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BELFAST CROWN COURT

THE QUEEN

-v-

JOHN ROBINSON

J U D G M E N T

of

MacDERMOTT J.

BELFAST CROWN COURT

THE QUEEN

v.

JOHN ROBINSON

MacDERMOTT J.

I shall commence by stating my verdict: it is that having regard to all the evidence the Crown has failed to satisfy me that the accused is beyond any reasonable doubt guilty in law of the murder of Peter James Martin Grew and accordingly I find the accused not guilty.

As Lord Diplock said in Attorney-General for Northern Ireland's Reference [1977] A.C.105 at 134A: a Judge is under no obligation to give a judgment in a case in which he finds an accused not guilty. There is much sense in adopting such a course as a negative conclusion is not described simply by listing a number of factual circumstances or inferences which can be drawn therefrom - it is reached having regard to the onus of proof and the whole interwoven tapestry which is created by a combination of all the facts and inferences. However, having regard to the circumstances of this case I propose to state, I hope reasonably shortly, a number of the

/principal

principal factors which guided me to my conclusion.

The single charge on the indictment arose out of a shooting incident which occurred at just before 8.30 p.m. on Sunday 12th December 1982 at Mulacreevie Park. Mulacreevie Park is a modern road, 24 feet wide, which leads from the Killylea Road uphill to the Mulacreevie Housing Estate on the outskirts of the City of Armagh. The accused is a constable in the Royal Ulster Constabulary. At the time in question he was, and had been for some two years, a member of the Headquarter's Mobile Support Unit. The members of that unit are specially selected and trained for anti-terrorist duties and on 11th December eleven members of the unit were sent from Belfast to Gough Barracks in Armagh. There they waited until sent out on patrol in three vehicles about 8.00 p.m. on Sunday 12th December. The members of the unit had been sent to Armagh as the police authorities believed, as a result of information from their intelligence sources, that a man called McGlinchey was coming over the border from the Republic of Ireland on either the Saturday or Sunday. McGlinchey was a man believed to be deeply involved in terrorist activity on both sides of the border, a dangerous and determined man, a man whom the police wanted to apprehend in connection with the fatal shooting of a postmistress and a man who was believed to be coming north to kill members of the security forces. It was also the police belief that McGlinchey would enter Northern Ireland in an Allegro car driven by the deceased Grew

/who

Who also was known to be a leading member of the Irish National Liberation Army, a man who had a few months previously been released from prison after receiving a 14 year sentence, a known terrorist and a man who had attacked members of the police. Both were men who were likely to be armed and who would have no qualms about seeking to resist arrest.

The accused and his colleagues were fully briefed and I am satisfied that from his previous knowledge of the reputations of both Grew and McGlinchey and from his briefings the accused was well aware that his task was likely to involve contact with at least one if not two of the most dangerous terrorists who were known to the police. The task given to accused and his colleagues was the capture of McGlinchey. To do this Grew's car was to be stopped. If McGlinchey were in it he was to be arrested. If he were not in it the car was to be searched and if nothing suspicious were found the occupants, including Grew, were to be allowed to proceed.

The accused left Gough Barracks driving a Cortina police car. It contained 2 other constables and the three vehicles proceeded towards Keady. The Army was also participating in this operation. Unfortunately two civilian vehicles driven by Army personnel were in collision with each other a few miles outside Armagh and the Cortina driven by the accused in turn struck the rear of the second army vehicle. This had the effect of putting the accused's Cortina out of action and reducing the screen of vehicles which were hoping to stop Grew's car. While the traffic

/incident

incident was being sorted out a silver Peugeot car came up from the Keady direction and stopped. It was being driven by an Inspector 'L' who was a member of the Special Branch and was alone in the car. The accused then learnt that Grew's Allegro car had passed and was heading towards Armagh. He and Constable 'D' then got into the Peugeot car and driven by the Inspector that car set off in pursuit of the Allegro with the occupants hoping, according to the accused, to stop the Allegro before it reached the Mulacreevie Estate where Grew was known to live. Coming along the Killylea Road as it leaves Armagh and a few hundred yards before reaching Mulacreevie Park the accused saw ahead a car which he believed was Grew's and as the Peugeot came up this was confirmed. The Inspector cut into Mulacreevie Park and the two vehicles came alongside. The accused says that he waved his police cap at the car to indicate that they were police and recognised the driver as Grew as he looked across. The Inspector cut across the Allegro causing it to stop against the left kerb going up Mulacreevie Park and about 100 yards into the Park.

