

REGINA

V

JOHN CHRISTOPHER WALSH

JUDGMENT AND SENTENCE

of

HIS HONOUR JUDGE PETRIE

at

BELFAST CROWN COURT

On

7th DECEMBER 1992

W.J.BOYD
Official shorthand
Writer

Judge Petrie

1. The defendant in this case, John Christopher Walsh, stands charged that on the 5th day of June in the county court division of Belfast that he had unlawfully and maliciously in his possession or under his control an explosive substance, namely, an improvised explosive device with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom or to enable any other person so to do.
2. On a further count that he knowingly had in his possession or under his control such an explosive device in such circumstances as to give rise to a reasonable suspicion that he did not have it in his possession or under his control for a lawful object.
3. The Crown case is that on the 5th June 1991, a soldier, one Corporal Blacklock from the 1st Paratroop Regiment entered an alleyway off Suffolk Road, Belfast, which runs towards Kerrykeel Gardens and that there he met the defendant approaching from the opposite direction.
4. The corporal told or motioned the defendant to remove his hands from his pockets, and the defendant did so but when he took his right hand out of his pocket he had in it ,coffee jar which had been converted into an explosive device or an improvised hand grenade.
5. The corporal directed the defendant to put it down and it was placed on a wall forming the base of some railings along the left side of the alleyway. police and other agencies were called and the defendant was arrested and the device when examined by experts was found to be primed and ready to be used, being in such a condition that if the glass jar had been broken or thrown or dropped the explosive charge would have been detonated.
6. The defendant for his part did not deny that he was stopped in the alleyway but said that when he was stopped the device was already on the wall and said that he only saw it when the corporal asked what it was He said to him that he did not know and he said that he continued to deny knowledge of it or where it had come from thereafter.
7. The Crown evidence was given by Corporal Blacklock and three other soldiers, members of his team, who were on patrol with him at the time and by a number of police officers and various technical witnesses.
8. At the conclusion of the Crown case Mr. Mooney, who appeared for the Defendant, submitted that there was no case for the defendant to answer on the basis that there was no evidence upon which the defendant could properly be convicted.

9. He criticised Corporal Blacklock'S evidence specifically because the corporal said that he could not remember how the defendant was holding the jar which Mr. Mooney said was the central point of the evidence against the defendant, Mr. Walsh.
10. Mr. Mooney also referred to some other matters upon which the corporal's evidence varied from his previous statement and from the evidence of the other three members of his patrol.
11. Mr Mooney also referred to the fact that none of the others apart from Private Boyce, who was the second man to come on the scene as the defendant was being stopped, said that he saw the device in the defendant's hand, and it was pointed out by Mr. Mooney that Boyce's evidence as to the way that the patrol had reached the scene was materially at variance with the evidence of his colleagues.
12. Apart from criticising the evidence of the soldiers as being inherently defective and being at variance one with the other Mr. Mooney stressed that the forensic evidence of the Crown was weak in itself in that there was virtually no forensic evidence to connect the defendant with the device. In fact he submitted that the lack of forensic evidence supported the defendant's case. M r. Mooney also referred to some other matters upon which the corporal's evidence varied from his previous statement and from the evidence of the other. This submission as to forensic matters was based upon two propositions, namely, that as the jar was alleged to have been in the defendant's pocket it would have been expected that some traces of the explosives would have been found in that pocket whereas there was none.
13. Secondly, similarly that one would have expected fibres from the jacket to be on the device, part of which was said to be an excellent reservoir for fibres and a retainer of fibre particles, excellent. being the term used by one of the Crown witnesses in relation to the matter. This was in particular on the part of the device which had been wound found with adhesive tape.
14. While I find that there was some substance in these submissions I formed the view that they did not justify holding that there was no case to answer. The soldiers' evidence although open to criticism which was made was not in my view discredited so that no reasonable tribunal of fact could rely on it in finding that the defendant had had the device in his possession. The issues raised were therefore essentially the kind of issue which ought to be resolved by the tribunal of fact when the evidence has been completed.
15. So far as the forensic evidence is concerned, the evidence as to the explosives as given by Dr. Murray on behalf of the Crown finally was that "it would not be that difficult" to remove the device without the outside of the jar being contaminated with explosives. He had previously said that it would be more probable that there would be some contamination but on the second

