

# The Queen v Paul Anthony McCAUGHERTY & Dermot Declan GREGORY [2001] NICA 45

Both appellants appealed against their convictions for terrorist related offences. McCaugherty was convicted of seven counts including conspiring to possess explosives and firearms and Gregory was convicted on one count of, making property available for terrorism.

The offences arose from a sting operation mounted by the Security Services against dissident Republicans.

McCaugherty was sentenced to 20 years. Gregory to 4 years for his proposed sale of a property in Portugal to fund the operation.

The Security Services engaged 'role playing agents' to gain the trust of Desmond Kearns and subsequently the appellant McCaugherty. Kearns was jointly charged with McCaugherty but the proceedings against him were stayed on the basis that they were an abuse of process. Kearns was not suspected of terrorist offences but attention was directed at him due to his association with McCaugherty.

The investigation was dependant on the two main agents, 'Amir' and 'Ali'. Amir played the role of a cheap cigarette dealer and Ali played that of an arms dealer. Amir gained the trust of Kearns over a period of time regarding cigarette smuggling which ultimately led to discussions about arms at their meetings. In December 2005, Desmond Kearns met Ali who posed as an arms dealer in Amsterdam and confirmed that his friend was serious about a deal. Kearns then took Ali to meet McCaugherty in a bar.

In a six month period, Ali met McCaugherty six times in various locations in Europe. The meetings and telephone calls were recorded. Ali's recollections was that they discussed and agreed the supply of plastic explosives, AK47 Assault Rifles, 20 RPG's, sniper rifles and pistols for a total of €104,00. Over those months McCaugherty paid Ali, €45.970.

The judge considered an application on behalf of Kearns & McCaugherty that the proceedings should be stayed on the basis that they had been entrapped by the state into performing the actions that constituted the offences charged. The application on behalf of Kearns was that what was said at the meetings he had with Amir. The judge concluded that Amir's evidence was deliberately untruthful in a number of respects.

Amir was emphatic that he had received no bonus payments but it later emerged that he had received 3 payments of £1000 each in respect of the part he played in the operation. Secondly, although he denied that he made or authorised a demand for £30,000 to give evidence at the trial through his solicitor, a letter produced was irreconcilable with that

assertion. Also, Amir denied ever seeing a statement attributed to him in the operation which was indeed inconsistent with some of his evidence. The judge also had regard to several critical assessments of Amir, prepared by his superiors, which created the impression that Amir was prepared to act as best *he thought*.

The critical assessments were made by Security Services personnel who considered that Amir's conduct may have constituted entrapment. The judge found that this fact, coupled with the financial incentive of receiving bonuses had been enough to step over the line of entrapment. In addition there was no 'unassailable record' of everything that was said in some of the meetings between Amir & Kearns.

Therefore the judge was satisfied that Kearns' conduct was brought about by the misconduct of Amir during these meetings and stayed the proceedings against him.

The core submission advanced on behalf of McCaugherty was that the integrity of the proceedings against him was so fundamentally compromised by the action of state agents in procuring the commission of the offences that the trial judge should have stayed the proceedings against him also. The operation against McCaugherty depended on the role played by Amir. It was Amir who introduced him to Ali, the 'arms dealer'. McCaugherty's argument being that the offences would not have occurred but for the conduct of Amir.

The operation was properly authorised under RIPA and there were reasonable grounds to suspect that he was involved with the Real IRA. Ali presented himself as an arms dealer which was not out of context in this case. There was also evidence that McCaugherty wanted to purchase arms before he made contact with Ali. There was evidence that Ali paid for hotel accommodation in Istanbul and meals, spending money etc. but the sums were modest and there was no evidence to suggest that they influenced McCaugherty's behaviour. There were also recordings of what they discussed at all the material times. The judge therefore concluded that there were no grounds to justify ordering a stay of proceedings in McCaugherty's case.

The principles set out in the case of *R v Loosely A-G's Ref (No.3 of 2000)* UKHL 53 were relevant to this case. Although the focus of the criticism by McCaugherty was the conduct of Amir, it was accepted that McCaugherty never met him in the course of the operation. The operation was properly authorised and supervised and all the meetings between Ali and McCaugherty were controlled and recorded. Therefore it was accepted that Ali did no more than offer McCaugherty the opportunity that he would have taken if he had been introduced to anyone he believed to be an arms dealer.

The conviction was considered safe and the appeal dismissed.