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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

OWEN WORKMAN

Mr Kelly QC and Mr Barlow (instructed by Reavey Solicitors) for the appellant
Mr Simpson QC (instructed by the PPS) for the respondent

Before: Morgan LCJ, Treacy LJ and Sir Donnell Deeny

MORGAN LCJ (delivering the judgment of the court)

[1] On 4 March 1997, the applicant pleaded guilty to one count of false imprisonment and one count of membership of the Ulster Volunteer Force ("UVF"). He was sentenced by His Honour Judge Burgess to concurrent sentences of four years' imprisonment in respect of the false imprisonment and three years in respect of membership of the UVF. On 12 June 2017, he lodged an application to extend time for permission to appeal which was refused by the single judge and he now renews that application to this court. The basis of the application is that his conviction was unsafe as a result of the undisclosed involvement of Gary Haggerty, an alleged state agent who was a covert human intelligence source at the relevant time. The failure of disclosure denied the applicant the opportunity to apply for a stay of the proceedings as an abuse of process. The applicant also pursued a wider abuse of process argument.

Background

[2] On the early evening of 13 May 1996, a group of local residents gathered in the Mount Vernon area of Belfast close to the home of Archibald Galway. At about 6:15pm, a number of masked men, of whom the applicant was not one, entered Mr Galway's home carrying baseball bats and a hammer. He was assaulted, hooded, bound and taken to his own car where he was made to lie in the footwell. The car

was driven for about 20 minutes after which Galway was put into another car and driven off.

[3] Police found Galway's car abandoned shortly after 7:30pm. Sometime after 3am on 14 May 1996, Galway was found in his underclothes lying in a ditch in the Larne area with head and arm injuries. In the early hours of the morning of 14 May 1996, police became suspicious of a car travelling from Rathcoole onto the Doagh Road into Newtownabbey. The three occupants of the car were arrested. One was the applicant, who originally identified himself as Paul Ferguson.

[4] At interview, following consultation with his solicitor, he told police that he had received a telephone call around 8:30pm on 13 May to meet persons because they were going on a job. He was to go with others to look after Galway. When he arrived at the flat where Galway was lying bound and gagged, the assault on Galway had already occurred.

[5] Workman remained in the flat with another person and Galway until about 2am. A car arrived and he went in the car with Galway leaving him in a remote part of the Larne area. The applicant made a 999 call to the ambulance service to alert them to Galway's location. Subsequently the applicant identified to police the telephone call box from which he had made the 999 call.

[6] In a subsequent interview on 15 May, conducted by Detective Constables Lyness and Simpson, the applicant also admitted membership of the UVF. He had been sworn into the organisation in Larne approximately 2½ months prior to the date of the interview. He described standing with his right hand up in front of three masked men and repeating an oath to the UVF. He stated that the first time he was contacted after the ceremony was in relation to these offences.

[7] Gary Haggarty is a terrorist who was deeply involved with the UVF over a 16 year period. He entered into an assisting offender agreement on 13 January 2010 as a result of which he pleaded guilty to 202 counts including five murders and five attempted murders and asked for 301 matters to be taken into consideration. He achieved a leading role in the organisation. During this period he also provided police with regular information in respect of serious crimes committed by the terrorist organisation.

[8] Subsequent to the assisting offender agreement he disclosed his participation in a wide range of terrorist offending. That included the abduction of Mr Galway. He stated that the family of a child who had been abused approached himself and Mark Haddock, another leader of the UVF in the Mount Vernon area. The applicant contends that Mr Haddock was also a police informer. The family alleged that Mr Galway was the abuser. Haggerty stated that he and Haddock approached the leadership of the UVF to seek authority to kill Galway. They were told that they could damage his testicles.

[9] On the evening of his abduction, local residents had gathered close to Galway's house. A police car was also in the vicinity. Haddock had made arrangements for a group of UVF men to attend for the abduction. Haddock made a phone call to ensure the police car was directed elsewhere and shortly afterwards it left. The UVF thugs then entered Galway's home and abducted him.

[10] Haggarty had identified a property in Larne in which to detain Galway. After the abduction he drove to Larne as the lead vehicle and guided the abductors to the property. Galway was assaulted in the property and Haggarty admitted kicking him. Subsequently, Haggarty alleged that the UVF was informed that Galway was a member of the UDA and as a result they were instructed to release him to prevent any feud.

[11] The transcript of his plea on 4 March 1997 is available. He was represented by Mr Grant who made the following points in respect of the offence:

> "In relation to the offence itself, it is quite clear that there are a number of points that should be made in fairness to him. Firstly, that substantially the evidence in this case actually emerges from him, in the way of voluntary statements that he made to the police and perhaps some credit beyond the normal amount of credit for that point can be made in this case in view of the fact that others who were apprehended at the time chose to say nothing to the police and it transpired that any circumstantial evidence, such as it was, was insufficient to hold them. It would not be wrong to say that this man is of some intelligence and therefore would have been in the position when he was in police custody to have chosen the same course, one would have thought, had he been an individual who was hardened in a criminal fashion, and had he been a committed member of any organisation such as the UVF. In those circumstances perhaps the court may feel a considerable amount of credit over and above the normal may attach to that point.
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> The second point is that those actions appear to indicate a true remorse and a true feeling that he had done something absolutely wrong in becoming involved with the organisation and that that had only been brought home to this young man when he became involved in this which was his first job – his blooding, as it were. It is his first job in this sense that not only factually was he asked to do this, but quite clearly he was being blooded, that he was, to put it crudely, the tail end Charlie. It is the norm of these organisations that although he was not

> particularly useful in this particular operation, and that he was brought in at the end of the beating merely to imprison and to transport the unfortunate injured party, the fact is that he was brought in for a particular reason known to the organisation, and that is so he would witness at first hand the type of activities that he had sworn himself to become involved in. Having witnessed that at first hand, to his credit, he immediately in apprehension has behaved consistently as a person who has shown a considerable degree of remorse and determination to enter a plea at the earliest possible stage."

