Neutral Citation No: [2018] NICA 49	*Ref:* TRE10588
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered: 18/12/2018*

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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

CRIMINAL APPEAL (NORTHERN IRELAND) ACT 1980

THE QUEEN

v

CHRISTINE CONNOR

Appellant

Before: Deeny LJ, Treacy LJ and McBride J

TREACY LJ (Delivering the judgment of the court)

Introduction

[1] The appellant, with leave of the single Judge, appeals against her convictions. Among the principal grounds relied upon by the appellant is the contention that her pleas of guilty were ambiguous or equivocal and a nullity in law. She also contended that her pleas were involuntary and the result of being subjected to such pressure by her legal advisers that her pleas were a nullity.

Background

[2] On 9 February 2015 the appellant was arraigned and pleaded not guilty. On 3 May 2017, upon application of her counsel, she applied to be re-arraigned on 6 counts. She pleaded guilty to one count of attempted murder, two counts of possessing explosives with intent, two counts of causing an explosion and one count of being involved in the preparation of terrorist acts. All these counts have a discretionary life sentence as maximum sentence and all are serious offences as defined by the Criminal Justice (Northern Ireland) Order 2008.

[3] The counts relate to two explosions one on 16 May 2013 and the other on 28 May 2013. They involved the deployment of improvised explosive devices the first in the Ligoniel Road area and the second on the Crumlin Road.

[4] The trial judge records that April and early May 2013 were largely spent by the appellant and her co-accused in researching bomb making techniques and by her co-accused in purchasing bomb parts and then shipping them to the appellant. Whether or not the appellant actually carried out the construction of the devices or arranged for another to do so is uncertain but the devices clearly were constructed. They were viable devices and in due course were deployed and exploded.

[5] It appears that two devices were deployed in the earlier attack on 16 May and then two further devices in the later attack on 28 May. The other attack involved a 999 hoax call referring to a suspect device at 02:11 hours and at the same time there were reports of explosions in the Ligoniel Road area. The trial judge states that this may have been a dry run or practice run carried out by the appellant and then recorded by her on a movie file recovered from her lap top either to remind her what to do in the future or as a propaganda exercise, he states that this is uncertain but that it was clear that she had prepared the particular movie file.

[6] The second incident on 28 May 2013 was described by the trial judge as much more sinister. There was a 999 call reporting to come from the victim who indicated that she was suffering from domestic violence at an address on the Upper Crumlin Road. This was at 02:12 hours. Two officers responded in this case one went to the relevant address itself and the other was providing cover when two devices were deployed and exploded in the vicinity of these officers. Shrapnel was dispersed from the devices up to a radius it appears of around 35 metres. Fortunately, both officers were able to take evasive action. Constable Polley, who was providing cover for his colleague, was the main target of the attack and the attempted murder count relates to him. Fortunately, he did not sustain any physical injuries.

[7] The appellant was present at the scene having transported the devices and may have actually thrown them but the trial judge acknowledges that this latter point is uncertain. It appears that the appellant's co-accused, D, made a call to Ulster Television claiming responsibility for the attack on behalf of what he described as the Irish Republican movement. Forensic evidence linked the appellant both to the scene and to the device. She was arrested and interviewed by the police over an extended period and largely gave no comment in response to the questions that were put to her but she did provide a statement stating that she may have been in the vicinity of the second bomb at 2am as part of her weight control regime.

[8] The judge said that this was clearly a well thought out attack or attacks and that they were researched and planned. He noted that while "certain elements of your conduct were bizarre" that the appellant was sufficiently motivated to construct such devices and to press home such attacks attempting to murder other

citizens. Whilst the appellant according to the trial judge appeared to be acting alone or within a small group he noted that it clearly lay within her power to manipulate others and to influence others such as D. He stated that the appellant was committed to a violent philosophy to achieve political objectives through the means of violence. The trial judge took into account in mitigation the fact that there were "certain aspects of amateurism and lack of sophistication in relation to her criminal activity" but noted that it had to be taken in the context of the fact that she was able to complete the manufacture of these bombs and to successfully deploy them.

[9] The trial judge concluded that the appropriate sentence before applying mitigation would be one of 24 years in custody. He reduced that to a period of 20 years to take into account the mitigation on her behalf particularly in relation to her health and prison conditions. He then reduced that by a further one sixth to take into account her plea of guilty. Accordingly, the sentence he imposed was one of 16 years and 4 months which was an extended custodial sentence and the effective overall sentence was one of 13½ years custody with an extended custodial sentence of 3 years and 8 months after assessing the appellant as posing a danger to society.

Was the plea ambiguous or equivocal?

[10] When the appellant was re-arraigned on 3 May 2017 the transcript confirms she said the following in relation to the six counts:

Count 1 – "Well I am not guilty, however on advice I will plead guilty"
Count 4 – "As I said I'm not guilty but on advice I will plead guilty"
Count 2 – "I'm not guilty but on advice I will plead guilty"
Count 5 – "I am not guilty but on advice I will plead guilty"
Count 3 – "I am most definitely not guilty of that but on advice I will plead guilty"
Count 6 – "I am not guilty but on advice I will plead guilty"

[11] The trial judge then indicated "I am recording guilty pleas for Counts 1-6".

