

Judicial Communications Office

4 December 2017

COURT ACQUITS DEE FENNEL OF ENCOURAGING TERRORISM

Summary of Judgment

His Honour Judge Geoffrey Miller QC, sitting without a jury today in Belfast Crown Court, acquitted Dee Fennell of encouraging terrorism and inviting support for a proscribed organisation in his speech at an Easter commemoration in April 2015.

Damien “Dee” Fennell (“the defendant”) was charged with three counts: encouragement of terrorism contrary to s.1(2) of the Terrorism Act 2006; inviting support for a proscribed organisation, contrary to s.12(1) of the Terrorism Act 2000; and addressing a meeting for the purpose of encouraging support for a proscribed organisation, contrary to s.12(3) of the Terrorism Act 2000.

The charges relate to a speech he gave at an Easter Commemoration on 5 April 2015 organised by the Irish Republican Prisoner Welfare Association (“IRPWA”) at St Coleman’s Cemetery, Lurgan. The event, which was recorded on video, was attended by approximately 70 people. Video footage was posted on YouTube and the IRPWA Facebook page. Police obtained copies of the footage on 13 April 2015 and the postings were removed from both sites shortly after this. The footage shows the defendant speaking for just over 8 minutes reading his speech from paper which he holds in his hands. A search was conducted of the defendant’s house on 20 April 2015 and the police recovered one handwritten page of the speech from behind the microwave in the kitchen. Other items were seized including some invitations to the Easter Commemoration.

The defendant replied “no comment” to each question during his police interview and his solicitor read the following statement on his behalf:

“On Sunday 5th April 2015 I gave a speech in Lurgan to commemorate the 1916 Easter Rising and the fallen volunteers of subsequent generations while giving a detailed analysis of the existing political context in Ireland and drawing upon history I gave a personal opinion as to why both armed struggle and the IRA exist. At no stage did I encourage anyone to join any organisation; at no stage did I encourage anyone to engage in violence against anyone. While rightly publicly rebuking Sinn Féin for welcoming a commander in chief of the British Armed Forces to Ireland, I did not encourage violence in stating my legitimate anti-monarchist views in the course of my speech. I legitimately encouraged those gathered to become actively involved in republicanism as opposed to simply being supporters of republicanism. I used a historical quote in an analogist way to do so; I did not encourage anyone to join any armed organisation. In the course of republican/loyalist and state commemorations and re-enactments quotations are used legitimately. I believe my arrest is

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politically motivated and is a prime example of the PSNI being driven by the agenda put forward by unionist elected members representatives and loyalist paramilitaries."

The defendant did not give evidence at the trial.

Judge Miller referred to the right to freedom of expression which is enshrined in Article 10 of the ECHR which the parties agreed is engaged in this case and said it was clear that any limitation placed by statute on these rights must be both proportionate and necessary: "Any analysis of the defendant's words must therefore be made within the context of the surrounding circumstances, the provisions of the terrorism legislation and his Convention rights as enshrined in Article 10".

Count 1: Encouraging Terrorism contrary to s.1 of the Terrorism Act 2006 ("the 2000 Act")

This legislation was passed in the aftermath of the London bombings of 7 July 2005 and the judge said some aspects of the statute were left somewhat opaque and lacking in clarity. The three elements which must be established by the prosecution in order to prove this offence are:

- The statement must be published;
- It must be likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement to them to commit, prepare or instigate acts of terrorism or a Convention offence; and
- When publishing the statement, or causing it to be published, the defendant must have the necessary state of mind.

Judge Miller said there could be no doubt that the statement was published when it was posted on social media but noted that the prosecution rejected any assertion that the defendant was responsible for the postings. The prosecution instead argued that the oral delivery of the speech amounted to "publication" within the context of the legislation. The prosecution also argued that this was a case of direct encouragement – an assertion that violence against the State is legitimate and an enjoiner to join the IRA. Section 1 of the 2000 Act is worded in a way that the offence can be committed either intentionally or recklessly. The prosecution acknowledged that it would need to show that the defendant was aware of the risk that an effect of the statement would be to encourage terrorism and in the circumstances known to him it was unreasonable for him to take that risk.

Section 20(4) of the 2000 Act sets out what is meant by publication including a person "publishing [a statement] in any manner to the public". The Act, however, does not define whether publication includes giving a speech. Judge Miller said he had "great difficulty" in reconciling the oral delivery of a speech with the statutory requirement that it be "published" and agreed with the reasoning set out by the defence that to do

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so would result in a breach of the defendant's Article 10 rights to free speech. His conclusion meant that the defendant was entitled to be acquitted on Count 1.

Counts 2 and 3: Inviting support for a proscribed organisation and addressing a meeting for the purpose of encouraging support for a proscribed organisation (s. 12(1) and 12(3) of the Terrorism Act 2000 ("the 2000 Act"))

Both the prosecution and defence accepted that these offences involve an interference with the Article 10 right to free speech and the issue was whether in the circumstances the defendant's words fulfilled the requirements of section 12 and whether the interference with his right to freedom of speech was necessary and proportionate. He referred to the leading case on the offences which states that the prosecution must make the jury sure that the organisation was a proscribed organisation, that the defendant used words which invited support for that organisation and that the defendant knew at the time he did so that he was inviting support for that organisation. The case law also stated that there must be proof of an invitation of support for the proscribed organisation and this has to be distinguished from the mere expression of personal beliefs, or an invitation to someone else to share an opinion or belief.

Judge Miller said that in considering the speech he must read it as a piece rather than focus on isolated passages but that this should not preclude him from drawing common sense inferences as to what the defendant meant and what he intended his audience to take from the words he used. He said the speech was full of "hyperbole and rhetoric", the content was "unashamedly partisan with florid and somewhat archaic references such as to "our martyred dead"". The judge said that many would see much of what the defendant said as "deeply objectionable" and "grossly offensive", particularly the oblique reference to the murder of Lord Mountbatten and members of his family. He noted, however, that s.12(1) and (3) of the 2000 Act does not criminalise "expressions of views or opinions, no matter how offensive" but only criminalises "the knowing invitation of support from others for the proscribed organisation".

The prosecution placed emphasis on the parts of the speech where it claimed the defendant "invites his audience to support the IRA". The first section was about the use of the "armed struggle" and the second spoke of supporting republicanism and becoming a "more active republican ... to assist in building a movement that will bring us freedom". The defence countered by drawing attention to the context within which the passages appear, namely a call to action in support of the republican cause rather than a call to arms.

Judge Miller stated that he could see no ground for not drawing inferences from the defendant's refusal to give evidence, however, any inferences that could be drawn on the facts of this case would not add to the strength of the Crown case. He concluded:

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“However offensive the words used by the defendant might be in the ears of many right thinking members of society they were expressions of personal opinion, which did not invite or encourage support for the IRA. In these circumstances he is entitled to be acquitted on Count 2 and 3.”

NOTES TO EDITORS

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 Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

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