

Judicial Communications Office

Thursday 8 September 2011

COURT OF APPEAL DISMISSES APPEAL IN REAL IRA GUN SMUGGLING PLOT

Summary of Judgment

The Court of Appeal today dismissed appeals by Paul Anthony John McCaugherty and Dermot Declan Gregory against their convictions for their roles in a plot to import weapons and explosives for the Real IRA and making property in Portugal available for the purpose of terrorism.

McCaugherty and Gregory were found guilty on 30 June 2010 of a number of offences which arose from a sting operation mounted by the Security Services against dissident Republicans. McCaugherty was convicted of 7 counts including conspiracy to possession explosives and firearms with intent, belonging to a proscribed organisation, using money for the purposes of terrorism and making property available for terrorism. He was sentenced to a total of 20 years imprisonment. Gregory was convicted of one count of making property available for terrorism. He was sentenced to 4 years imprisonment. Both men appealed against their convictions.

The appeal of McCaugherty

McCaugherty submitted that the integrity of the proceedings against him was so fundamentally compromised by the actions of state agents in procuring the commission of offences that the trial judge ought to have stayed the proceedings against him. The trial judge had stayed the proceedings against a co-defendant, Desmond Paul Kearns, on the basis that he was satisfied that Kearns' conduct was brought about by the misconduct of one of the agents (Amir) employed by the Security Services. The trial judge, however, considered the position of McCaugherty to be different in that Amir's role in his case was only preliminary in that he introduced McCaugherty to the agent he believed was an arms dealer (Ali). The trial judge formed the view that at most Amir's conduct induced Kearns to introduce McCaugherty to Ali, whom Kearns believed to be an arms dealer. He considered that Ali's evidence was reliable, it was recorded and there was no risk of exaggeration in light of the financial incentives open to him. The trial judge therefore concluded there were no grounds to justify ordering a stay of proceedings in McCaugherty's case.

The Court of Appeal set out a number of principles which should apply in a case where state agents have procured the commission of an offence:

- It is an abuse of state power to lure citizens into committing acts forbidden by the law and then to prosecute them;
- Such conduct constitutes entrapment and normally leads to a stay of the proceedings as an abuse of the process of the court;

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- The investigating authority seeking evidence of criminal offences through undercover officers must act in good faith. This may be established by demonstrating reasonable grounds for suspicion, authorisation of the operation and continuing supervision;
- The use of proactive techniques, such as the infiltration of a conspiracy, may be appropriate due to the secrecy and difficulty of detection and the manner in which the particular criminal activity is carried on;
- The greater the inducement held out by undercover officers the greater the danger that the court may conclude that they have overstepped the boundary;
- Whether the officer merely provides an opportunity for the accused to commit the offence rather than causing the commission of the offence is likely to be highly important in determining whether the officers have overstepped the line;
- The relative weight and importance of these factors will depend on the particular facts of the case.

The Lord Chief Justice, delivering the judgment of the Court, said he accepted the trial judge's analysis that the conduct of Amir was preliminary to the engagement of Ali with McCaugherty: "It did not cause the commission of the offences but rather led to circumstances where the opportunity for the appellant to commit the offences arose". The Lord Chief Justice said he could see no reason to depart with the conclusions reached by the trial judge and dismissed the appeal.

The appeal of Gregory

Gregory appealed against his conviction on the basis that the trial judge erred in holding that the prosecution had defeated his case of duress beyond reasonable doubt and that he erred in drawing an adverse inference from Gregory's failure to testify. Gregory had stated that he acted under duress during his police interviews. It was disclosed to the Court of Appeal that he had been the subject of a threat to his life at the commencement of the trial although it does not appear that the threat was connected with the conduct of the trial. The threat was conveyed to Gregory and his counsel but neither brought it to the attention of the judge. It was also suggested to the Court of Appeal that Gregory was inhibited by the presence of his co-accused at the trial. The Lord Chief Justice said that the fact that Gregory was of previous good character did not answer the point that there were matters that required explanation in the prosecution case, including why he had simply not asked Teresa Murphy in person for the deeds of the property in Portugal.

The Lord Chief Justice said that the Court considered that the trial judge was entitled to take into account Gregory's failure to give evidence as some additional support for the prosecution case: "There was ample evidence from [Teresa] Murphy in particular to defeat the duress case and the judge was also entitled to take into account the fingerprint of [Gregory] on one of the notes passed by McCaugherty to Ali as well as the failure to give evidence". The appeal was dismissed.

NOTES TO EDITORS

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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 Court Service website (www.courtsni.gov.uk).

ENDS

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