

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

MICHAEL G MAGEE and JOHN FRANCIS O'HAGAN

HUTTON LCJ

After a lengthy trial they together with a number of other accused were convicted and sentenced by Lord Justice Murray at Belfast Crown Court on 11 January 1991. They then appealed against their convictions and the Appellant O'Hagan abandoned his appeal against conviction the Appellant Magee continued with his appeal against conviction and his appeal was then dismissed by this Court in a judgment which the Court gave, they now appeal against their sentences.

The counts in the indictment against them believes they together with other co-accused were charged in the first count with conspiracy to cause an explosion; in the second count they were charged with possession of an explosive substance with intent, that was a radio controlled improvised explosive device; and the third count they were charged with possession of another explosive substance; the fourth count was a lesser charge of possession of explosive substance in suspicious circumstances; and in the fifth count they were charged with conspiracy to murder.

The background to the case against these Appellants was this, in the early hours of the morning of 15 December 1988 the police found a very large bomb hidden in a culvert under the Springfarm Road, near the town of Antrim and the bomb contained about 47 kilos of semtex plastic explosive and there was attached to the bomb a radio scanner which was set to receive a coded signal which would have detonated the bomb and within a short time after the bomb was discovered a bus load of about 12 soldiers going on duty was due to pass over the place where the bomb was concealed in the culvert and if it had been detonated as was the intention of the terrorists who planted it, as the soldiers bus passed over they would all have been killed or some of them might have been seriously injured and others killed. Following the discovery of this bomb the police later in the morning stopped a car which contained a number of men including the Appellant O'Hagan and he was examined and scientific evidence established various fibres in his clothing together with traces of explosives and after stopping the car the police then went to a remote farmhouse near the north shore of Loughneagh which was 36 Black Road,

Randalstown, and a number of people were found in that house and it was clear from what was found in the house and from scientific evidence relating to it that this very large and deadly bomb had been assembled in that house and had been carried from it by car to be placed under or in the culvert on the Springfarm Road. The next day the Appellant Magee was arrested at his home in Antrim and he made a very lengthy statement which set out his involvement in this conspiracy to murder and to detonate the bomb and the Learned Trial Judge referring to the Appellant O'Hagan said this about his part:-

"I am satisfied that he (that is O'Hagan) also was part of the bombing team which was using Number 36 to assemble and dispatch to the culvert the bomb that was intended to kill the soldiers on that December morning in 1988".

I also (inaudible) the article for procedure to O'Hagan explained to him and I had to explain to him, called upon to give evidence and he declined to do so. I recalled that if I had any doubt about O'Hagan's guilt I would have drawn the inference that he was present in the living-room of number 36 during the preparation of the bomb, as an active participating member of the bombing team and the judge then found him guilty on the counts against him. As we have stated the Appellant Magee made a lengthy statement to the police in which he described his part in this conspiracy in great detail. His involvement in summary, consisted of the following ways of involvement. He said that the idea to attack the soldiers at Springfarm had been circulating for about 6 months, and his part in it was to keep an eye on the soldiers in the estate and to get details of their movements and he watched the soldiers and got a citing of a red Dowds van on 3 occasions and he saw that they used the same road in the morning between 7 and 8 o'clock and that he memorised it. He then described how he went to a public house outside Randalstown to a meeting with members of the IRA. He passed on the information about the movements of the soldiers to a man who he believed was in the IRA, and then after that he went to this house in Randalstown and he saw people working there at the bomb and at one stage he helped to carry explosives out of the farm and down a field for a while because they were afraid that someone might be coming. He then describes the bomb being put into the boot of a car and he then got into that car into the front passenger seat and he directed the driver how to go to the place where the bomb had to be placed. He says that he took him round the country roads to get to the site where the bomb had to be placed and it was quite clear that he was familiar with these roads and he assisted the driver and directed him how to get there. When they arrived close to the place where the bomb was to be put into position Magee got out and helped some of the men to lift the bomb material out of the boot of the car and he helped the man to carry the bomb and explosive materials into a field near the junction and he said at the end of the statement that he knew the bomb was going to blow up a military vehicle. So therefore his involvement in this very deadly and murderous conspiracy was a very important one and he played a very substantial part in the events.

