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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

ERIN CORBETT

Mr Gerald Simpson QC with Mr Robin Steer (instructed by the Public Prosecution Service) for the Crown
Mr Donal Sayers QC with Mr Stephen Toal (instructed by KRW Law LLP) for the Applicant

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Before: Keegan LCJ, Treacy LJ and Sir Paul Maguire

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] On 5 March 1991 the applicant pleaded guilty to five offences of making property available to others knowing or suspecting that the property might or would be used in connection with terrorism. These were scheduled offences pursuant to section 9(2)(a) of the Prevention of Terrorism (Temporary Provisions) Act 1989.

[2] On 9 May 1991 the applicant was sentenced by Hutton LCJ to five years' imprisonment suspended for five years in relation to the said offences. This was following a trial in relation to events surrounding the kidnapping and interrogation of Alexander "Sandy" Lynch in which the applicant was one of 10 co-accused all of whom were convicted at trial for related offences.

Background

[3] For the purposes of this application the background may be briefly stated as follows. Sandy Lynch was kidnapped on 5 January 1990. On 7 January 1990 police, assisted by army personnel, went to premises at 124 Carrigart Avenue, Lenadoon,

following a tip-off that a man was being held there against his will by members of the Provisional IRA. There police found Sandy Lynch and rescued him from some of his captors and interrogators who were present. Danny Morrison who was one of the co-accused at trial was arrested in 126 Carrigart Avenue having made his way from the rear of 124 as the police and army arrived. The address at 124 Carrigart Avenue was the home of James Martin and Veronica Martin otherwise known as Ryan. Some of the others who were charged were part of this operation.

[4] On 29 October 1990 Sandy Lynch provided a formal deposition in relation to events. In this he maintained that he was kidnapped by the IRA and interrogated due to suspicions that he was an informer. In relation to the events of 5 January 1990 the deposition refers as follows:

> "The arrangement was made on Wednesday 3 January. The meeting was to take place at 9 Antigua Court in the Ardoyne area of Belfast. At that time I knew the owner of the place as Erin. I had been to that house before that time. I had met her on the occasions before. The house was used as a drop house and a meeting house. A drop house is where messages are left and collected. On Friday 5 January we were to meet at 6:30pm.
>
> I then went to 9 Antigua Court and I entered the house from the rear. I saw the girl I knew as Erin in the kitchen of that house."

This deposition comprised part of the evidence at trial against the applicant.

[5] It is common case that the applicant was not directly involved in the events relating to the kidnap and interrogation of Sandy Lynch. Her involvement was in providing the first port of call on the evening where the interrogation of Sandy Lynch took place and from which house he was subsequently brought to 124 Carrigart Avenue.

[6] There the connection with the events relating to the kidnap and interrogation of Sandy Lynch ends. This activity was comprised in count 9 only. The other counts relate to prior provision of property by the applicant for IRA purposes between 1989 and 1990. The applicant made admissions in relation to these separate offences during interview. All of the others convicted after the trial have successfully appealed their convictions. The applicant is the last to appeal.

[7] The statutory time limit for appeal is 28 days from the date of conviction, verdict or finding under challenge by virtue of section 16(1) of the Criminal Appeal (Northern Ireland) Act 1980. This court may extend time by virtue of section 16(2) but will only do so if there if there is merit: see *R v Brownlee* [2015] NICA 39 particularly paragraph 8(v) and (vi). The applicant applies for leave to appeal her

convictions out of time to this plenary court having been refused by the Single Judge on the basis that the full court should determine the matter. We have proceeded on a "rolled up" basis to consider the application to extend time alongside consideration of the merits of the case.

The applicant's case

[8] The application is advanced on the basis that direct material evidence was withheld from the Director of Public Prosecutions ("DPP") at the time of the trial as to the circumstances of these offences with the result that the applicant was denied a fair trial and denied the ability to apply to exclude evidence or the opportunity to apply for a stay of proceedings on the basis of abuse of process.