- day of his evidence he stated that on reflection that it would not be too difficult to remove the device without contamination of the jar on the outside.
16. With regard to fibres it was stated that parts of the device were receptive to fibres, notably the taped parts but that the rest would not be receptive. It was also said that the pocket was not of such material which was very prone to shed fibres. The examination for fibres had not taken place at once. In these circumstances, and bearing in mind that the device was primed and ready for use, was on the Crown case being carried by a man with his hands in his pockets, which were wide pockets, it seems to me to the pocket.
 17. Again it seems to me that the issues raised are what one might term jury matters, that is matters of fact to be determined by the tribunal of fact after hearing the full evidence in the case. I therefore held that Mr. Mooney's application should be refused.
 18. The case for the defendant was then presented and he gave evidence on his own behalf and called one witness. While the defendant joined issue with the Crown witnesses on a number of subsidiary points, such as where exactly the incident in the alley took place, and as to the movements of the other members of the patrol in the alleyway and what had been said by them, I found that the accounts of either side coincided to a considerable extent, apart of course from the crucial issue.
 19. The defendant maintained that the device was already on the wall when he was stopped at first. One unusual issue which arose was as to whether any of the soldiers had moved the detonator of the device from its position inside the jar into the holder taped on the outside of the jar which is what the defendant suggested. I considered that he must be wrong in this as the detonator was in place in the jar according to Warrant Officer Duffy, the A.T.O., when he arrived.
 20. The device was then in position on the wall as described by the defendant. I am unable to form any conclusion as to why this matter was raised by the defendant but I consider it not very relevant.
 21. Finding as I do that the accounts of the parties as to the auxiliary issues are reconcilable and bearing in mind that the witnesses were giving accounts of detail of events about 18 months ago I have to consider the evidence on the crucial issue, whether the soldiers, specifically Blacklock and Boyce are correct in saying that the defendant had the device in his hand or whether he is right in saying that it was on the wall when he was stopped.

22. Mr. McCrudden, for the Crown, expressed the matter as a decision as to whether the soldiers or the defendant were telling lies, and in a sense that is the case, but I make some reservations as to that because one must bear in mind the onus of proof is on the Crown and the fact is that that proof has to be beyond a reasonable doubt. I have kept in mind here the fact that when one is addressing a jury in a case in which there is a conflict of evidence one tells the jury that they have to decide which witness they believe but one warns them at the same time that the defendant must be entitled to the benefit of any reasonable doubt.
23. However, that does not mean that one should not examine the possibilities of the circumstances and consider the fact that there appears to be no reason for the soldiers to try to make false allegations against the defendant, who, it is common sense, was totally unknown to them.
24. I may state at this particular point what while the evidence of Private Boyce varied from that of the other soldiers, the main variance was as to what had transpired on the patrol just before the alleged incident and as to where they crossed the Suffolk Road. But at that time there was nothing unusual occurring on what was then a routine type of patrol. So there was nothing to cause any of the soldiers to remember "the details of what happened until the events began to occur. I am prepared therefore to accept that there was evidence that Boyce as well as Blacklock could have seen the defendant with the device in his hand as Boyce has stated.
25. Turning to the defendant's case he said that he had left home at 1 Thomas Court, Broadway, and was going to meet a friend at an inn on the Suffolk Road. He took a taxi to Lenadoon which left him at the shops at Lenadoon and he was proceeding on foot to Suffolk Road at the time of the incident. He was not familiar with the area but he saw when he reached the area of Kerrykeel Gardens what appeared to be a short cut and he was taking this short cut when he met a soldier; that is Corporal Blacklock; Blacklock motioned him to take his hands from his pockets, which he did, and to his right nearby then the corporal asked the defendant "What is that?" which was a reference to the device which was on the wall to his right nearby.
26. The defendant said and continued to say that he did not know anything about it or what it was. He told the police when they came that the soldiers were lying

but he was arrested and taken to Castlereagh. He also gave evidence that as he was going through the alleyway there was another man walking in it about 15 feet in front of him in the same direction who passed the corporal on the corporal's right hand side and went round the corner to Suffolk Road before or as he was stopped by the corporal. The corporal and the other soldiers denied seeing any such man but none was prepared to say that he could not have been there.

