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COURT DISMISSES APPEAL BY CHRISTINE CONNOR AND INCREASES SENTENCE

Summary of Judgment

The Court of Appeal[1] today dismissed an appeal against conviction and sentence by Christine Connor in respect of the offences of attempted murder of a police officer and causing an explosion likely to endanger life or cause serious injury to property. It also increased her sentence from 20 to 25 years imprisonment.

Introduction

On 29 July 2020, following a non-jury trial, Christine Connor ("the appellant") was convicted of the following offences:

- The preparation of terrorist acts between 1 February and 30 May 2013 contrary to section 5(1) of the Terrorism Act 2006;
- Causing an explosion likely to endanger life or cause serious injury to property on 16 May 2013 contrary to section 2 of the Explosives Substances Act 1883;
- Causing an explosion on 28 May 2013 contrary to the same statutory provision; and
- The attempted murder of a police officer on 28 May 2013 contrary to Article 3(1) of the Criminal Law Attempts and Conspiracy (NI Order 1983 and common law.

On 20 August 2020 the appellant was sentenced to 20 years imprisonment plus an extended period on licence of four years. She appealed against her convictions for the offences of attempted murder of a police officer and causing an explosion likely to endanger life or cause serious injury to property. She also appealed against the sentence imposed. The Director of Public Prosecutions ("DPP") also referred the sentence to the Court of Appeal maintaining that it was unduly lenient.

The Court set out the prosecution and defence case in paragraphs [5] to [12] of its judgment. It then detailed the judgment of the trial judge in paragraphs [13] to [45].

APPEAL AGAINST CONVICTION

There were two grounds of appeal against conviction:

1. The trial judge erred in law in refusing the appellant's application for a direction of no case to answer in respect of the count of causing an explosion likely to endanger life or cause serious injury to property; and
2. The trial judge erred in law in finding the appellant guilty of attempted murder.

[1] The panel was the Lord Chief Justice, Lord Justice McCloskey and Mr Justice Scoffield. Lord Justice McCloskey delivered the judgment of the Court.

By virtue of section 2 of the Criminal Appeals (NI) Act 1980 the single overarching question for the Court of Appeal is whether either of the convictions under appeal is unsafe. This entails the application of the test of whether the court has a sense of unease, or a lurking doubt about the safety of the conviction under challenge[2].

First Ground of Appeal

The essence of the submission that the appellant had no case to answer in respect of the count of causing an explosion likely to endanger life or cause serious injury to property was that there was no evidence that anything deployed in the area in question at the material time on 16 May 2013 was of a nature likely to endanger life or cause serious injury to property. This submission drew attention to the evidence concerning a flash and loud bangs, the absence of any debris, the presence of two scorch marks on the road but no other damage on the road surface, the absence of any damage to a vehicle driven by a witness, the CCTV footage showing a quick flash and rapidly vanishing plumes of smoke and the view expressed by the attending police officers that fireworks had been set off. It was submitted that, given the foregoing, the court could not be sure that a pipe bomb had exploded and thus that the appellant had caused an explosion likely to endanger life and, consequently, the court could not be sure that the appellant intended to endanger life. It was accepted that the appellant had a case to answer as to whether it was she who was responsible for what had occurred.

The trial judge addressed this issue in his judgment setting out the test which he had to apply in a non-jury trial, namely, whether there was sufficient evidence for him to decide that the discrete ingredient of causing "… an explosion of a nature likely to endanger life or to cause serious injury to property …" was established. In his findings and conclusions at [205] – [206], the trial judge said he was satisfied beyond reasonable doubt that the appellant had caused two explosions to detonate highlighting the circumstantial evidence of extensive research by her and "D"[3] into constructing pipe bombs and ordering the necessary component parts and explosive fill. He was satisfied beyond reasonable doubt that two pipe bombs were thrown by the appellant at the approach civilian vehicle. The trial judge also took into account the appellants descriptions in her subsequent communications with D which the Court of Appeal observed the essence of which was that the enterprise had been an unqualified success and which had overtones of celebration and self-congratulation.

The trial judge rejected the suggestion of a reasonable possibility of what was seen and heard had been caused by fireworks. He said he was satisfied beyond reasonable doubt that the explosions were pipe bombs with the real capacity to endanger life or cause serious physical damage to property deployed onto a road and into the path of an oncoming vehicle. In addition, the prosecution pointed to a "Practice Run" video tape and evidence of the planning and preparation phase between February and May 2013 which demonstrated extensive references to research into pipe bombs, the acquisition of component parts and chemical ingredients for these devices, their manufacture and, finally, the delivery of a parcel from D to the appellant.