[9] The applicant renews an application for leave to appeal, applies to admit fresh evidence to support her case in the form of two affidavits dated 1 July 2019 and 25 April 2022. This evidence formed the basis of an application pursuant to section 25(1)(c) of the Criminal Appeal (Northern Ireland) Act 1980 to adduce the fresh evidence contained in the affidavits.

[10] The prosecution concedes that one count, count 9, is unsafe for the same reasons that the convictions in *R v Morrison and others* [2009] NICA 1 and *R v Ryan and Martin* [2014] NICA 72 were quashed namely that relevant sensitive material was not disclosed at trial in relation to the possible involvement of state actors in the commission of the offences. These related cases were concerned with the kidnap and interrogation by members of the IRA and the murder of Joseph Fenton who was taken to the same address and then shot by the IRA as he was suspected of being an informer.

[11] Count 9 relates to a specific offence on 5 January 1990 and concerns the use of property at 9 Antigua Court for the commission or furtherance of acts of terrorism immediately prior to the kidnap and interrogation of Sandy Lynch. The other four counts pre-date count 9 and span a period from 1 January 1989 to 21 January 1990. These counts encompass the same type of activity at 9 Antigua Court and another address at which the applicant resided, 10 Glenview Court but are independent of the events surrounding the kidnap of Sandy Lynch.

[12] Flowing from the above, the core question for this court is whether the offences are interlinked or separate as that will determine the safety of the convictions. To answer this question we begin by examining the affidavit evidence and the applicant's interviews during which she made the admissions which formed the basis of her convictions.

The affidavit evidence

[13] The applicant's first affidavit is dated 1 July 2019. In it the applicant accepts that the offences in question were planned and ordered by members of the

Provisional IRA. She also explains that at the time of the offences her now ex-husband was serving a period of imprisonment for terrorist related offences as a result of his involvement in the IRA. The applicant continues, providing the following concession:

> "I was therefore very aware of who his associates were in the PIRA. The association to my ex-husband in turn led several members of PIRA to approach me and prevail upon me to give them the keys of my house so that they could conduct meetings."

[14] As to her own position the applicant also states as follows:

> "For absolute clarity, I have never been involved in paramilitary activity and I do not support, and never did support, their illegal activities. Since the separation from my ex-husband I have led a law abiding life and I managed to secure many promotions in my career and I now occupy a reasonably prominent position in employment."

[15] She then explains the context of events in the following terms:

> "At the time that this was happening I was petrified as I feared for my children if the police found out and thought that I was involved with these people. Through fear and misguided loyalty to my ex-husband and his perceived associates I did however give the keys of the property to various members of PIRA. Through the years there were a number of meetings in the house. At times the participants arrived when I was still there and it was clear who the organisers were by the way in which they interacted with each other. Although I did not know all of the names of the men at the time, I subsequently identified them from the press and television coverage through the years."

[16] In this affidavit the applicant also names five persons who she identifies as organisers or attendees at her house during the relevant time including Sandy Lynch. Tellingly, contained in this affidavit there is no identification of the person who asked the applicant to provide her property for terrorist purposes.

[17] In order to explain why she pleaded guilty at trial, the applicant states as follows:

> "At the time of my trial I pleaded guilty as a result of my personal circumstances, in that I had three children who were aged seven, three and one and a half. I also got an indication from the judge through my counsel and I was offered a suspended sentence and I felt I could not turn that down. I wasn't aware that any of the foregoing men might have been agents when they prevailed upon me to let them use my house."

[18] A second affidavit was filed by the applicant of 25 April 2022 after this case was listed for hearing and subsequent to some queries raised by the court as to potential gaps in the evidence. In this second affidavit the applicant identifies the man who first asked her about the use of the house. This is the first time an identification is made by the applicant.

[19] In this second affidavit the applicant also provides the rationale for allowing her property to be used as follows:

> "I was not given a free choice in whether my property could be used for IRA meetings. It was a very long time ago, but I recall that the essence of the conversation was along the lines of "we need to use your house OK? It was also communicated to me that my husband had given his approval."

[20] She also explains in the affidavit that she feared what would happen to her children and asserts that at the time the IRA had complete control over the Ardoyne area and so she was "in no position to make some type of stand against the IRA."

