IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

PHILIP BLANEY, BRIAN GERARD DUFFY, ROBERT ANTHONY FINLAY,

FRANCIS PAUL GREEN, KEVIN MICHAEL McSHANE, MARK

EMMANUEL McVICKER, SEAN LIAM O'NEILL, PATRICK PEARSE

VOYLE and ANTHONY McVARNOCK

HUTTON LCJ AND MACDERMOTT LJ

Several young men pleaded guilty to charges of making petrol bombs, hijacking and arson of vehicles. Those under 21 were sentenced to terms of detention ranging from 31/2 to 2 years and 2 men over 21 were sentenced to 4 years and 18 months' imprisonment. All had been active participants in widespread disturbances but not ringleaders. They had substantially clear records, respectable family backgrounds and had complied fully with the terms of their bail. The sentence was suspended in the case of 1 of the accused and the others appealed against the sentences.

Held, dismissing the appeals and affirming the sentences, that -

(1) The sentences were not manifestly excessive or wrong in principle. Parliament regarded these offences as serious and heavy maximum sentences had been laid down. This conduct contributed to widespread fear and disruption and caused considerable damage to property, and required punishment by way of custodial sentences.

(2) Because of the nature of the offences and the need to deter the commission of similar acts in the future, previous clear records, good family backgrounds and opportunities for employment could not prevent the imposition of a custodial sentence. R v Shaw and another [1989] 8 NIJB 60 applied.

(3) The appellants had no justified grievance on the ground that a co-accused received a suspended sentence.

The following cases are referred to in the judgment:

R v O'Neill [1984] 13 NIJB

R v Shaw and another [1989] 8 NIJB 60

R v Weekes [1982] 74 Cr App R 161

APPEAL against sentence by Philip Blaney, Brian Gerard Duffy, Robert Anthony Finlay, Francis Paul Green, Kevin Michael McShane, Mark Emmanuel McVicker, Sean Liam O'Neill, Patrick Pearse Voyle and Anthony McVarnock. The facts appear sufficiently in the judgment.

A D Harvey QC and J F McCrudden (instructed by Michael Flanigan) for the appellants Blaney and McVicker.

A D Harvey QC and Treacy J (instructed by Madden and Finucane) for the appellants Duffy and McVarnock.

J D O'Neill (instructed by Oliver Kelly, J Steele & Co) for the appellant Finlay.

K J Finnegan QC and Miss A A Maginess (instructed by Flynn & McGettrick) for the appellant Green.

K A J Mallon (instructed by McCann & McCann) for the appellants O'Neill and Voyle.

S G McCrudden (instructed by the Director by the Director of Public Prosecutions) for the Crown.

HUTTON LCJ

These are appeals against sentence by 9 young men who pleaded guilty on 13 October 1989 at Belfast Crown Court before His Honour Judge Higgins QC to charges of making petrol bombs, hi-jacking and arson of vehicles. Those under 21 were sentenced to terms of detention in the Young Offenders Centre ranging from 2 years to 3½ years, and 2 young men over 21 were sentenced to 4 years' imprisonment and 18 months' imprisonment respectively.

The offences were committed during 5 days between 26 August 1988 and 1 September 1988 when areas of West Belfast were the scene of very grave civil disturbance. Vehicles were stopped and hi-jacked. Many were destroyed by petrol bombs. Many drivers and their passengers must have been terrified. In his judgment at page 5 Judge Higgins described the civil disturbance in this way:

"This was a very serious episode in the life of the city. It was spread over 5 days, namely from the Saturday to the Wednesday and both these days were the most prominent of the 5.

It would appear that about 100 vehicles were hijacked in all and burned throughout this area. Let me say that I recognise that these defendants are not charged with all of that but it is necessary to state that to understand the scale of the incidents and the defendants' individual responsibility within it.

The hijacking and arson of vehicles has become too common a feature in our society and whether carried out by individuals for any reason or carried out by organised groups as a form of protest it is a serious matter of which all right thinking members of the public should beware of.