The Court of Appeal said there was no error in the trial judge's self-direction in law. Nor did he commit any error of fact in his rehearsal of those elements of the evidence which he highlighted and, furthermore, the materiality of this evidence is beyond dispute. The Court said the trial judge correctly considered these items of evidence in their entirety and his conclusions were based largely

[2] See *R v Pollock* [2007] NICA 34 at para [32]

[3] The Court of Appeal used the cipher "D" to describe a person named in the papers and judgment of the trial judge. This person was not convicted of any offence arising out of the events relating to the convictions of the appellant and is now deceased.

on undisputed and indisputable evidence. Having correctly directed himself in law, the trial judge then had to form and evaluative judgement on the sufficiency of the material evidence. This came down to the central question of whether, at the stage when the prosecution case was closed, on one possible view of the facts there was sufficient evidence upon which the trial judge, as a tribunal of fact, could properly conclude that the appellant was guilty beyond reasonable doubt of having perpetrated the attack using a pipe bomb.

The Court said there was an abundance of evidence supporting the view that the devices prepared for the purpose of and deployed in the attack on 16 May 2013 were pipe bombs. The legal test focuses on the "potential" of these devices rather than their actual effects. The Court said the trial judge applied the test of whether the prosecution had adduced evidence which would "conceivably support" a verdict of guilty in respect of this count and asked himself whether there were any circumstances in which he could properly return a verdict of guilty:

> "The judge expressed himself satisfied beyond reasonable doubt that the appellant had thrown the devices and the devices were pipe bombs. There is no discernible flaw in his approach. The undisputed evidence was that pipe bombs are constructed with the aim of showering shrapnel in all directions. We consider that there was ample evidence to support the judge's finding that the devices were pipe bombs and that, in those circumstances and in light of the other evidence before him, they were likely to endanger life or cause serious injury to property. Our foregoing analysis and conclusion are dispositive of the first ground of appeal, which we dismiss."

Second Ground of Appeal

It was contended that the court could not be sure of the requisite intent on the appellant, namely an intention that a police officer would be killed as a result of the attack, by reason of four considerations:

- The court could not be sure that the appellant had thrown the pipe bombs and, moreover, the prosecution had not advanced this case at any stage;
- The use of a pipe bomb is not something from which an intent to kill must inevitable be inferred;
- The circumstances of the throwing of pipe bombs were not supportive of an intention to kill; and
- There was not additional, immediate, contextual evidence supportive of a direct intention to kill.

The *mens rea* which must be established beyond reasonable doubt in order to establish the guilt of an accused person of attempted murder is intention to kill. The Court said the trial judge's self-direction was impeccable and noted he added with some emphasis that "No lesser intention will suffice". The trial judge then grappled with the issue of the strength and quality of the evidence concerning the appellant's participation in the events. The defence had submitted that there was good evidence to suggest the appellant did not throw the pipe bombs based on evidence by a police officer and a member of the public about the presence and movement of what they believed to be two different men in the area following the explosions. The trial judge then summarised aspect of the evidence including the first of the explosions which was preceded by a fizzing large metallic object which landed on the ground a couple of inches from the police officer's foot and the ensuring explosion as the officer fled. The trial judge said he was satisfied beyond reasonable doubt that "this

pipe bomb was close enough to have killed [the police officer], well within the 1-3 metre lethal zone described by Professor Crane". The trial judge continued: "I am further satisfied that whoever threw that pipe bomb was intent on killing police. Indeed it was followed almost immediately by the deployment of another pipe bomb."

The Court noted that the trial judge's self-direction was that he must give consideration to "circumstantial matters" pointing away from the conclusion that the appellant had committed the offence, giving "considerable credence" to any such evidence. This included the requirement to identify circumstances "… which tend to establish innocence and more especially circumstances which are inconsistent with guilt …" Having laid the ground in this way the trial judge progressed to the analysis of the cumulative force and weight of the circumstantial, DNA and forensic evidence pointing toward the appellant's guilt. He then concluded, beyond reasonable doubt, that the appellant "threw the two pipe bombs from the alleyway of the Crumlin Road towards the [police officer] and at the time of doing so she intended to kill him."

