

Judicial Communications Office

7 October 2020

COURT DISMISSES APPEAL IN TERRORISM ACT CASE

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal by a defendant who was convicted under section 13 of the Terrorism Act 2000 (“the 2000 Act”) of wearing clothing “in such a way or in such circumstances as to arouse a reasonable suspicion that he was a member of a proscribed organisation”.

Joseph Patrick Barr (“the appellant”) was observed by the police wearing paramilitary uniform at the funeral of Michael Barr in Strabane on 5 May 2016. He was one of 12 individuals who were marching in military formation and performing military manoeuvres close to the hearse and which the prosecution stated was a colour party. Footage recorded by a police officer, statements of police at the scene and CCTV footage formed the basis of the prosecution evidence. There was no dispute as to the appellant’s presence at the scene or as to his identity. The appellant did not give evidence, nor call any evidence in his defence. It was submitted on his behalf, however, that the proscribed organisation had not been specified in the charge and that consequently the charge was defective and should be dismissed. This was rejected by the deputy District Judge who found the appellant guilty of the offence.

Following conviction, the following point of law was certified for the opinion of the Court of Appeal:

“Was I correct in law in convicting the Defendant of wearing an item of clothing in such a way or in such circumstances as to arouse reasonable suspicion that he was a member or supporter of a proscribed organisation, contrary to section 13 of the Terrorism Act 2000, when the charge as preferred against the Defendant did not specify any proscribed organisation?”

Counsel for the appellant referred to Rule 6 of the Magistrates’ Courts Rules (NI) 1984 (“the 1984 Rules”) which provides that every complaint, summons, warrant or other document issued for the purpose of any proceedings “shall be sufficient if it describes the specific offence with which the accused is charged or, of which he is convicted, in ordinary language avoiding as far as possible the use of technical terms, and give such particulars as may be necessary for giving reasonable information as to the nature of the charge.” He said this rule is a reflection of the principle that every defendant must know with precision what he is charged with. Counsel asserted that the prosecution, by framing the charge the way it did, meant that the appellant was effectively faced with multiple alternative offences in the one charge as he could have been charged with membership of the IRA or one of the 14 proscribed organisations listed in Schedule 2 to the 2000 Act.

Counsel for the PPS (“the respondent”) argued that there is nothing in section 13 of the 2000 Act to suggest that a material particular of the offence is that an organisation must be specified by name – the only requirement is that it relates to a proscribed organisation. He further contended that the only specific requirement under Rule 6 of the 1984 Rules is that the description of the offence shall

¹ The panel was Lord Justice Treacy and Mr Justice Maguire. Lord Justice Treacy delivered the judgment of the Court.

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contain a reference to the section of the Act and that this has been complied with in the present charge.

Discussion

The Court of Appeal said it is clear law that statutes must be interpreted to give effect to the purpose that Parliament intended them to have:

“It is clear from the terms of section 13(1) of the Terrorism Act 2000 that the intention of Parliament is to prevent public displays of power by proscribed organisations through the use of clothing, emblems and other items which they might display in public. The person commits the offence if the display is done “in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.””

The Court noted that the general approach to proscription in legislation is to proscribe the IRA using a blanket description to embrace all emanations including the Provisional IRA. It said the District Judge in this case had referred to the circumstances in which the appellant wore the clothing specified in the charge against him and agreed that he was dressed, and in circumstances where he engaged with others around him in the ways described, in a way that could not but have aroused a reasonable suspicion that he was a member of a proscribed republican organisation, namely the IRA:

“The legislation does not require the suspicion to be precise in relation to factions. If it were otherwise it would be extremely difficult to utilise the [2000] Act to prevent public displays of paramilitary power because the internal workings of these organisations cannot be known by observation alone. The legislation targets activity which would generate a reasonable suspicion of support for, or participation in, prohibited groups. That is the mischief it is designed to address. It would be wrong to require a degree of specificity in the charges which would prevent the legislation from achieving its purpose.”

Conclusion

The Court was content that the District Judge was entitled to reach the decision he did on the evidence before him and that his decision complied with the requirements of the legislation and the guidance in previous case law. It dismissed the appeal.

NOTES TO EDITORS

This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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