Those then are the events stated very briefly leading up to the shooting incident which then occurred. I am satisfied that those are the facts which did occur. I put it that way because the story up to this point, as originally told by the accused, was quite different. He was first interviewed by detective officers on 19th December. His account was taken in

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question and answer form and then reduced to a written statement - Exhibit 42. That version described only the events of 12th December, it indicated that the accused was always the observer in the Cortina car, that Constable 'D' was the driver, that they had patrolled generally in this area during the 12th December and that he had heard on the radio that Grew's car had gone through a v.c.p. injuring a policeman. No Special Branch officer was mentioned.

The accused states that he and the other members of the unit were told by senior police officers to give this story so as to conceal the fact that they were participating in a planned operation based on source information and acting in concert with Army surveillance teams. There is no doubt that this is so. Exhibit 48 acknowledges that advice and instructions were given to the accused and that he had been reminded of the constraints imposed on him by the Official Secrets Acts. It is difficult to see how the supposed road block incident aided the general purpose but the accused says that he was told to keep it in his account even after the constraints were lifted when the accused was so informed by Detective Chief Superintendent McNeill and Deputy Chief Constable McAtamney, on 20th July 1983. This claim was not disputed by the Crown and I accept accused's evidence. In passing I would note that the accused did not mention the road block in his account of his movements which he gave in evidence and that there is no suggestion that either the Deputy Chief Constable or the Detective Chief Superintendent in any way participated in the false version.

/I

I am not in this case conducting an inquiry into why the officers who advised, instructed or constrained the accused acted as they did. Neither the police, as such, nor those officers in particular are represented in these proceedings or charged with anything. My task throughout has been to decide whether or not the accused is guilty as charged. I would simply say that when an incident occurs the true facts should be ascertained, if that be possible, as quickly as possible and that a person who may have to face a charge of murder (or indeed any charge) should not be required to tell a false story. This accused like any other person who is cautioned should have been allowed to tell his story freely and without restriction - if his statement contained secret or operationally important matters then arrangements for editing, if appropriate, could have been made. The matter having been approached as it was the task of the investigating detectives must have been made extremely difficult and I must and do bear these matters in mind when considering the truthfulness of the accused's evidence.

Lying either in evidence or out of court is no new phenomenon. I find the following passage from the opinion of Lord Devlin in Broadhurst v. The Queen [1964] A.C. 441 at 457 to be helpful -

> "It is very important that a jury should be carefully directed upon the effect of a conclusion, if they reach it, that the accused is lying. There is a natural tendency for a jury to think that if an accused is lying, it must be because he is guilty, and accordingly to convict him without more ado. It is the duty

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> of the judge to make it clear to them that this is not so. Save in one respect, a case in which an accused gives untruthful evidence is no different from one in which he gives no evidence at all. In either case the burden remains on the prosecution to prove the guilt of the accused. But if upon the proved facts two inferences may be drawn about the accused's conduct or state of mind, his untruthfulness is a factor which the jury can properly take into account as strengthening the inference of guilt. What strength it adds depends, of course, on all the circumstances and especially on whether there are reasons other than guilt that might account for untruthfulness."

Having heard and observed the accused as he was examined and fully, but fairly, cross-examined I am satisfied that the events of the evening of 12th December 1982, in so far as he recalls them, did occur as he describes them.

