

N.I.

CLARKE v. SECRETARY OF STATE¹

A

Criminal injury to persons—Criminal injury—Applicant and others threw stones at police—Applicant pursued—Police mistakenly believed that shots were fired at them—Police shot and wounded applicant—Whether injury directly attributable to a violent offence—Whether compensation payable to offender injured in course of arrest—Criminal Injuries (Compensation) (Northern Ireland) Order 1977 (S.I. No. 1248 N.I. 15), Arts. 2(2), 3(1).

B

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D

The applicant claimed compensation for personal injuries under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977 by reason of being shot by police officers in the early hours of the morning of 23 May 1981 in the area of Elswick Street and the Springfield Road, Belfast. The night and morning of 22/23 May 1981 were a time of great unrest and violence in that area because a hunger striker died on the night of 22 May. The applicant and two friends had attacked a police landrover with missiles before running off. The pursuing police honestly believed that they were pursuing a gunman or gunmen who were firing at them in a maze of streets and alleyways into which it was very dangerous for the police to enter in pursuit of a gunman or gunmen and, honestly believing that the applicant was an escaping gunman who had failed to obey an order to halt, fired at him and wounded him. The issue was whether, on these facts, the applicant had suffered a “criminal injury” within the meaning of Article 2(2) of the 1977 Order. The County Court judge had found against the applicant on this issue and the applicant appealed to the High Court.

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Held, dismissing the appeal, that:

(1) The definition of “criminal injury” does not cover the case where a police officer uses reasonable and lawful force to arrest an offender as to whose criminal conduct he has made no mistake (see page 368E).

(2) The injury sustained was not an injury directly attributable to a violent offence because the police who fired the shots had not committed a criminal offence (see page 368G).

F

The following cases are referred to in the judgment:

Niland v. Secretary of State for Northern Ireland [1982] N.I. 181 C.A.
R. v. Criminal Injuries Board, ex parte Schofield [1971] 1 W.L.R. 926; [1971] 2 All E.R. 1011.

G

APPEAL from an order of refusal of compensation by the County Court judge for the Division of Belfast. The facts appear sufficiently in the judgment of Hutton J.

J. O. McNulty Q. C. and *K. T. Conlon* for the appellant.
Miss J. E. Watt for the respondent.

Cur. adv. vult.

H

¹In the Queen’s Bench Division before Hutton J.: 26 September and 26 November 1986.

HUTTON J. This is an appeal by the applicant, David Clarke, who is now aged 26 years, against the dismissal by His Honour Judge Gibson Q.C. of his claim for compensation for personal injuries under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The applicant claims that he sustained a criminal injury by reason of being shot by police officers in the early hours of the morning of 23 May 1981 in the area of Elswick Street and the Springfield Road, Belfast. The night and morning of 22/23 May 1981 were a time of great unrest and violence in various parts of Belfast, including the Springfield Road, because a hunger striker died on the night of 22 May.

The factual background preceding the shooting of the applicant by officers of the Royal Ulster Constabulary is confused, but I find the following facts on the balance of probabilities. At about 1.45 a.m. on the morning of 23 May 1981 two police landrovers were travelling down the Springfield Road in the direction of the city. As the first landrover approached Colinview Street bricks and bottles were thrown at it by the applicant and two other young men who were standing at the corner of Colinview Street and the Springfield Road. At this time the applicant and the two other young men, who were friends of his and with whom he had been drinking, had consumed a large quantity of alcohol. The two landrovers stopped on being attacked with missiles and the police in both landrovers dismounted. One of the police thought he heard a shot being fired, but I am not satisfied on the balance of probabilities that a shot was fired, and I think it more likely that by reason of the atmosphere of tension which then existed the police officer honestly, but mistakenly, mistook some other sound to be a shot.

When the landrover stopped and the police dismounted, the applicant and the two other young men who had been throwing missiles ran off to escape the police either down Colinview Street or Colinward Street, which run parallel to each other in a westerly direction from the Springfield Road. The applicant and the other two young men running away with him then ran into the alleyway that runs between Colinview Street and Colinward Street and then crossed over Colinward Street into the entry which runs between Colinward Street and Colinpark Street which is the next street to the north of Colinward Street and runs parallel to it. The police gave chase and split up into two parties, and the police officer who thought he had heard a shot fired shouted to the other police that there was a gunman and also fired one shot at an escaping figure whom he thought was the gunman. One group of the police ran down the entry between Colinview Street and Colinward Street and then crossed Colinward Street into the entry between Colinward Street and Colinpark Street. A second group of police took up a position in an entry at the top of Colinpark Street which looked out onto waste ground which borders the Springfield Road and which runs from Colinpark Street up to Elswick Street which is the next street to the north of Colinpark Street and runs parallel to it. At one stage members of the first group of police who were then in the entry between Colinward Street and Colinpark Street, believing that they were pursuing a gunman, fired shots up that entry. In the confused situation in which two groups of police officers thought that they were pursuing a gunman who had fired at them and who was somewhere in the maze of streets and entries in the area of Colinview Street, Colinward Street and Colinpark Street, the second group of police in the entry at the

top of Colinpark Street believed that the shots fired by the police officers in the entry between Colinward Street and Colinpark Street were shots fired by a gunman at them, and they then saw the applicant running up Colinpark Street, and they believed that he was the gunman, or one of the gunmen, who had been firing at them. They then shouted: "Halt, police", but the applicant failed to halt and kept on running and ran onto the waste ground at the top of Colinpark Street between Colinpark Street and Elswick Street, whereupon the police in the entry at the top of Colinpark Street, who had shouted the warning to halt, fired at the applicant and he received a serious wound to each leg and fell on the waste ground. The police then advanced to the position where the applicant had fallen, expecting to find him in possession of a firearm, but no firearm was found. I am satisfied that at all times the applicant was unarmed and I think the probability is that no gunman had fired at any of the police officers who comprised the crews of the two landrovers, although I consider that the police officers honestly believed that a gunman had fired at them on two occasions, first just after they had dismounted from the landrovers and secondly when some of them were in the entry at the top of Colinpark Street.