In sentencing the Appellant Magee, the judge said this:-

"Magee you have a clear record, but your involvement clearly was very considerable and I have that from your own statement. You gave information about soldiers movements and helped to move explosives, directed the driver of the car where he had to carry the bomb and helped him unload it".

I had advantage of seeing you in the witness box which I didn't have in other cases of assessing your personality and intelligence - you are a man of 24 years of age and not a callow youth easily lead - you have to bear full responsibility, but having regard to the record or lack of it, I fix the term of 20 years' imprisonment in your case on count 5 and counts 1, 2 and 3 the terms of 18 years' imprisonment all concurrent effective, the sentence of 20 years' imprisonment.

In respect of O'Hagan the Judge said in sentencing him your record includes firearm offences in 1975, a possession with intent to endanger life or cause serious injury and you received a sentence of 7 years' imprisonment for that and a sentence for a related offence of carrying a firearm in a public place. You also appear to me to be clearly an experienced terrorist. In your case in count 5 the conspiracy to murder I fix the term of 23 years' imprisonment to reflect the somewhat less serious record behind it, and the Judge said that because another accused was given 25 years that he had had a more serious conviction for a terrorist offence and the Judge went on to say in counts 1, 2 and 3 a term of 18 years, these are all concurrent and the effective sentence is 23 years' imprisonment.

Before returning to consider the specific points that are put before us on behalf of the Appellants this Court thinks it necessary to stress again that those who are convicted of terrorist offences involving conspiracy to murder members of the security forces or civilians and particularly where a conspiracy is to murder a considerable number of persons must receive very severe sentences, not only to punish them, to express the abhorrence of society at such crimes but to deter them and also to deter others and to make it clear to anyone who may engage in such offences that if caught and convicted they will receive very severe punishment and that has been constantly stated and emphasised by this Court.

Now on behalf of the Appellant Magee Mr McCartney has referred to and made a number of points on his behalf. Mr McCartney submits that there is no evidence that the Appellant Magee had been dedicated over a long period of time to assisting terrorism, while he is entitled to make that point on his behalf, but the position is, that Magee has not been punished for previous offences, he was being punished for his involvement in these particular crimes and we consider that there can no criticism of the sentences passed on him. On the basis that it appears, certainly the evidence, the only evidence is that his involvement commenced with these crimes. He was punished for these crimes alone. Then Mr McCartney makes the point that the Judge took account of the consideration that Mr Magee provided the information about the movement of these soldiers as he undoubtedly did and Mr McCartney makes the point that although Magee provided the information the plan did not

originate from him. But again, that may be so, but he was very deeply involved and is a very serious part of this conspiracy that he actually furnished the information which enabled others to plan where the bomb should be placed and detonated. Again, Mr McCartney makes a somewhat similar point in relation to the offences of possession that he had no knowledge or prior use of these explosives, but again the same reply has to be made that the Appellant is being punished for these particular offences alone. Mr McCartney submits that his presence in the farmhouse in Black Road was incidental and he was not deeply involved in the construction of the bomb, but he is being punished, as we have already stated for his giving of information, or his watching the soldiers and for the very important part he played in guiding the driver of the car with the bomb to the place where it was to be placed. Mr McCartney makes a similar point which I really think which is one and the same that Magee's attendance at this farmhouse (inaudible), well he may not have played a very important role in the house but his role in other respects as we have stated was very important and vital to this conspiracy. He said he didn't set the bomb up, he didn't actually go to the place under the culvert or to the position of the culvert or to adapt the radio equipment but, again, his involvement was very important in the overall plan and conspiracy.

