

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

STEPHEN MATTHEW SHAW

AND

THOMAS SAMUEL HOUSTON

HUTTON LCJ

At Belfast Crown Court on 24 April 1989 before His Honour Judge Hart QC the appellants pleaded guilty to 6 counts arising out of the throwing of petrol bombs at 2 houses. On the first count the 2 appellants were charged with aiding and abetting arson, on the second count they were charged with aiding and abetting the throwing of petrol bombs, on the third count they were charged with aiding and abetting arson, on the fourth count they were charged with aiding and abetting the throwing of petrol bombs, on the fifth count they were charged with the possession of petrol bombs in suspicious circumstances and on the sixth count they were charged with possession of petrol bombs in suspicious circumstances.

On the first and third counts they were each sentenced to 5 years' imprisonment, on the second and fourth counts they were each sentenced to 3 years' imprisonment and on the fifth and sixth counts they were each sentenced to 3 years' imprisonment, all the sentences were made concurrent and therefore each appellant was sentenced to a total of 5 years' imprisonment.

These offences were committed in the early hours of the morning of 12 July 1988 in Ballynahinch when a group of young men, which included the 2 appellants, threw a petrol bomb at the house of a police officer who was out on duty, and a short time later threw a second petrol bomb at the house of another police officer who was also out on duty.

One petrol bomb was thrown through the back window of the house of Reserve Constable Tate. The dining room and kitchen area were completely destroyed by the fire started by the petrol bomb and much damage was caused inside the house by smoke and then by the water used to put out the fire. Fortunately no member of

Reserve Constable Tate's family was living in the house at the time and the house was empty whilst he was out on duty but, those who planned the attack and carried it out including the appellants did not know this.

The second house attacked was the home of Reserve Constable Brewster in which his wife and children were sleeping whilst he was out on duty. The petrol bomb thrown at his house did not break the window, but it appears that it bounced back from the window and caused scorch damage around it. If the petrol bomb had broken the window, as happened in relation to Constable Tate's house, it would most probably have caused a major fire with the possibility of very serious consequences. Mrs Brewster and her children could well have been subjected to the terrifying experience of being awoken by flames and trapped in a burning house facing serious physical injury, all this without the presence of a husband and father to rescue and comfort them.

After their arrest each appellant admitted his involvement to the detectives who interviewed them. Both admitted that they knew that the houses which were to be attacked with a petrol bomb were the houses of police officers and each said, which was accepted by the Crown, that he did not throw either petrol bomb but that he had kept a lookout. In his second statement to the police Shaw said:

"On the night that we petrol bombed Tate's house, before we did that it was arranged that we would all meet up again afterwards at the hockey pavilion at the Lisburn Road. ... it had all been planned earlier that after Tate's house we would go and petrol bomb Brewster's house in Knockdene. Brewster is a cop too We petrol bombed Brewster's house because he was a policeman and there had been trouble with the police down the street earlier that night."

At the time of the offences Shaw was aged 18, having reached that age on 11 July 1988. He had a completely clear record and came from a respectable home and background. Houston was aged 17. He also came from a respectable home and background and he also had a clear record, save that he faced a charge of having committed an assault occasioning actual harm on a date prior to 12 July 1988, and for that offence he was convicted at Downpatrick Magistrates' Court on 29 September 1988 and was fined £125.00 and bound over in his own recognizance of £200.00 to keep the peace for 2 years.

The learned trial judge took the view that these were very serious offences and that severe punishment should be imposed to deter others. He stressed that the need to impose severe deterrent sentences should prevail over any personal circumstances of the appellants. In the course of sentencing the appellants he said:

"I have to have regard to the fact that both of these petrol bomb attacks were carried out on the homes of serving police officers. The police are in the front line of the struggle against terrorism in Northern Ireland and like members of the Regular

Army and the Ulster Defence Regiment they are constantly exposed by virtue of their duties to the risk of grave injury and death.

They are entitled when this kind of offence occurs to look to the courts to show the disgust which right thinking members of the community must show for this type of cowardly and despicable behaviour because when those officers are serving the public, trying to keep the 2 sides of our community from each other's throats there is a risk that their ability to perform their duties may be impaired by their natural concern for the safety of their homes and the safety of their families.

Their families are entitled to know that if their homes are attacked in this way this type of offence will be punished with considerable severity.

...

I hope that anyone else who is inclined to become involved in this type of incident will think twice when they hear what sentences have been imposed upon you. No matter what your personal circumstances may be I feel that I would be failing in my duty to the public as a whole not to impose sentences of imprisonment."

This court is in agreement with the approach of the learned trial judge in this case. The court considers that the throwing of a petrol bomb into a dwelling house which is known to be occupied, or which appears to be occupied, is a very serious offence which, save in exceptional circumstances, requires a custodial sentence, irrespective of the age or record of the offender.

The offence becomes even more serious if it is committed at night when the occupants of the house might be asleep and might be trapped by the fire started by the petrol bomb, and the judge rightly said that the throwing of a petrol bomb into the home of a police officer is a factor which aggravates the crime because he is entitled to expect that his home and family will be safe whilst he is out on duty risking his life to protect the community.

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.

However in this case, fortunately no injury was caused to any person, and as the appellants are young and have clear, or virtually clear records, and pleaded guilty we consider that the appropriate deterrent sentence to impose on each of them was the maximum period in the Young Offenders Centre, which is 3 years less one day, rather than a term in prison where the appellants would have to serve their sentences with older men. But if these appellants had had previous records for offences of violence, or if they had been older men, or if someone in 1 of the houses had suffered injury, we consider that sentences of imprisonment considerably in excess of 3 years would have been appropriate.

In conclusion we desire to emphasise that, save in exceptional circumstances, a custodial sentence should be imposed on anyone, whether a young person or not, who takes any part, whether as a look-out or otherwise, in the offence of throwing a petrol bomb into a dwelling house which is known or believed to be occupied, and the court is only substituting detention in the Young Offenders Centre for a term of imprisonment in this case because of the youth and clear, or virtually clear, records of the appellants.

We further state that if the imposition of the maximum term of detention in the Young Offenders Centre does not appear to operate against young persons as an effective deterrence to stop offences relating to the throwing of petrol bombs, it may well be necessary for the courts to impose prison sentences considerably in excess of 3 years even on young offenders with clear records.