[21] In addition to the extracts of evidence summarised above the applicant states that she is a woman who has lived a law abiding life since these offences and that she has been employed in a responsible position. She states that she has separated for some time from her ex-husband who she accepts was associated with the IRA. She also states that she considers the convictions; "a blight of my life and my reputation as I never voluntarily would have associated myself with any unlawful organisation."

[22] We do not doubt the applicant's sincerity in making these statements. However, we cannot simply take these claims at face value given the serious nature of this case. Rather we must consider these averments in context and compare them with the case made contemporaneously at interview which we have considered. We will not recite all of the interview detail for the sake of economy. However, we think that some sections are of particular significance and so we highlight material extracts in the following paragraphs.

The interviews

[23] The applicant was arrested on 23 January 1990. She was interviewed over three days between the 23 and 25 of January 1990 before being charged on 25 January 1990. The first series of interviews all related to the events which led to the freeing of Sandy Lynch, in that the applicant was asked about allowing her house to be used by the IRA specifically in relation to the plot to kidnap Sandy Lynch.

[24] Until the tenth interview which was on 24 January 1990 the applicant denied the allegations put to her. In the tenth interview she admitted that Sandy Lynch rapped the door of her house and told her that he had to meet someone there. She also said that she thought the men he was meeting were Provisional IRA.

[25] During the twelfth interview which was also on 24 January 1990 the applicant was told that the police believed that other Provisional IRA meetings had taken place in her house prior to 5 January 1990. She went on to say that meetings took place there on average once a week, sometimes twice a week and sometimes not for a couple of weeks. When questioned, she also replied as follows:

> "Q. How long did the PIRA start using your house?
>
> A. Just over a year ago.
>
> Q. Tell us how this came about?
>
> A. I was approached by a man who asked me if the PIRA could use my house for meetings.
>
> Q. Did you agree to this?
>
> A. Yes."

[26] Later in this interview she stated that Sandy Lynch was mostly at the other meetings. She also said that prior to Sandy Lynch coming to her house on 5 January 1990, another person called at her house to tell her that Sandy Lynch would be coming. During this interview the applicant agreed to make a written statement. That statement which is signed and dated 24 January 1990 contains the following admission:

> "About a year ago I was asked by a man would I allow the Provisional IRA to use my house. I agreed."

[27] During the thirteenth interview the applicant told the police that she had lived at the address at 9 Antigua Court from the end of August 1989, prior to that

she lived at a previous address 10 Glenview Court. Some questions and answers from this interview bear recitation as follows:

> "Q. Did the PIRA use your house when you lived in 10 Glenview Court?
>
> A. Yes. It is over a year since they started coming to my house.
>
> Q. So they used both these houses when you lived in them?
>
> A. That's right.
>
> Q. How did this all come about – the PIRA using your home?
>
> A. Someone just came and said they needed my house for meetings and things. They didn't need to say anything else, I knew what it was for and who they were. I don't think they even said Provisional IRA at that time, because they knew I knew.
>
> Q. What did you say?
>
> A. I agreed. I think I said just as long as it is only meetings or something like that?
>
> Q. Why did you say you allowed them to use your house?
>
> A. I don't know, I suppose I thought it was the right thing to do."

[28] In this interview the applicant also gave the following replies to questions:

> "Q. What about this person who stayed in your house?
>
> A. He just stayed in Glenview Court, he hasn't stayed since I moved to Antigua Court."

[29] Drawing all of the above together we identify some striking facts which emerged during this series of interviews. First, the applicant does not allege duress at any point. Second, the applicant does not identify the man who asked her for use of her property for the IRA. This is in keeping with an overall reticence on the applicant's part to divulge any information. In fact, as we have said it is only as the

interviews progress that the applicant makes the admissions that then form the basis of the evidence against her. The third fact is that at no point either at the time or now does the applicant make any allegation of ill treatment by police during interview. This is the contextual setting in which we must assess the strength of the applicant's arguments.

The arguments

[30] Two core points are raised by the applicant in support of this appeal as follows:

(i) That all of the convictions are unsafe on the basis of the involvement of a state actor in the commission of the crimes who effectively entrapped the applicant.