As regards the points made by Mr McCartney, there is of course the further consideration which has often been laid down in this Court and other Courts of Appeal and that is that where there is some overall plan to carry out a grave crime, it is not a reason for reduction of sentence to look at the part played by one person deeply involved in it and to say well his part was a little less than someone else. Every conspirator and participant plays a part and in general they should all be punished in the same way for their involvement and there is clear authority, for example, that in a bank robbery the man who acts as the lookout, or the driver of the car should be punished in the same way as those who go into the Bank, but in addition to that as they have stated the Appellant Magee himself played a very important part in this role. It is said that on behalf of the Appellant Magee that he was a dependable tradesman and a good worker, that may be, but unfortunately in an offence of this nature and this gravity where there is a plan to kill a considerable number of people it counts for very little that in his ordinary work he was a good craftsman and a good tradesman. Then Mr McCartney makes the point that when one looks at the sentences passed on the other accused there is a disparity, were we to consider that there is no unreasonable or unjust disparity, the accused Bateson was given 25 years' imprisonment, but that was because he had a worse record.

The accused Gallagher and Coyle were given 17 years' imprisonment but that was because albeit well into the trial, 25 days into the trial, they pleaded guilty, but as my Lord, Lord Justice MacDermott has pointed out, even a late plea is entitled to some discount because it indicates an acceptance of guilt and can indicate remorse.

Then Mr McCartney refers to the sentences passed on Daniel O'Neill and James O'Neill, they pleaded guilty at the start of the trial and Daniel O'Neill was sentenced to 14 years' imprisonment and James O'Neill to 10 years' imprisonment,

but we consider that the reason for that discount and reduction is clear in that Daniel O'Neill immediately confessed his full part in the plan to the police and told them the full nature of the plan and gave them very considerable assistance as to where the bomb was and what was happening and he was therefore clearly entitled to a substantial discount for that. We consider to be clear that James O'Neill as well as being entitled to a discount for his early plea at the start of the trial was involved in a lesser way in that he was not involved in the watching of the soldiers and in guiding the car to the place where the bomb was to be put, but he was involved more in matters such as purchasing a car to assist the gang. And we consider that looking at those differences there can be no criticism on the grounds of unreasonable disparity. Where a Judge makes an allowance and a discount for a plea of guilty the discount may vary on occasions. There is no precise figure to be given and we are satisfied that there is no unreasonable or unfair disparity and that there is no valid criticism in the point of disparity.

As regards the Appellant O'Hagan there is really one point which is advanced by Mr Magee on his behalf and that point is and you should say that before we come to that point that we can see no validity in any criticism that might be made of the sentences imposed upon him having regard to his part in this whole crime and the conspiracy in having regard to his previous conviction. But Mr Magee advances a point to this Court, which he did not advance because of his instructions to the trial judge and that point is that the Appellant O'Hagan has spent a total period consisting a smaller separate period of 3 years and 3 months in prison on charges in respect of which ultimately the Crown did not proceed, so that he was released and Mr Magee makes the point that that is the equivalent when one takes the count of remission to about 4½ years of a prison sentence and in effect Mr Magee submits to us that in considering the sentence passed upon O'Hagan that this Court should take account of that.

While Mr Magee has not been able to advance to us any authority in support of the proposition, that in sentencing either the trial judge or this Court of Appeal should make an allowance for previous time spent in prison on previous charges and it is perhaps not surprising that no authority can be advanced in support of that proposition, because if that were a principle of sentencing it would lead to a somewhat surprising concept that because someone had been in custody on previous charges, that where not proceeded with, he had in a sense built up a period of credit against subsequent offences for which he might be sent to prison, we consider that there is no such principle in sentencing as we have already emphasised this Appellant and the other co-accused were sentenced for their involvement in this very grave crime. We are satisfied that those were proper sentences and we consider that it is not appropriate that we should reduce a proper sentence because of previous periods in custody. If any account is to be taken of those periods we consider that it is a matter for the executive discretion of the Government.

Accordingly, both appeals are dismissed.