I summarise my findings of fact by stating that I consider that the applicant and his two friends, at a time of great tension and violence in various parts of the city, including the Springfield Road area, consequent on the death of a hunger striker, attacked a police landrover with missiles and then ran off, and the pursuing police honestly believed that they were pursuing a gunman or gunmen who were firing at them in a maze of streets and alleyways into which it was very dangerous for the police to enter in pursuit of a gunman or gunmen and, honestly believing that the applicant was an escaping gunman who had failed to obey an order to halt, fired at him and wounded him.

In these circumstances the question arises whether the applicant, whom I am satisfied was not a gunman, is entitled to recover compensation. Article 2(2) of the 1977 Order provides:—

“‘criminal injury’ means an injury (including an injury which results in death) directly attributable to—

(a) a violent offence;

(b) the lawful arrest or attempted arrest of an offender or suspected offender, or the prevention or attempted prevention of an offence, or the giving of help to any constable, member of Her Majesty’s forces or prison officer who is engaged in arresting or attempting to arrest an offender or suspected offender or in preventing or attempting to prevent an offence.”

Mr. McNulty, Q.C., who appeared for the applicant, accepted that the police officers who fired at and wounded the applicant had not committed an offence, because he accepted that in the circumstances prevailing they reasonably believed that the applicant was an escaping gunman who had fired at them and Mr. McNulty therefore accepted that the police were not acting unlawfully in firing at the applicant, and therefore that the police officers who fired had not themselves committed a criminal offence; accordingly Mr. McNulty accepted that the applicant could not claim that he had

sustained an injury directly attributable to a violent offence committed by the police officers.

However Mr. McNulty advanced two separate arguments. His first argument, based on the evidence of the police officers, was that a gunman had fired at the police when they dismounted from their landrovers, and that the firing by the gunman therefore constituted a violent offence, and that the firing by the police officers at the applicant was directly attributable to the violent offence committed by the gunman because their firing had been brought about by the gunman's crime. I consider that this argument must fail for two reasons. First, as I have already stated, I am not satisfied on the balance of probabilities that a gunman did fire at the police. Secondly, even if a gunman had fired at the police at the time when they dismounted from the landrovers, I am satisfied that the conduct of the applicant in running off and in leading the police officers a chase through the maze of streets and alleyways severed any chain of causation between the firing by the gunman when the police dismounted on Springfield Road and the subsequent firing by the police at the end of the chase when they were in the entry at the top of Colinpark Street. Therefore even if there had been a violent offence committed by a gunman when the police dismounted on the Springfield Road I consider that the subsequent firing by the police was not "directly attributable to" the firing by the gunman and that the firing by the gunman was not a causa causans of the injury to the applicant (see *Niland v. Secretary of State* [1982] N.I. 18 at 190–192).

Mr. McNulty's second argument relied upon the second part of the definition of "criminal injury", and Mr. McNulty submitted that the applicant fell within the wording of sub-paragraph (b) because, in firing at him, the police were carrying out the lawful arrest of a suspected offender and that his injury was directly attributable to this arrest.

I reject this argument because I consider it to be clear that the second part of the definition was not intended to cover, and does not cover, the case where a police officer uses reasonable and lawful force to arrest an offender as to whose criminal conduct he has made no mistake. If, for example, a police officer uses reasonable force and strikes a blow with his baton to arrest a person who is undoubtedly using violent and unlawful force as a rioter, I am of opinion that the rioter cannot recover compensation on the ground that under the wording of the definition he sustained an injury "directly attributable to the lawful arrest of an offender". I think that as a matter of construction "an offender" is someone different from the person who sustains the injury in respect of which compensation is claimed, and I consider that the definition was not intended to give a right to compensation to an offender against whom a police officer intends to use force in making a lawful arrest or attempted arrest. I consider that this becomes clear when the second part of the definition is read together with Article 3(1) of the 1977 Order, which provides:

"Subject to and in accordance with the provisions of this Order, where a person sustains a criminal injury in Northern Ireland on or after the commencement of this Order the Secretary of State shall, on application made to him, pay compensation—

(a) to or for the benefit of the victim."

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When Article 3(1) and the second part of the definition are read together the provision reads:—

A “... where a person sustains an injury in Northern Ireland directly attributable to the lawful arrest or attempted arrest of an offender or suspected offender, ... the Secretary of State shall, on application made to him, pay compensation to or for the benefit of the victim.”

B I further consider that by the same reasoning the person who sustains the injury and to whom compensation is to be paid is someone different from the suspected offender who is being arrested, even if that suspected offender is, in fact, someone, like the applicant, whom the police officer mistakenly believes to have committed the offence (in this case firing at the police) for which the police officer seeks to arrest him.

C On the other hand if an innocent third party, who happens to be present at the scene, is injured in the arrest or attempted arrest of another person, that third party is a person, on the proper construction of the 1977 Order, who has sustained a criminal injury within the meaning of the second part of the definition and can recover compensation: see *R. v. Criminal Injuries Board ex p. Schofield* [1971] 1 W.L.R. 926.

D Having regard to my conclusion that the applicant's claim does not come within the ambit of the second part of the definition of “criminal injury” it is unnecessary for me to express an opinion on the other points which were argued before me by counsel.

Appeal dismissed

Solicitors for the appellant: *James T. Johnston & Co.*

Solicitors for the respondent: *Crown Solicitor*

E.J.D.McB.

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