder bid, devised and implemented with care over a period of time, and that the indications from the evidence were that the attack on the target was to occur imminently in the vicinity of Belmont Avenue. He found, however, that the evidence was insufficient for him to hold that Bradley and Donaghy had sufficient knowledge or contemplation of the plan to be guilty of conspiracy to murder.

Adams, who is 36 years old, has a previous record which includes offences of possession of firearms and ammunition with intent, of which he was convicted in 1974 and 1980. On the latter occasion he was sentenced to 14 years' imprisonment. Crawford, who is now 38 years of age, was convicted on 2 counts of murder in 1975 and was sentenced to be detained during the pleasure of the Secretary of State. At the time of the commission of the present offences he was on licence. Stitt is 24 years old and has a criminal record, but none of the offences was of a terrorist nature. Bradley is 41 years old, and his criminal record is similarly of little relevance. Donaghy is 24 years of age, and his record is also of little consequence for present purposes.

The learned judge, in sentencing the accused men, said:

"Not contesting the Crown case is not the equivalent of a guilty plea as it lacks any indication of remorse which may flow from that of a guilty plea. Beyond question some time, trouble and logistical arrangements have now been saved by the court from the stance which you have adopted and I bear that in mind."

Referring to Adams' record, he described him as "a dangerous man." He said that Crawford had failed to learn from his period in prison and had returned to terrorism. He then accepted that Stitt's role was that of driver and that he was much the youngest of the 3 men. Although the actual role performed by an accused in such a case is of comparatively little significance, he thought that it would be proper to draw a modest distinction in his favour. He therefore made the effective sentence 22 years instead of 25 years in his case.

Although reference was made in argument to the allowance which the judge accepted he could make for the course which the accused adopted at trial - as to which see the judgment of this court in R v Murray (1995, unreported) - it is not a directly material factor in this case, since the judge recognised the existence of this factor and it applied equally in the case of Adams and Crawford. The immediate issue is therefore the extent of the differential between Stitt and the other two conspirators. Miss McDermott QC for Stitt submitted that the judge had made insufficient allowance for the lesser part played by him in the conspiracy and for his youth and lack of a relevant record of previous offences. It has to be remembered, however, that elaborate murder bids of this type require a variety of participants carrying out a variety of roles, and that although some may be less directly concerned in the final attack on the target their participation is essential to its successful completion. Any differentiation between the participants should generally be of only slight degree. We must also observe that it has regularly been said that the need for sentences in serious terrorist crimes to constitute a deterrent to others substantially reduces the allowance which might in other cases be made for youth and personal circumstances: see R v Cunningham and Devenney [1989] 9 NIJB 12, 18-20.

If 1 accepts the correctness of the sentences imposed on Adams and Crawford, then a differential of 3 years in Stitt's case is in our view justified. Miss McDermott by inference at least submitted that the 25-year sentences were on the long side, especially after making some allowance for their not contesting the case. We do not accept this view. We looked at these sentences carefully, even though Adams and Crawford did not proceed with their appeals. We are satisfied that even after making that allowance they bear comparison with other recent cases arising out of serious terrorist crimes. We accordingly consider that the sentences imposed by the learned judge upon Stitt were neither wrong in principle nor manifestly excessive.

We are of opinion that the sentences imposed on Bradley and Donaghy of 10 and 8 years respectively for false imprisonment and hijacking were fully merited in the circumstances of this case and their length was not in itself at all excessive. The burden of the case made on behalf of Bradley and Donaghy was that the sentences imposed on them should have been lower than in the case of Adams and Crawford, to reflect the difference in their records and, in Donaghy's case, his age. It was also suggested that the judge did not advert to the need to consider an allowance for not contesting the case when he sentenced Bradley and Donaghy.

We are unable to accept that there is any substance in the latter point. This factor must have been present to the mind of the judge when he considered the sentences, for he specifically referred to it when addressing Adams, Crawford and Stitt. In any event, any allowance would necessarily be small, since the sentences on Bradley and Donaghy were materially lower and the saving of court time in their case was not considerable.

We consider that the judge was justified in imposing the same sentences on Bradley and Donaghy as on the other accused. They were the persons who actually carried out the hijacking and false imprisonment, even though the others were in law participants in those offences, which, as the judge found, were preliminary stages in the operation. That difference in the nature of participation could properly be set against the difference in their records and Donaghy's age. But even if it could be said that the judge should have made some difference between the sentences, those imposed on Bradley and Donaghy were entirely merited in themselves. If the other accused received sentences on these counts which were shorter than they might have been, that degree of disparity was not such as to give rise to any justifiable feeling of grievance on the part of the appellants Bradley and Donaghy. We therefore consider that the sentences on these appellants were neither wrong in principle nor manifestly excessive.

The appeals will all be dismissed.