[12] A written statement by the applicant was submitted to the court dated 10 November 2020. The applicant alleged that he had never been a member of the UVF or any other paramilitary organisation. He said that he remembered denying that he was in the UVF but admitting that he had been present in the house. He agreed that he had pleaded guilty to false imprisonment and membership of the UVF but said that he had done so because it would make no difference to his sentence.

[13] He said that various enquiries into the use of informers and supergrasses had exposed that Haggarty and Haddock were Special Branch informants when they were paramilitary commanders ordering the murder and assault of others. He did not contend that he had any engagement with Haddock or Haggarty in respect of these offences.

[14] Three days before the hearing, an application was made to introduce the statement pursuant to section 25 of the Criminal Appeal (Northern Ireland) Act 1980 ("the 1980 Act"). No application was made on behalf of the applicant to give evidence and be cross examined. The statement offered no explanation as to why the applicant made an admission of membership of the UVF to police at interview. There was no explanation of why his plea was advanced on the basis that he had become a member of the UVF. His assertion that he pleaded guilty to UVF membership because it would make no difference to his sentence was plainly false. He pleaded guilty because he had made voluntary admissions that he had become a member. We concluded that the written statement was devoid of credibility and would be of no assistance in allowing the appeal. We refused to admit it.

Consideration

[15] There is no evidence to suggest that the police had any advance notice of the intention to carry out this attack prior to its occurrence. The applicant's suggestion in his statement that he never was a member of the UVF is completely lacking in credibility. His admissions to police and the submissions advanced on his behalf to

the trial judge indicate precisely the opposite and no explanation is provided for that.

[16] He participated in this crime because he had committed himself to the UVF and was an intelligent man who could not have failed to understand the nature of its activities. He voluntarily elected to place himself at the service of that organisation. There was no material to suggest that he was placed under any pressure to participate in this offence but even if there had been the observations of Lord Lowry in R v Fitzpatrick [1977] NI 20 at 31D are appropriate:

> "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."

[17] In R v Hill [2020] NICA 30, we considered the principles on entrapment between paragraphs [16] and [26]. We considered in that case that it was plainly an example where the appellant had been provided with an unexceptional opportunity to commit a crime which he duly accepted. In our view, this case is no different. There is no basis for an entrapment claim.

[18] Mr Kelly sought to pursue a wider abuse of process claim. He relied upon the Public Statement issued by the Police Ombudsman on her investigation into the circumstances surrounding the death of Raymond McCord junior and related matters. At paragraph 31.27 of that Statement she stated:

> "Prior to 2003 some RUC/PSNI Special Branch officers facilitated the situation in which Informant 1 was able to continue to act as a senior figure in the UVF, despite the availability of extensive information as to his alleged involvement in crime. Informant 1, by virtue of his alleged rank in the UVF, must have been engaged in the direction of terrorism and must have known that he was not being dealt with for crime. Some RUC/PSNI officers, at all levels, were complicit in the failure to deal appropriately with Informant 1, both by way of criminal investigation and by dispensing with his services as an informant."

It was submitted that these observations could properly be applied to both Haddock and Haggarty.

[19] In respect of this crime, there was no real dispute that Haggarty and Haddock had contributed to the commission of the crime. The applicant sought to take some support from the fact that Haddock left the scene at one stage to make a phone call with a view to getting the police car to move. There is nothing to suggest that the removal of the police car was other than in connection with some other matter that required to be investigated. There is no basis for any sinister inference.

[20] There is no material to support the contention that the applicant did not have a fair trial. The wider analysis of the obligation of the court to stay criminal proceedings as an abuse of process was considered in R v Maxwell [2011] 1 WLR 1837. Lord Dyson said at [13] 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 or bring it into disrepute.

[21] We agree that the findings of the Ombudsman in her Public Statement at paragraph 31.27 are deeply troubling but we do not accept that they justify the conclusion that Haddock or Haggarty or anyone else participating in crimes with them had impunity. Both Haddock and Haggarty were sentenced to periods of imprisonment in respect of the crime which was the subject of the appeal in Hill. Haggarty has, of course, pleaded guilty to a wide range of terrorist offences and has been sentenced. Haddock and others were prosecuted for murder and other terrorist offences in a trial conducted by Gillen J and reported at [2012] NICC 5.

[22] We do not consider that the trials of Haddock or Haggarty offended the court's sense of justice and propriety or undermined public confidence in the criminal justice system or brought it into disrepute and we can see no basis upon which those who voluntarily determined to participate in the activities of a terrorist organisation should avoid the rigours of a fair trial in connection with their conduct.

Conclusion

[23] For the reasons given the application to extend time pursuant to section 16(2) of the Criminal Appeal (Northern Ireland) Act 1980 is refused.