The Court said that in order to convict the appellant of the count of attempted murder it was not necessary for the trial judge to find beyond reasonable doubt that she was the person who had thrown the two pipe bombs. Rather, it was open to him to find that her participation in the explosions could have, for example, took the form of planning and preparing the pipe bomb attack. The Court added that the trial judge could also have properly found that her involvement in the joint enterprise had been of a non-specific kind: "The effect of the judge's conclusion beyond reasonable doubt that [the appellant] had [actually thrown the pipe bombs] was that the prosecution had over-achieved. Their aspirations at the outcome of the trial had been too modest".

The Court considered the trial judge's self-directions were beyond reproach:

> "He engaged with the defence arguments, he took into account all material aspects of the evidence, he left nothing material out of account and he reached an outcome which was reasonably available to him. This ground of appeal must fail accordingly."

The Court said it had no concerns about the safety of the appellant's convictions and dismissed the appeal.

APPEAL AGAINST SENTENCE

The appellant contended that her sentence of 20 years imprisonment was manifestly excessive but the DPP contended that it was unduly lenient.

In paragraphs [3]–[10] the Court outlined the legal test to be applied in an unduly lenient referral and the guideline sentencing decisions. In this case the trial judge had provided a separate sentencing judgment in which he considered the question of whether the appellant was a "dangerous" offender within the framework of the Criminal Justice (NI) Order 2008. The trial judge concluded that the test for dangerousness had been met and the Court said considered the assessment and conclusion unimpeachable.

The trial judge, having concluded that the offending of the appellant did not warrant a life sentence or an indeterminate sentence, then considered the aggravating and mitigating factors. The Court paraphrased the seven aggravating features identified by the trial judge: furtherance of a violent political cause; the cunning and deceit employed to lure two police officers to the scene; extensive

planning and preparation; a central role (throwing the pipe bombs); two separate episodes of criminality; a lack of remorse; and the factor of a live suspended sentence when the offences were committed. The trial judge then identified three mitigating factors: the appellant's mental and physical ill health; the lack of sophistication in the pipe bomb attacks; and the appellant's limited criminal record. He recognised, however, that in terms of personal mitigation it had to be recognised that this was of limited consequence given the gravity of the offences.

The Court said that while some of the aggravating features identified by the trial judge were intrinsic elements of the offences committed, the assessment did not apply to the factors of elaborate planning and preparation, the commission of two attacks within a period of some two weeks and the circumstance of a live suspended sentencing. The Court also considered that reckless disregard for the safety and lives of innocent residents and other civilians, such as passing motorists, in a residential area was a further free-standing aggravating feature.

The Court did not consider that any of the three mitigating features identified by the trial judge could be sustained for the following reasons:

- The evidence relating to the appellant's mental and physical ill health suffered from "manifest limitations" and fell demonstrably short of the elevated threshold established in case law;
- The absence of professional sophistication in the "murderous attacks" could not conceivably be characterised as a mitigating feature and was extinguished by the consideration of meticulous and determined planning and preparation;
- It was erroneous to have ranked the appellant's limited criminal record and her good conduct whilst on bail as a mitigating factor: "No credit for either was warranted as a matter of long-standing sentencing principle."

The Court said there were no flaws in the trial judge's identification of aggravating and mitigating features but that his transition from a starting point of 25 years to a terminus of 20 years could not be sustained:

> "Having regard to the building blocks which [the trial judge] identified, aggravation comfortably outweighed mitigation and the outcome should therefore have been a sentence of at least 25 years imprisonment."

The Court then evaluated the judge's terminus of 20 years imprisonment in light of its assessment of the features which should properly be assigned to the aggravating and mitigating categories and said this readily produced the conclusion that the sentence should have been in the bracket of 25 to 28 years imprisonment. It concluded:

> "The attempted murder of any member of the security forces in Northern Ireland is a heinous crime, demanding of condign punishment. The offending of Ms O'Connor is characterised by a multiplicity of aggravating facts and factors and a stark absence of mitigation. The sentencing of the trial judge was unsustainably generous. We substitute a sentence of 25 years imprisonment accompanied by an extended licence period of four years for the attempted murder of [a police officer]. We affirm the lesser concurrent sentences imposed by the judge in respect of the other offences, about which there was no debate. The appellant's appeal against sentence is dismissed."

NOTES TO EDITORS

1. 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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