It causes considerable inconvenience to the residents of the area and untold disruption of public services and utilities quite apart from the physical damage which has been caused to the vehicles and property involved. It is also no doubt an unnerving situation for the drivers of the vehicles, in this case in many instances workmen going about their business and where weapons are used in the hijacking it must be very frightening."

The reason for these acts of lawlessness appears to have been that a man called Russell was being extradited from the Republic of Ireland. That is no justification or excuse whatever for what occurred. It was accepted by the learned trial judge in the course of his very carefully considered and composed judgment that this lawlessness was devised and orchestrated by members of the Provisional IRA or their associates.

It is not suggested that any of the appellants were planners of, or leaders in, this criminal behaviour. But those who organise require others to carry out their plans and the appellants all willingly and actively participated and this Court does not accept that they were mere dupes.

A considerable number of points have been advanced to this Court in carefully marshalled submissions by counsel on behalf of the appellants although, as is often and necessarily the case, there is some interlocking and overlapping between the points.

Mr Harvey made the opening submissions and his submissions were adopted by the counsel for the other appellants.

The points made by Mr Harvey were these:

1. None of the appellants were involved in leading or orchestrating the criminal events.

2. Although their participation varied from being on the periphery to being principals, all the appellants were drawn into this criminal activity.

3. The Courts had granted them bail prior to the trial.

4. The appellants had been on bail for a period of about 12 months prior to their trial and during that time none of them had come under adverse police notice.

5. All the conditions imposed by the Courts in granting the appellants bail had been honoured although the conditions were onerous.

6. All the appellants were young, being aged between 17 and 23.

7. Unusually for those involved in these types of offences, virtually all of the appellants had completely clear records with the exception of a few minor convictions.

8. A number of the appellants had been in employment at the time of the trial.

9. The family backgrounds of the appellants were hostile to the criminal activities in which they had been involved and were also hostile to the aims and objectives of the IRA and of Sinn Fein.

10. In corroboration of some of the factors which had already been put forward impressive references had been furnished on behalf of many of the appellants.

11. Although the civil disturbances took place over 4 days the appellants had only been involved in criminal activities for periods of relatively short duration.

12. The involvement of the appellants was casual rather than planned.

13. Most of the appellants had been arrested in late September 1988 and had not become involved in criminal conduct between the commission of the offences and their arrests.

14. All the appellants had pleaded guilty, and moreover all the appellants pleaded guilty at the earliest possible moment.

15. The trial had been adjourned on a number of occasions through no fault of the appellants, and this had increased the strain to which they were subjected.

Further points made by counsel were that the appellants suffered more severe sentences because the organisers and ringleaders were not before the Crown Court,

and because the judge had to sentence 16 defendants he was not able to differentiate properly between them. In relation to the latter point, we consider that it has no substance because it is quite clear from the course taken by the judge in sentencing and from the very careful nature of his judgment that the judge was fully capable of differentiating between, and did differentiate between, the various accused. A number of other points were made in respect of individual appellants which we shall refer to at a later stage.

Having regard to the considerations to which we are about to refer we consider that the points advanced as general points on behalf of the appellants are not reasons which should lead us to conclude that any of the sentences were manifestly excessive or wrong in principle. The considerations are these:

First, Parliament regards these offences as serious offences. The maximum sentence for arson laid down in 1977 is life imprisonment. The maximum sentence for hi-jacking laid down in 1975 is 15 years. The maximum sentence for making or possession of petrol bombs laid down in 1969 is 5 years.

Secondly, these offences were committed at a time of widespread disturbance by violent acts which put many innocent citizens in fear, which caused great disruption of ordinary life and which caused many tens of thousands of pounds worth of damage. Some of the vehicles destroyed by fire were worth many thousands of pounds and all this loss will have to be paid for by way of compensation out of public funds. It is ordinary citizens who have to provide these public funds out of their taxes.

The very grave consequences of the appellants' criminal conduct cannot and will not be tolerated by the Courts, and clearly requires punishment by way of custodial sentences to deter the appellants and others from similar behaviour in the future.