I turn back now to what might be described as the critical events of this December evening. But those events must not be divorced from what went before. They cannot and must not be taken out of context for what is at issue here is the accused's conduct and state of mind. That phrase reminds me that in this, as in any criminal case, an accused is innocent unless and until the Crown proves his guilt beyond reasonable doubt. That fundamental principle was recently reiterated by Lord Diplock in R. v. Courtie /1984/ 2 W.L.R. 330 at 332E -

> "The substantive principle is that to which in Woolmington v. Director of Public Prosecutions /1935/ A.C. 462, 481, in a speech which bears indicia of collaborative authorship, Lord Sankey L.C. applied the metaphor of 'the one golden thread that is always to be seen throughout the web of English criminal law'. The principle so

/referred

> referred to is: that an accused person cannot be convicted of any offence with which he is charged unless it has been established by the prosecution that each one of the factual ingredients, which are included in the legal definition of that specific offence was present in the case that has been brought against him by the prosecution.
>
> The factual ingredients of every criminal offence, whether it be statutory or an offence at common law, consist of the conduct of the accused and his state of mind at the time of that conduct. Heedful of the recent admonition contained in my speech in Reg. v. Miller /1983/ 2 A.C. 161, 174, with which the other members of the Appellate Committee concurred, I use the expressions conduct and state of mind in preference to speaking of actus reus and mens rea."

I would also add what is but a statement of the obvious: namely that the law applies to a policeman exactly as it does to any other citizen - those whose duty it is to uphold the law must act within the law.

What then was the accused's state of mind when the Peugeot stopped across the front of the Allegro? Understandably he did not sit still and check on his knowledge - he reacted quickly getting out of the Peugeot, out of the lights of the Allegro and onto the grass at the left of the road. At that time I am satisfied that he knew that Grew was in the Allegro. He knew that Grew was a dangerous man who could be armed and who was no friend of the police. He knew that there was a passenger in the car and that that person could be McGlinchey whose notoriety and reputation were akin to that of Grew. He knew that his duty was to stop and search the car. He knew that that task had to be done forthwith lest the Allegro drive off and he knew that he could not rely on support as the Peugeot car did not have a radio with which to report the original sighting of the Allegro.

/Before

Before considering the accused's account of how events developed I shall mention several other pieces of evidence. Shortly after the Allegro went up Mulacreevie Park gunshots were heard by a Mr. McBride from his bungalow on the Killylea Road just on the Armagh side of Mulacreevie Park and by a Mr. Bing from his house in the estate and on high ground some 100 yards from the Allegro. Neither man's recollection of the number of shots nor the manner of their being fired exactly matches and differs from the established facts. This is however not surprising as each man was observing from some distance an area of Mulacreevie Park where the three nearest street lights were out. Mr. Bing also sought to describe a man with a handgun standing beside the car and shooting downwards. Having regard to the fact that he omitted any reference to this event in his police statement on 13th December and says he recalls it after discussion with others I am not sure that he was accurately recalling what he himself saw.

Other police in several vehicles were on the scene within a matter of minutes and some of those who arrived gave evidence but, for I am sure, entirely proper reasons, I did not have the benefit of hearing either Constable 'D' or Inspector 'L'. When examined the Allegro was first stopped as is shown on the plan which is exhibit 40. A man called Carroll was dead in the front passenger's section of the car and Grew was dead on the road lying parallel to and about 18 inches from the car with his head towards the rear of the car. Ten spent 9 mm. parabellum cases

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were found on the grass and footpath 20 - 30 feet from and to the front left of the car, and five cases of .223 rifle calibre were found 32 - 45 feet from and to the front right of the car. Two cases of 9 mm. calibre were found below Grew's body and two more below the car. The car was carefully and repeatedly examined by Mr. James McQuillan of the Forensic Science Department. He found that the nearside or passenger's door panel had been struck by fifteen bullets of 9 mm. calibre. All save one had entered the interior of the car. On the offside or driver's side there were five strike marks - two penetrating the offside rear window and exiting through the rear window, one had struck low on the door and had entered the door pillar, one struck the edge of the roof above the rear passenger's window and one struck the bottom edge of the car near to the rear offside wheel. These five shots were fired by Constable "D's' weapon - a .223 Ruger rifle. Mr. McQuillan was able to find in the car or in the bodies or their clothing the whole or parts of at least sixteen 9 mm. bullets and a seventeenth was found under the car damaged as if it had struck the road but no strike mark was found on the road.