[12] Neither the trial judge nor counsel for the prosecution or defence addressed the nature of the "pleas" which were entered by the appellant.

Applicable legal principles regarding plea

[13] Blackstone 2019 states at paraD12.100:

> "If an accused purports to enter a plea of guilty but, either at the time he pleads or subsequently in mitigation, qualifies it with words that suggest he may have a defence (eg 'Guilty, but it was an accident' or 'Guilty, but I was going to give it back'),

> then the court must not proceed to sentence on the basis of the plea but should explain the relevant law and seek to ascertain whether he genuinely intends to plead guilty.
>
> If the plea cannot be clarified, the court should order a not guilty plea to be entered on the accused's behalf (CLA 1967, s.6(1)(c): 'if [the accused] stands mute of malice or will not answer directly to the indictment, the court may order a plea of not guilty to be entered').
>
> Should the court proceed to sentence on a plea which is imperfect, unfinished or otherwise ambiguous, the accused will have a good ground of appeal. Since the defect in the plea will have rendered the original proceedings a mistrial, the Court of Appeal will have the options either of setting the conviction and sentence aside and ordering a retrial (see eg *Ingleson* [1915] 1 KB 512) or of simply quashing the conviction (see eg *Field* (1943) 29 Cr App R 151). If the former course is chosen (ie there is to be a retrial), the court may either then and there direct that a not guilty plea be entered or order that the accused be re-arraigned in the court below (eg *Baker* (1912) 7 Cr App R 217)."

[14] Archbold 2019 at para4-172 states:

> "It is important that there should be no ambiguity in the plea, and that where the defendant makes some other answer than guilty or not guilty, care should be taken to make sure that he understands the charges and to ascertain to what the plea amounts. As to the power of the Court of Appeal, where the Crown Court has wrongly held an imperfect or unfinished plea to be a plea of guilty see Post 7-46, 7-432."

[15] Archbold at 2-144 defines an unequivocal plea as:

> "A plea which could not be described as a 'guilty but … plea'."

[16] In *R v Drew* [1985] WLR 914, at 918 letter D, Lord Lane stated:

> "An equivocal plea is one qualified by words which if true indicates that the accused is in fact not guilty of the offence charged."

[17] Archbold at 7-432 states:

> "If the defendant can establish that he pleaded guilty without understanding the nature of the charge or without intending to admit that he was guilty of what was alleged the conviction will be quashed: *R v Ford* [1923] 2 KB 400, 17 Cr App R 99, CCA; *DPP v Shannon* [1975] AC 717, HL; *R v Phillips* 74 Cr App R 199, CA. Equally where the plea is equivocal the proceedings will be held to be a nullity: *R v Baker* 7 Cr App R, CCA; *R v Ingleson* [1915] 1 KB 512, 11 Cr App R 21, CCA."

Discussion

[18] In the present case the guilt of the accused rests upon her confession by way of a plea of guilty. The effect of such a plea is to release the prosecution from their obligation to prove the case. The accused stands convicted simply by virtue of the words that have come from her own mouth.

[19] As was said by Lord Morris of Borth-y-Gest in the leading case of S (an infant) v The Recorder of Manchester [1971] AC 481 at 501:

> "Guilt might be proved by evidence. But also it may be confessed. The court will, however, have great concern if any doubt exists as to whether a confession was intended or as to whether it ought really ever to have been made."

[20] This case is somewhat unusual in that the appellant expressly stated that she was "not guilty" before qualifying this with "on advice I will plead guilty". In respect of five of the counts her first words were "I am not guilty but…". In respect of the most serious charge of attempted murder, which requires specific intention to kill, she said "I am *most definitely* not guilty but ….". In these circumstances we do have doubt as to whether a confession was intended. On any showing the pleas were heavily qualified, ambiguous and equivocal. The pleas were plainly "imperfect, unfinished or otherwise ambiguous". In those circumstances as Blackstone makes clear the court must not proceed to sentence on the basis of such a plea "…but should explain the relevant law and seek to ascertain that (s)he genuinely intends to plead guilty". Inexplicably those inquiries were not made when these pleas were entered. The prosecution in resisting this aspect of the appeal relied heavily upon the suggestion that the case against the appellant was overwhelming. Whether that be so

or not, and we express no view, convictions resting solely on the heavily qualified pleas in this case cannot be regarded as safe. We consider that in these circumstances a conviction resting solely on such a plea of guilty cannot be regarded as safe.

[21] In R v Ralph Phillips [2006] NICC 4 the court, in addressing an application to set aside a plea of guilty to murder, considered the authorities and, at [14], reached six conclusions. The first of these was:

> "If a plea of guilty is in fact equivocal the court would normally not receive it in the first place or would vacate it on application."

We consider that in the circumstances prevailing here, taking into account the evidence put before us at the hearing of the appeal, convictions resting solely on such equivocal pleas of guilty cannot be regarded as safe.

[22] Reliance on such a plea, in our view, might work an injustice and we entertain serious doubts that the "pleas" represent a genuine confession of guilt. In these circumstances we will quash the convictions and order a retrial. In light of this conclusion we do not consider that it is prudent or necessary to express any view on the other grounds of appeal.