The main thrust of the submissions made on behalf of the appellants was that, notwithstanding the gravity and number of the offences which they committed and the gravity of the background against which they took place, sentencing policy required that young men with previous clear or virtually clear records coming from good homes and backgrounds, some of whom were in employment, should not go into custody but should receive suspended sentences.

We do not accept those submissions. Because of the grave nature of the appellants' conduct, because of its consequences to innocent citizens in the ways which we have described, because of the gravity of the background against which their criminal actions were conducted and to which they contributed, and because of the need to deter the commission of similar criminal acts in the future, previous clear records, good family backgrounds, and opportunities for employment cannot prevent the appellants going into detention for periods, including periods of 3 or 3½ or 4 years

where they have been involved in a considerable number of cases of making petrol bombs, hijackings and arsons.

In the case of R v Stephen Matthew Shaw & Thomas Samuel Houston (not yet reported) where 2 young men, with clear or virtually clear records, coming from good homes, pleaded guilty to throwing petrol bombs into dwelling houses this Court said in July 1989:

"The Court was informed by counsel that there has been a considerable variation in the sentences imposed by the Crown Courts for the offences of throwing petrol bombs at dwelling houses and of causing arson to dwelling houses by the throwing of petrol bombs, and that in some cases only a suspended sentence or a recorded sentence has been imposed. This Court states that such an approach to sentencing should now be regarded as being too lenient. Some years ago when dealing with young offenders with clear records or virtually clear records the giving of a non-custodial sentence for such offences could be regarded as justifiable as being in accordance with the general approach taken by the courts that, save where the particular gravity of the crime prevented it, a young person before a criminal court for the first time should be given a chance to keep out of trouble in the future and should not be given a custodial sentence. But this Court considers that the throwing of a petrol bomb into a dwelling house which is known or believed to be occupied is a serious offence which has become much too prevalent in this jurisdiction and should now, save in exceptional circumstances, be met by a custodial sentence which is intended to be a deterrent irrespective of the age or record of the offender.

This Court also makes it clear that the fact that a petrol bomb is thrown at a time of sectarian tension or when passions are inflamed constitutes no mitigating factor and no reason for a reduction in sentence. The Courts should make it clear by stiff and deterrent sentences that those who give vent to inflamed feelings at a time of tension and commit crimes of violence will be severely dealt with so that the number of such crimes may be kept in check.

Therefore we reject the submissions on behalf of the appellants that because of their youth and clear, or virtually clear records, the appropriate sentences which the learned trial judge should have imposed on them were suspended sentences. We are satisfied, for the reasons which we have stated, that the judge was entirely right to impose custodial sentences."

That case was concerned with petrol bomb attacks on 2 houses which happened to be the homes of police officers. But the principle stated in it applies equally to organised burnings of vehicles travelling on the public roads; people are entitled to move freely about our roads without fear or hindrance. The judge has calculated that the appellants' criminal activities affected some 35 vehicles and that altogether

about 100 vehicles were involved. That was a very grave state of affairs in respect of which the Court must impose deterrent sentences.

This Court has said that those who make or throw petrol bombs must expect a custodial sentence. So also must those who hi-jack and burn vehicles. Sometimes it may be possible because of some exceptional circumstances to suspend a sentence but that will be a rare possibility when the offences arise out of widespread and organised lawlessness.

In respect of a number of the accused before him the judge suspended their sentences. He suspended the sentence imposed on Rogan and he said at 42 of his remarks in passing sentence:

"Alan Ambrose Robert Rogan, you have pleaded guilty to 3 counts in the bill of indictment. Count 19 and count 20 relate to the hijacking and arson of the Bedford lorry. You were one of those who hijacked the lorry being driven by Mr Brady. You then drove it to the Falls Road where you helped to set it on fire.

In count 25 you pleaded guilty to the arson of a Leyland tipper. After unsuccessfully moving the digger and the lorry from the building site you went to the Falls Road then the lorry presumably driven by Mr Fegan was hijacked. You and others then went to the lorry and helped to set it alight. That was valued at £6000.

You are now 21 years of age. You were 20 years of age at the time. You have 1 previous conviction for theft for which you were fined. You have got job prospects.