(ii) In the alternative that the applicant was deprived of the opportunity to make an application at trial for the exclusion of her confession and or an abuse of process application on the basis of the general circumstances surrounding these offences.

[31] The prosecution case is crisply put at paras [29] and [32] of its skeleton argument in the following way:

> "The fundamental difference between the appeal of this [applicant] and the above mentioned cases is that in her interviews in 1990 she has admitted allowing her property to be used well before the events of 5 January 1990 and there is no apparent connection to the kidnapping/murder of Fenton.
>
> Accordingly, the convictions of the appellant are entirely free-standing from the Fenton kidnapping and murder and the Lynch kidnapping."

Examination of sensitive material

[32] At the specific request of the applicant we conducted an examination of sensitive material to decide if there was undisclosed material which was relevant to the four convictions which the prosecution maintained were valid. To this end we conducted two closed hearings to examine the intelligence available to police in relation to these crimes. As we have said the safety of count 9 and the issues pertaining to the false imprisonment of Sandy Lynch were not at issue as the prosecution conceded that count 9 should be quashed for the same reasons as the convictions in *R v Morrison* and *R v Ryan and others* were quashed.

[33] The exercise we conducted focussed on whether any sensitive material existed which could assist the defence in the wider claims made by the applicant. Of core

relevance was the connections of the person identified by the applicant as the man who had asked her to offer her house in the first place prior to the events surrounding the kidnapping and interrogation of Sandy Lynch. We examined this issue carefully. Having done so we were satisfied that there was no relevant sensitive information that would assist the defence or validate the applicant's case in relation to state involvement in relation to the four convictions at issue which were separate from the Lynch and Fenton cases.

[34] We communicated this outcome to the defence and allowed an opportunity to the defence to consider any implications and specifically whether or not evidence needed to be called from the applicant. Following from a brief pause Mr Sayers indicated that the applicant would not give evidence and that the appeal would proceed on legal submissions only.

[35] Mr Sayers made the argument that because count 9 should be quashed and because the questioning of the applicant came about as a result of the evidence of Sandy Lynch that this infected the other counts. This he said led to a situation where the applicant did not have a fair trial in that she could not apply to exclude evidence or apply for an abuse of process at trial. The simple proposition in response advanced by Mr Simpson was that as the other offences pre-date count 9 and are not of the same species the convictions for the four other counts should stand.

[36] In undertaking an analysis of this refined appeal we decided to admit the fresh evidence in affidavit form to determine whether in the light of all available information this is a case of entrapment and/or whether abuse of process can be established. If either argument were made out it would have a bearing on the safety of the convictions.

Discussion

[37] The law in this area has been examined recently by our Court of Appeal in *R v Hill* [2020] NICA 30. In that case Morgan LCJ referred to *R v Latif* [1996] 1 WLR 104 which was a judgment of the House of Lords in relation to entrapment. In that case the House of Lords affirmed the principle that entrapment is not a defence under English law but a court has discretion to stay proceedings for abuse of process in any given case where it would be an affront to the public conscience to continue. This may arise in circumstances of entrapment by law officers or state actors in the Northern Ireland context in the commission of criminal offences. Whether the claim does result in the quashing of a conviction will depend on all the circumstances.

[38] At paras 26-29 of *R v Looseley* [2001] UKHL 53 the House of Lords provided guidance as to how to proceed as follows:

> "26. The nature of the offence. The use of pro-active techniques is more needed and, hence, more appropriate, in some circumstances than others. The secrecy and

difficulty of detection, and the manner in which the particular criminal activity is carried on, are relevant considerations.

27. The reason for the particular police operation. It goes without saying that the police must act in good faith and not, for example, as part of a malicious vendetta against an individual or group of individuals. Having reasonable grounds for suspicion is one way good faith may be established, but having grounds for suspicion of a particular individual is not always essential. Sometimes suspicion may be centred on a particular place, such as a particular public house. Sometimes random testing may be the only practicable way of policing a particular trading activity.