Grew had been struck according to Dr. Press, State Pathologist, by at least five and possibly seven bullets. I am satisfied that neither Grew nor Carrol was struck by a .223 bullet. I am satisfied that four bullets were fired by the accused from his Smith and Wessan pistol when he was on the driver's side of the car. In other words he fired fifteen rounds (a full magazine of fourteen plus one from the chamber) into the passenger's door (it is a two door car) and four from his second magazine when on the driver's side of the car.

/Grew's

Grew's several wounds can be described thus (1) an entry wound in his left low back region three inches to the right and above which was found a damaged bullet which I am satisfied entered through the passenger's door. All the bullets entering the passenger's door had, on comparing the entrance and exit holes through the door, a downward trajectory, and so to sustain this injury Grew must have been leaning forward and probably to his right. This seems to accord with the natural instinct to "duck" when fired upon but equally one cannot determine with any degree of certainty how an injured person's body will react to a bullet strike. Thus if one considers Carroll his first injury could well have been to his left thigh when sitting but the entry wounds to his right back and side of his head indicate that somehow he must have got turned round so that his knees were on the floor - though where his head and upper body were before Grew left his seat could not be stated specifically.

2. An entry and exit wound to the head - the bullet passing from left to right and causing a 4 centimetre wide track through the brain. Death from this injury would according to Dr. Press have been practically instantaneous.

3. An entrance wound on the left upper back in the region of the shoulder blade. That bullet exited under the right arm pit and was found in the right arm. It was to all intents and purposes undamaged and clearly did not pass through the passenger's door. The bullet severed the aorta which would have caused instant death.

/4.

4. Another entry wound was found in Grew's back towards the centre and roughly at the same level as No. 3. It also exited below the right arm pit but did not enter the arm and cannot be identified from among the other retrieved bullets and part bullets.

5. An "in and out" pair of wounds on Grew's right forearm.

6. An "in and out" pair of wounds in the area of the base of Grew's left thumb.

7. A graze on his left buttock.

A virtually undamaged bullet was found in the lining of the front of Grew's parka jacket. It was not damaged to an extent consistent with the bullets which passed through the passenger's door and so can be associated with the group of four shots. Mr. McQuillan suggested that it might have ended where it did after passing through the right forearm and left hand when folded across Grew's chest. Unlike the bulk of Mr. McQuillan's evidence this appears to be a rather speculative suggestion and lacks the firm factual basis upon which he bases his main conclusions.

In many ways the important aspect of Mr. McQuillan's investigation is that he found round the two upper back-entry holes in Grew's parka jacket particles of unburnt propellant. Mr. McQuillan was satisfied, and has satisfied me, that these particles came from ammunition fired in the accused's pistol and when the muzzle of the gun was within 30 - 36" of Grew's back. The Crown relies on this evidence as establishing, along with the lack of 9 mm. strike marks in the driver's door that

/(a)

(a) the driver's door must have been open when the four shots were fired; and

(b) the accused must have been within 3' of Grew when he fired the two shots which hit the upper back.

I accept these two conclusions. The Crown also claims that on the factual basis Grew could have been out of or getting out of the car when the four shots were fired and that the accused was then close enough to ascertain that Grew was not a danger to him. I shall return to this submission later but in the meantime note that in fact neither Grew nor Carrol was armed and no weapon was found in the car.

I return now to the accused's evidence. He says he got out of the Peugeot and onto the grass in order to get out of the headlights of the Allegro. The Allegro was "revving" and trying to reverse away from the kerb. He shouted to the occupants to halt. The driver's door opened and he saw movement which led him to think the unidentified passenger was going to fire. The door closed and he heard a bang. He thought he was being fired at and that his life was in danger. He fired 15 shots at the passenger's door and changed his magazine. At this time he says the car was reversing.

