IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

SEAN CONNOLLY

HUTTON LCJ, KELLY AND MacDERMOTT LJJ

MacDERMOTT LJ

On 15 March 1993 the appellant (Sean Connolly) was convicted at Belfast Crown Court by His Honour Judge Curran QC on an indictment containing 6 counts of possession of explosives or firearms.

Counts 1 and 2 related to a "find" of explosives made on 10 January 1992 at 73 Westrock Drive, Belfast, and Counts 4 to 6 relate to a "find" of explosives and firearms at 93 Westrock Drive and in the adjoining house No.95 on the same day. The appellant received a sentence of 20 years' imprisonment on each count.

As to No.73 Westrock Drive

The appellant, born on 30 June 1961, is the occupier of that house. When the police search team entered the house shortly before 5.00 pm on Friday 10 January 1992 the appellant was in the living room - no one else was in the house. Various items of significance were found in the kitchen. In the middle of the floor was a plastic carrier bag - when asked what was in it the appellant said he knew nothing about it. On the top of the work surface near the kitchen sink was a biscuit tin and on top of it there was an improvised timer power unit. Also on the work surface were a pair of scissors and a roll of clear tape.

On examination the plastic bag was found to contain a small amount of commercial explosive and a putty knife to which a small quantity of Frangex (.9 grams) was adhering. In the tin box were 6 detonators and 10 lbs of an explosive substance consistent with Frangex. Swabs of various parts of the kitchen revealed residues of PETN and RDX (the explosive components of Semtex) and nitroglycerine (NG). The right-hand swab taken from the appellant bore residues consistent with PETN and NG. The left-hand swab bore residues consistent with PETN, and 3 items of his

clothing bore residues consistent with PETN - they were blue gloves from a blue anorak, the blue anorak and a black/red jacket.

As to 93 Westrock Drive

At the same time as 73 Westrock Drive was being searched another police/army team entered No.93 which was unoccupied. Again a very substantial number of significant items were found. In a space under the stairs reached by a cupboard the ATO found: 26 boxes incendiary devices, 50 improvised initiating charges, a number of Mark 12 mortar components including enough to make 2 complete mortar bombs, an electronic power unit, over 15 kg of various explosives, a plain detonator, a mercury tilt switch, about 50 metres of detonating cord and a quantity of ammunition.

A search of the attic showed that an access opening had been made into No.95 Westrock Drive. From this upper area the following items were recovered: 2 AKM rifles, 9 AK style magazines (2 with rounds loaded), an AK weapon butt, an FN bolt action rifle, a .32 Vzor automatic pistol, 4 silencers, 2 telescopic sights, sufficient Mark 12 mortar components to make 2 complete mortar bombs, about 8¼ KG of explosives, about 58 metres of detonating cord, 10 electric detonators, 2 box incendiaries, a No.36 hand grenade, an RPG 7 rocket mortar, 2 time power units, the empty components of an improvised grenade, an incomplete under vehicle improvised explosive device, various items of ammunition, 9 hand held radios, batteries and charging equipment.

[The learned trial judge convicted the appellant on each count. The Court of Appeal upheld the conviction in respect of each arms find, while observing that where a court convicts a defendant of possession of explosives with intent, contrary to section 3(1)(b) of the Explosive Substances Act 1883, it is preferable that it should follow the usual practice of returning no verdict on a count charging possession in suspicious circumstances, contrary to section 4 of the 1883 Act, which is based on the same facts.

In relation to the appeal against sentence MacDermott LJ continued:]

Mr McDonald argued that a sentence of 20 years was in the circumstances manifestly excessive though he recognised that a lengthy custodial sentence was inevitable. He made several points.

1. Discount should have been allowed for the fact that, although the appellant pleaded Not Guilty, he did not challenge the Crown evidence. The judge was fully aware of this point saying -

> "... you contested the case but as your counsel rightly says it was a technical contest and to that extent it is virtually the same as a plea."

For our part we would wish to make it clear that we cannot accept this proposition by the judge. It has long been established that where an accused pleads guilty the sentencer should recognise that fact by imposing a lesser sentence than would otherwise be appropriate to reflect the fact that the plea is an indication of remorse, has led to a saving of time and has convenienced witnesses who would otherwise have had to attend court. This approach is often called "giving a discount". What is an appropriate discount depends on a variety of factors such as how early the plea was made and all the general circumstances of the case of which the sentencer will be aware. In this case the appellant did not plead guilty and so is not entitled to a discount in the accepted sense. In this as in any other case where an accused has been convicted after pleading not guilty the sentencer will impose a sentence which properly reflects all aspects of the case.

2. There is no evidence that the appellant would have used these bombs himself. In some cases it may be proper to make such a distinction but here the facts point clearly to the appellant being not merely a possessor of explosives but a bomb-maker. Such people obviously play a major role in terrorist activity and on conviction their sentences are bound to be extremely lengthy.

We do not agree that this sentence was in any way excessive and we note that the judge properly reminded himself of the recent guideline cases. In relation to those cases we would repeat what this Court said in R v Carroll (22 December 1992, unreported):

"The issue before the Court of Appeal in each of those cases was whether or not the particular sentence was manifestly excessive. Acceptance of a sentence does not imply that a longer sentence might have been excessive and a factual comparison of 1 case with another is rarely likely to be a meaningful exercise as the imposed sentence reflects the views of the sentencer in respect of both the offender and the offence in the case before him. We have no doubt that in this area it is very difficult to draw comparisons with other cases. Further it must be realised that as terrorist activity continues it is a proper discharge of the judicial function to recognise that fact and to review existing sentencing levels and properly to raise the level of sentencing so that deterrence may in fact occur."

It is also appropriate to remember that the maximum sentence for offences under s.3(1)(b) of the Explosive Substances Act 1883 and Article 17 of the Firearms (Northern Ireland) Order 1981 is life imprisonment, which reflects the opinion of Parliament that these are amongst the most serious and grave offences in the criminal calendar. As criminal activity using firearms and explosives continues, sentences in excess of 20 years' imprisonment will be neither wrong in principle nor excessive. Each case depends on its own facts and a factor in sentencing is that if the existing level of sentences for a particular offence is failing to deter then the level of sentencing may well have to rise. In relation to explosives we note that in this case there were many incendiary devices as well as anti-personnel devices. Very

extensive and very costly damage to commercial and other property has been caused in recent times by incendiary devices planted by terrorists. Possession of such devices, with intent, like possession of explosives with intent to kill or injure persons, must attract very heavy sentences.

Our conclusion can be stated shortly: 20 years was in no way an excessive sentence. The appellant is fortunate that his sentence was not in or about 25 years.

We would return to Counts 2, 4 and 6. In imposing a sentence of 20 years on each count the judge overlooked the fact that 14 years is the maximum on a charge under Section 4 of the 1883 Act and 10 years is the maximum under Article 23 of the 1981 Order. We consider that the appropriate way to deal with the matter is to vary the sentences of 20 years on Counts 2 and 4 to 14 years and on Count 6 to 10 years. As before all sentences will be concurrent. Apart from this adjustment of sentences the appeal is dismissed.