28. The nature and extent of police participation in the crime. The greater the inducement held out by the police, and the more forceful or persistent the police overtures, the more readily may a court conclude that the police overstepped the boundary: their conduct might well have brought about commission of a crime by a person who would normally avoid crime of that kind. In assessing the weight to be attached to the police inducement, regard is to be had to the defendant's circumstances, including his vulnerability. This is not because the standards of acceptable behaviour are variable. Rather, this is a recognition that what may be a significant inducement to one person may not be so to another. For the police to behave as would an ordinary customer of a trade, whether lawful or unlawful, being carried on by the defendant will not normally be regarded as objectionable.

29. The defendant's criminal record. The defendant's criminal record is unlikely to be relevant unless it can be linked to other factors grounding reasonable suspicion that the defendant is currently engaged in criminal activity. As Frankfurter J said, past crimes do not forever outlaw the criminal and open him to police practices, aimed at securing repeated convictions, from which the ordinary citizen is protected: see *Sherman v United States* [1957] 356 US 369, 383."

[39] This guidance was utilised by the Court of Appeal in *R v Hill*. In that case the Court found that entrapment was not made out, rather it was a case of "unexceptional opportunity" which the defendant had accepted and admitted.

Therefore, the court concluded that "the failure to disclose the participation of informers in the commission of the crime did not deprive the appellant of any opportunity to stay the proceedings on the basis of entrapment."

[40] As the Court did in *R v Hill* we also endorse the observations of Lord Lowry in *R v Fitzpatrick* [1977] NI 20 at 31D where he said:

> "If a person behaves immorally by, for example, committing himself to an unlawful conspiracy, he ought not to be able to take advantage of the pressure exerted on him by his fellow criminals in order to put on when it suits him the breastplate of righteousness. An even more rigorous view which, as we have seen, prevails in the United States, but does not arise for consideration in this case, is that, if a person is culpably negligent or reckless in exposing himself to the risk of being subject to coercive pressure, he too loses the right to call himself innocent by reason of his succumbing to that pressure."

[41] This case has different characteristics to those discussed above however application of the principles clearly results in the same outcome as in *R v Hill* as regards entrapment. Whilst conceded in relation to count 9 it is not determinative as to the other counts. As we have said the sensitive material we have seen does not support the applicant's case as regards the other counts. Her case therefore represents an unexceptional opportunity to commit the criminal offences other than count 9 which she admitted at interview.

[42] The second wider argument based on abuse of process does not depend upon entrapment. This ground of appeal is intimately connected with the fairness of the proceedings as a result of which the applicant was convicted. Initially, Mr Sayers relied on the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE") to support this argument. However, he subsequently accepted that PACE does not apply to this case.

[43] Article 76(2) of PACE specifies that nothing in Article 76(1) shall affect the operation of section 8 of the Northern Ireland (Emergency Provisions) Act 1978:

> "**8. Admissions by persons charged with scheduled offences**
>
> (1) In any criminal proceedings for a scheduled offence, or two or more offences which are or include scheduled offences, a statement made by the accused may be given in evidence by the prosecution in so far as—

(a) it is relevant to any matter in issue in the proceedings; and

(b) it is not excluded by the court in pursuance of subsection (2) below.

(2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, prima facie evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies it that the statement was not so obtained—

(a) exclude the statement."

[44] Therefore, we agree with the prosecution submission that applying these provisions the applicant would not have been able to make an application to exclude the admissions under Article 76 of PACE as the confession was not obtained by virtue of torture or inhumane or degrading treatment as defined in section 8 of the Northern Ireland (Emergency Provisions) Act 1978.

[45] Mr Sayers was left with an argument based on the residual judicial discretion to stay proceedings for abuse of process. A judicial discretion to exclude statements remains, but the exercise of any such discretion was not to be such as to defeat the purpose of the section, see *R v Brown* [2012] NICA 14 at paragraphs 12-13 citing *R v Corey* [1973] NIJB December 2 page 5-6 and *R v McCormick* [1977] NI 105. To this must be added the Convention considerations which compliment domestic law as explained in *Teixeira de Castro v Portugal* [1998] 28 EHRR 101.