Mr. McQuillan says he found the handbrake on but there was no evidence to suggest that this car, like many others, could not be driven with the handbrake on. On all the evidence I am satisfied that the Allegro did reverse away from a position at the kerb.

/Mr.

Mr. McQuillan also stated that when test driving the car he could not create a noise which sounded to him like a gunshot: a clinical test of that nature does not however mean that there could not have been a noise which the accused reasonably thought was a gunshot. Here I would mention that the accused is not charged with murdering Carroll - that does not mean that the Crown accepts that the accused was justified in firing the first fifteen rounds but it does indicate that from the Crown's point of view especial significance does attach to the last four shots.

Having changed his magazine the accused ran across the road towards the driver's side. The Crown suggests that the fact that he said in his statements that he ran across the front of the car indicates that he had no great fear of the occupants of the car. The alternative was to run behind a reversing car which might have been a risky move. My own view is that there is little of weight in this point.

The accused then says that he realised that 'D' was no longer firing and he did not know if he had been hit or had a weapon stoppage. Also the car was still reversing which can only have indicated a wish to escape. The accused then says he fired four or five shots at the driver's door, ran up to the door, opened it and Grew fell out. By the time he came to give evidence the accused was well aware of Mr. McQuillan's evidence and the conclusions which flow from it. He did not however seek to tailor his evidence either directly or indirectly so as to fit the scientific evidence.

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In this respect the accused's evidence is clearly wrong and I ask why that is so. Is he lying or is his recall faulty? The whole shooting incident occupied a time space that could better be measured in seconds rather than minutes and events were occurring much more quickly than it takes to describe them. It was a period of high tension and, he believed, high danger for the accused. Some people have the gift of total recall of events lasting long periods - others can get mixed up as to events which were over in seconds. This is not a personal reflection - it was confirmed by the evidence of Mr. Patton, consultant psychologist. Having observed the accused and sought to assess his credibility quite objectively I am satisfied that his recall in relation to this part of the incident is and will remain distorted and that he is not lying or seeking to conceal something from me.

I now ask myself the question - what significance, if any, is there in the accused's inability to remember accurately the events which occurred at the time the four shots were fired? The answer is to be found in another passage in the opinion of Lord Devlin in Broadhurst /1964/ A.C. 441 at 451:-

> "The first is the appellant's loss of memory. This does not relieve the prosecution of any part of their burden. They are not entitled to have the prisoner's assistance in proving their case; even if his memory had been perfect, he is under no obligation to give evidence. On the other hand, loss of memory is no defence: Reg. v. Podola. Subsequently loss of memory does not mean that the accused may not have had a clear intent at the time of the act."

/That

That appears to me to represent the position here and I have to determine what may have happened without the benefit of the accused's recollection. For the door to be open it must have been either opened by Grew or by the accused or by someone else. There is no justification for assuming the intervention of a third person. That then leaves Grew or the accused. Negative evidence has always to be viewed with caution but it is a fact that close examination of the car does not appear to have revealed any fingerprints of the accused on the door. On the other hand was Grew fit to open the door and that opening must have occurred after the .223 bullet hit the door? This raises the question of whether or not Grew sustained his head injury during accused's firing of the first fifteen shots. The entry wound was similar to that in Carrol's head and that was caused by a bullet which was damaged entering the door. It is impossible to determine where Grew's head might have been at any time but it is difficult to place his head in a position relative to the entry holes so as to cause the entry and exit wounds which in fact he suffered. To this must be added the conspicious lack of Grew's blood within the car. Thus I think the probabilities are that Grew's head injury was not caused by one of the first fifteen shots. If it had been the Crown case insofar as it depends on the last four shots would have been undermined because an essential proof in the crime of murder is that the deceased was alive at the time of the unlawful act.

