IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

MARY ROISIN DEVLIN

MURRAY LJ

(Giving the judgment of the Court)

The appellant in this case is a young married woman of 24 who has a child aged 3. On 4 October 1990 she pleaded guilty at Belfast Crown Court to making property available for terrorism contrary to section 9(2)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989 the particulars of the offence being as follows:

"Mary Roisin Devlin, on a date unknown between 30 June 1989 and 4 October 1989, in the County Court Division of Belfast, made available to other persons certain property, namely a house situate at 16 Moyard Crescent, Belfast, knowing or having reasonable cause to suspect that the said property would or might be applied or used for the commission of, or in furtherance of or in connection with acts of terrorism to which section 9 of the Prevention of Terrorism (Temporary Provisions) Act 1989 applies".

The appellant has a clear record except for a minor theft. His Honour Judge Russell QC sentenced her to 5 years' imprisonment. The grounds of appeal are:

"1. The sentence imposed by the Learned Trial Judge was manifestly excessive in that the Appellant, although she had pleaded guilty to the offence, ought not to have been treated as a willing participant therein.

2. That in the circumstances of the case a deterrent sentence was inappropriate".

The basic facts were these: on 3 October 1989 an army and police search party forced an entry into a dwelling-house at 16 Moyard Crescent ("the House") in West Belfast and found, inter alia, 7 motor fuse units, 260 kilograms of material used by terrorists for making bombs, a substantial amount of nitrobenzene, 9 "Hilti" caps and an

elaborate excavation in the kitchen floor which was obviously intended to be a hide for the home-made explosives. They also found bags of spoil excavated from the hide. The appellant had become a tenant of the house in March 1989 and had previously lived with her mother in 3 New Barnsley Drive, Belfast, which is only a few minutes walk from the house. (It appears that between the time she left her mother's house with her child and the time at which she took up the tenancy of the house she spent a few months in a hostel run by nuns). The appellant lived for only about 4 weeks in the house and then she and her child moved back to her mother's house: notwithstanding this the appellant retained the tenancy of the house and still had it on 3 October 1989, the day of the explosives find. She was arrested on the morning of the find and was questioned in Castlereagh Police Office by detectives over the 3 day period 3-5 October 1989: on Thursday 5 October she made 2 written statements to the police, and the papers before the lower court and this court included also detailed notes of some 16 interviews of the appellant by the detectives in Castlereagh.

The general picture emerging from the interview notes is this: at the first interview she said that while she had visited the house regularly for a time after returning to her mother's house she had stopped doing this in July 1989 and had not been back since then and in effect did not know of the terrorist activities in the house. However, in the third interview which took place between 4.30 pm and 5.45 pm the same afternoon she altered her story materially and told the detectives about 2 masked IRA men coming to the house on an evening in July, demanding a key to the house, and issuing a threat against her child if she told anyone about their visit. At a later interview that day with the same detectives the appellant maintained that the 2 men arrived masked at the house about 8.00 pm on the July evening and she gave this explanation, notwithstanding that it would have been broad daylight at the time with people moving about and children playing in the area. Her first written statement was to the effect of the outline of facts given above and included a statement, which she had made orally to the detectives on various occasions, that she had not "gone back near the house since this happened [ie the intrusion by the IRA men] until Tuesday morning this week when a girl called Jeanie Irvine from up the street came down and told me that the police were raiding the house". In her second statement she said:

"I want to tell you something else now which I didn't mention in my previous statement. I did go back to my house at 16 Moyard Crescent, Belfast, after the 2 IRA men came 1 night in July. It was about 3 or 4 weeks ago. I was visiting my granny at 66 Moyard Park. I left the house at 12.00 midnight ... As I came up to my house in Moyard Crescent, I just thought I'd call in as I heard there would have been letters there for me. I went in through the front door ... I picked up 2 letters ... I then opened them".

When taxed by the detectives about why she made the further disclosure about her visit to the house between July and October she gave an explanation which seems to us to throw a distinctly unfavourable light on her character and attitude: she said she

realised that her fingerprints would be found on the letters which she had left in the house at the time of her September visit.

Beyond question the whole business of taking the tenancy of the house, then leaving it but not attempting to relieve herself of the burden of the rent and electricity charges - even though the rent was being paid by Social Security - was highly suspicious, and despite the fact that she alleged that threats had been made against her child she did not attempt to raise duress as a defence to the charge.

The learned trial judge took time to consider the sentence after her plea and he obviously formed a very adverse view of the appellant's conduct. He began his judgment as follows:

"Devlin, you have pleaded guilty to the offence of making property available for terrorism, contrary to Section 9(2)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989 in that you permitted your rented house at 16 Moyard Crescent to be used for making a variety of terrorist weapons. The material involved included 7 motor fuse units, 260 kg of material for use in making bombs, a substantial amount of Nitro Benzine, 9 Hilti caps, together with an elaborate hid in the kitchen.

It is obvious that the material in this house would have been sufficient to cause death or serious injury to persons and serious damage to property on a very wide scale.

Your Counsel referred to an element of pressure being brought to bear on you, but no case of duress has been made before the court and I deal with the case as one in which you were clearly co-operating in the preparation of the very gravest type of terrorist activity".

Before us Mr McMahon QC (who appeared with Mr O'Neill for the appellant) submitted that the learned judge was not justified in saying - as he appeared to say - that the appellant knew that the house was to be used for the preparation of the death-dealing substances which were in fact found there. By her plea she admitted knowing generally that the house was to be used for the IRA's purposes but (said Mr McMahon) these could well have been of a much less serious and dangerous nature than was in fact the case. Mr McMahon also submitted that the heavy sentence of 5 years on a young vulnerable woman with a clear record so far as terrorism is concerned resulted from the trial judge's unjustified view of the facts.

We are quite satisfied that, as her plea involves, the appellant knew that the IRA was going to use her house, but however strong one's suspicion might be about the real truth behind her taking a tenancy of the house, we do not think the learned judge was justified in sentencing the appellant on the basis that she knew she was lending her house for use as a bomb factory. She did not plead duress by way of defence, as

distinct from a matter of mitigation, and we have no doubt that she willingly committed the offence charged; we note that she completely failed, despite many opportunities given to her by the detectives, to express any remorse whatever for what she had done or to condemn in any way the activities of the IRA.

We are satisfied that she was a willing co-operator with the terrorists but not to the extent which the learned trial judge referred to. In the result we take the view that on the facts of this case the sentence of 5 years was manifestly excessive. We allow the appeal and substitute a sentence of 2 years for the 5 years originally imposed.