[46] Mr Sayers presented the remaining argument as follows:

(i) Had the relevant disclosure been made, it would have enabled an application for a stay of proceedings as an abuse of process and/or an application to exclude evidence.

(ii) That the ability to make such application would not have been confined to count 9.

(iii) That it cannot be said whether such application would or would not have been granted.

[47] The most recent analysis of the obligation of the court to stay criminal proceedings as an abuse of process was the decision of the Supreme Court in *R v Maxwell* [2011] 1 WLR 1837. At para [13] of that case Lord Dyson said that it was well established that the court has power to stay proceedings where it offends the

court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In that category of case the court is concerned to protect the integrity of the criminal justice system and a stay will be granted where the court concludes that in all the circumstances the trial will offend the court's sense of justice and propriety or will undermine public confidence in the criminal justice system and bring it into disrepute.

[48] In his skeleton argument Mr Sayers maintains that had the operation in respect of the false imprisonment of Sandy Lynch not taken place, he would not have provided evidence leading to the applicant's arrest and detention, and her consequent admissions. He makes the case that it is the logical outworking of *R v Morrison* and the prosecution stance in respect of the appeal on count 9 that if the prosecution of the applicant on count 9 was improper, her arrest in respect of that offence similarly should not have occurred. She should not, it follows, have been prosecuted for offences which came to light only by way of Sandy Lynch's evidence in respect of offences with substantial state involvement from which flowed the applicant's arrest and detention, and consequent admissions.

[49] This is not an argument that has arisen in any of the other cases that we have been provided with. However, in our view, the answer to the question simply involves application of principle to the particular facts and we determine it as follows. Firstly, it is quite clear from the interviews that we have examined that the applicant at that time through a series of interviews did not identify duress as an issue. She also quite clearly indicated that she knew that members of the Provisional IRA were using her property. So, duress is not an issue. The next question is whether this is truly an entrapment case. We have, as we have said, found that there was no state actor involvement in the original request to the applicant to provide her property one year before these events took place. It is therefore impossible to see how the applicant can claim entrapment by a state actor. There is simply no evidential basis to support that argument.

[50] The remaining question is whether or not there is merit in the more procedural point that the applicant was denied the opportunity to make a stay application to the trial judge on the basis of abuse of process. We can see why this point is raised. The applicant comes before this court saying that she was not a sympathist with the IRA and therefore wants to clear her name. However, at the time of these serious criminal offences it appears that she willingly gave up her property. This was well before the Sandy Lynch incident. Therefore, we do not consider that the applicant was prejudiced by the lack of disclosure at trial of sensitive material relating to that incident.

[51] Equally, we do not accept the argument that there is a case of *de facto* duress as a result of the general conditions in Northern Ireland prevailing at the time. We cannot accept this argument as it overlooks the fact that notwithstanding the conditions prevailing at the time the general population in North Belfast and

elsewhere in Northern Ireland did not allow their houses to be used by the IRA for terrorist purposes.

[52] In *R v Hill* the case was plainly one where the appellant was provided with what the court considered was an unexceptional opportunity to commit a crime which he duly accepted. In that case the failure to disclose the participation of informers in the commission of the crime did not deprive the appellant of any opportunity to stay the proceedings on the basis of entrapment.

[53] Therefore, it seems to us that without any other evidential basis the convictions in relation to counts 10 to count 13 cannot be said to be unsafe. These are not convictions based on instigation or inducement by the police or state agents by way of manipulation of the applicant. We do not consider that the applicant's argument is sustainable that the criminal justice system would be compromised if such prosecutions were pursued.

[54] It is perhaps difficult for the applicant to process these convictions in circumstances where all of the co-accused in the other case relating to Lynch were acquitted. However, as we have said the bulk of her offences pre-date that circumstance quite substantially. On the basis of all of the material received and the submissions made we do not consider that the arguments made on the basis of entrapment and / or abuse of process have been sustained.

Conclusion

[55] Accordingly, for the reasons we have given it is our conclusion that the convictions on counts 10, 11, 12 and 13 are not unsafe and should stand. Therefore, we refuse an extension of time and refuse leave to appeal on these counts. The conviction on count 9 will be quashed.