/Thus

Thus I consider it probable that Grew survived the accused's first fifteen shots and Constable 'D's' five shots. Whether or not he was injured in either arm or hand is impossible to say but having regard to the type of man he is known to have been I would consider it highly likely that he would, when the firing stopped, have tried to get out of the car which was attracting fire and he must have been aware that Carrol was hard hit. He also knew that he was hit in the low back but whether or not that would effect his locomotion he would not know until he tried. Thus I am satisfied that Grew could have opened the door as could the accused. But I think it would have been highly unlikely that the accused would have opened the door of a car containing what he believed were dangerous men and from which he believed he had been shot at.

The whole of the evidence satisfies me that the probabilities are that Grew opened his door and was getting out or trying to get out when the accused saw him moving and fired four times. The question that thus arises is what would the effect on the accused's mind have been as he saw Grew moving. He would have known that Grew was alive, trying to get out of the car and could have been a continuing and real danger to him. His state of mind at this time cannot be divorced from his knowledge of Grew's reputation, his belief that he had been fired at from the car, the fact that the car had continued to move despite being fired at and the fact that Constable 'D' had ceased firing. Movement could well have heightened the accused's sense of danger and the Crown has failed

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to satisfy me that the accused ought to have realised that Grew was in fact unarmed. Being wise after an event is always easy - I would respectfully repeat the words of Lord Diplock in The Attorney-General for Northern Ireland's Reference [1977] A.C. 105 at 138C:-

> "This being so, the jury in approaching the final part of the question should remind themselves that the postulated balancing of risk against risk, harm against harm, by the reasonable man is not undertaken in the calm analytical atmosphere of the court-room after counsel with the benefit of hindsight have expounded at length the reasons for and against the kind and degree of force that was used by the accused: but in the brief second or two which the accused had to decide whether to shoot or not and under all the stresses to which he was exposed."

In cross-examination the accused was pressed to explain why he only fired four times at Grew. The answer seems to me to be plain. When firing at the passenger's door he could not actually see his individual target - and in passing the accuracy with which he struck the door speaks highly of his marksmanship and implies a capacity to be accurate under stress. On the other hand with the driver's door open he must have seen the individual target and been aware that he had struck it.

Initially this case might have developed as one in which the accused sought to rely on the provisions of section 3 of the Criminal Law Act (Northern Ireland) 1967. In the event it is really a case in which the accused seeks to justify his conduct in killing Grew, as he undoubtedly did, by relying on the so-called defence of "self defence".

/To

To justify killing or inflicting serious injury in self-defence, the accused must honestly believe on reasonable grounds that he is in immediate danger of death or serious injury and that to kill or inflict serious injury provides the only reasonable means of protection.

I am satisfied that the accused honestly believed that he had been fired at and that his life was in danger. As Lord Normand said in Cwens v. H.M. Advocate /1946/ S.C. (J.) 119 at 125:-

> "In our opinion self-defence is made out when it is established to the satisfaction of the Jury that the panel believed that he was in imminent danger and that he held that belief on reasonable grounds. Grounds for such belief may exist though they are founded on a genuine mistake of fact."

Once the accused raises the issue, as he has done in this case, the Crown cannot succeed unless it removes from the mind of the tribunal of fact the reasonable possibility of its being correct. It is unnecessary that there should be an actual attack on the accused and it is enough if he honestly and reasonably believes an attack to be imminent.

Both in relation to S.3 of the Criminal Law Act and to self-defence the fundamental issue is one of reasonableness. That depends upon a consideration of all the circumstances and while policemen are required to act within the law they are not required to be "supermen" and one does not use jewellers' scales to measure what is reasonable in the circumstances.

/Looking

Looking back on all the evidence, applying the legal principles which clearly apply in this type of case and having regard to the helpful submission of counsel I have no doubt that the Crown has failed to satisfy me that the accused was not justified in acting as he did and accordingly as I indicated at the outset I direct that a verdict of not guilty be entered on the record.