27. I have to say that I found the defendant's evidence unsatisfactory. In the first place his account of why he was at the scene of the incident was unconvincing. Accepting that he did go to the area as he said one sees that although he says that he used the alleyway as a short cut indeed he had to concede in evidence that it was not a short cut to the place that he was going but was a slightly longer route. Apart from that his explanation of his movements, even although supported by his friend who gave evidence on his behalf, reveals a strange scenario.
28. It was said that the defendant, who was arrested with £2.05 cash in his pockets was going to go out drinking. As he had indeed said to the police in one of the few of the twenty odd interviews that he had in Castlereagh in which he made any reply, that he was going to meet his mates, plural at the inn. He said that his friend was going to carry him, which I took to mean was going to subsidize *him* with money and that they had arranged the previous evening to meet at the inn. The peculiar circumstances of this account is that the defendant at the time was in employment whereas his friend was not although they explained this situation by saying that the defendant had no money because he had just spent some £500 on a woodworking machine and owed money to his mother while his friend who was unemployed had done a job at Lenadoon for another friend for which he was to be paid on the day in question.
29. I found it odd also that the defendant with £2.40 in *his* pocket to start with should take a taxi which cost 45p and walked to the Suffolk Road to go to the inn to meet his friend in order to go and drink elsewhere, especially since the place that he said that he was going to, the Beehive, was on the Falls Road and this was nearer the defendant's home at Broadway.
30. My main criticism of the defendant's case, however, relates to the fact that although at the hearing he alleged there was another man in the alleyway in

front of him, he did not mention this at the time. I am not clear indeed at what time he did first mention this shadowy figure.

31. He says that he mentioned it in the interview already referred to which was on the 7th June though there is no record of it in the police notes of the interview. Assuming he did mention it, it appears to me to be strange that he did not refer to the other person immediately when he was stopped. The defendant while giving evidence baulked somewhat when Mr. McCrudden said that he was “fairly intelligent” but I think that, judging by the way that he answered questions in the box, and more particularly the way he evaded answering the questions to which he thought that his answers would be unfavourable to him in the box, that he was a person who was astute enough to know what was going on around him and would have been aware of what he was accused of in the first place, and that it would be important to refer to the other person who was at or near the scene.
32. I think that I would be entitled to have regard to this sort of circumstances under the common law but certainly since the Criminal Evidence Order 1988. I am entitled to have regard to the fact that he did not even when he had received the written caution under article 3 of the order served on him on the 5th June did not then reveal the fact that he now seeks to rely on, namely, that there was another person at the scene at the time of the alleged offence.
33. Mr. McCrudden, in cross examination, put to the defendant that he ought to have referred to the fact that he had left his mother to go to go to meet his friend but I do not attach so much to these matters as to the fact that he did not say at best until the 7th June that there was another person present at the scene of the incident.
34. I turn now to the forensic evidence. As I stated earlier, the forensic evidence did not assist the Crown in relation to the crucial issue as to whether the device was in the possession of the defendant, but Mr. Mooney submitted that the fact that there being no such evidence was to be taken in favour of the defendant in that if the Crown case was correct some forensic evidence in the form of either explosives traces or fibres was to be expected.
35. As I said earlier, however, I consider that the matter of the absence of traces of explosives on the defendant's jacket is not of great significance, bearing in mind the fact that whoever prepared the device would be likely to ensure if

possible that no traces which might contaminate a person Carrying the device would be left on it. Traces of fibres of the defendant's jacket might have been found since the device was in the pocket but I do not consider that the lack of fibres in the circumstances is of major significance either. I have therefore treated the forensic evidence as neutral.

36. For completeness I would say that I have not taken into account the fact that traces of one of the major components of the device were registered as being found on the sides of the defendant's left hand. There is no explanation as to that and I have left it out of account.
37. In view of the defendant's demeanour in the Witness box, and in View of the specific criticisms I have made as to the evidence given by and on behalf of the defendant I reject his evidence and having regard to the Circumstances r accept the Crown evidence. The Crown evidence establishes beyond reasonable doubt that the defendant was Carrying the explosive device as alleged and that he should be convicted of the charge.
38. Since the device was primed and ready for use I draw the inference that it was to be used forthwith and since the evidence shows that the purpose of such a device is to cause serious injury or death to persons I infer that the defendant had the intent contemplated in section 1 (1) (b) of the Act and therefore there is a conviction on the first count.

SENTENCE

39. John Christopher Walsh, I have found you guilty of having possession of this device. It is clear from the evidence that there was an intention to use that device and it was intended to be used forthwith for the purposes of causing injury or death to someone, probably against members of the Security Forces. In those circumstances I must consider this to be a very serious offence and on which merits a substantial period of imprisonment.
40. Reference has been made to the fact that you had a hitherto clear record but regrettably in a case of this sort one cannot attach much significance to that fact.
41. In those circumstances I consider that the appropriate sentence in your case on count 1 should be a term of 14 years imprisonment.