In count 19 I sentence you to 18 months' imprisonment.

In count 20 I sentence you to 2 years' imprisonment.

In count 25 I sentence you to 2 years' imprisonment.

In view of what Detective Constable Moorehead has told me I will suspend those sentences for a period of 2 years. I would remind you as I have told the others who have been given suspended sentences that if you get into no more trouble you will hear no more about this but if you do get into trouble in the next 2 years you will be brought back to this court and you will be sentenced for these offences."

Mr Harvey submits that looking at Rogan, in fairness, the sentences on McVicker should have been suspended. Mr Mallon submits that looking at Rogan, in fairness, the sentences on Voyle should have been suspended. In respect of McVicker the judge said at 38.

"Mark Emmanuel McVicker, you had pleaded guilty to 3 counts in the bill of indictment.

In count 8 you pleaded guilty to making petrol bombs. You with others made about 20 petrol bombs in a derelict house in Brighton Street. You then brought a couple of them down to Beechmount Avenue obviously hoping to use them.

You have pleaded guilty to count 19 and count 20, to which I have already made reference. Once this Bedford lorry was hijacked you poured petrol over the floor and set it alight.

You are 22 years of age now. You were 21 years old at the time of the commission of the offences. You have no previous convictions. You were involved in 1 day.

I sentence you on count 8 to 18 months' imprisonment.

On count 19 I sentence you to 18 months' imprisonment.

On count 20 I sentence you to 18 months' imprisonment.

All of those sentences are to run concurrently."

Mr Harvey makes the point that McVicker was involved in only 1 hi-jacking whereas Rogan was involved in 2 hi-jackings.

In respect of Voyle the judge said at 43.

"Patrick Pearce Voyle, you have pleaded guilty to 3 offences in this bill of indictment.

In count 7 you pleaded guilty to the making of petrol bombs. On the Saturday you with others made 2 crates of petrol bombs.

You pleaded guilty to the arson of a van on Wednesday the 31st. That vehicle had already been hijacked and it would appeared to be Mr Graham's. The vehicle belonged to the Belfast Education and Library Board. You then set fire to that vehicle by setting fire to papers placed under the seat. The vehicle was burned out and that vehicle and its contents was valued at £8700.

In count 45 of the bill of indictment you also pleaded guilty to the arson of a vehicle which had already been hijacked, and that was a vehicle which had been driven by Mr Stewart. It was a red Ford Transit van which contained a quantity of eggs. You set it on fire in the same way as the previous case or incident.

You are now 18 years of age. You were 17 at the time of the commission of the offences. You have no previous convictions. You were unemployed.

On count 7 of the indictment I sentence you to 18 months' imprisonment.

On count 44 I sentence you to 2 years' imprisonment.

On count 45 I sentence you to 2 years' imprisonment.

Mr McCrudden: If your honour pleases, ought that not be detention?

The Judge: I am sorry, that is detention in the young offenders centre. All of those sentences will run concurrently."

In R v O'Neill [1984] NIJB at 6 Gibson LJ in delivering the judgment of this Court stated:

"... the fact that an appellant feels aggrieved that a co-defendant has received a substantially smaller sentence is not a proper ground for interfering with his sentence if that is the only ground. We consider, as did the English Court of Appeal in R v. Weekes 74 CAR 161, that it is only if the grievance is justified that this Court should interfere."

Here we consider that McVicker and Voyle have no grievance which is justified. We think that the judge took into account against McVicker and Voyle, as he was fully entitled to do, that they had shown their readiness to be involved by making petrol bombs, whereas Rogan had not made petrol bombs. In addition the judge was obviously influenced in respect of Rogan by what Detective Constable Moorehead told him in favour of that accused.

The point was also made in respect of Green and O'Neill that the judge had wrongly referred to them as unemployed - when in fact they were employed - but we are satisfied that these errors provide no reason for interfering with the sentences because having regard to the gravity of the offences, employment cannot operate to stop an accused serving a period in custody.

Therefore the appeals are dismissed.