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MACKLIN v SECRETARY OF STATE FOR NORTHERN IRELAND

A In the High Court before Carswell J: 14 June,7 September 1990.

Criminal injury – Refusal of compensation – Meaning of 'violence' – Whether acts puts public or section of the public in fear – Whether exclusion from compensation confined to acts of violence for political ends – Criminal Injuries (Compensation) (Northern Ireland) Order 1977 (SI No 1248 NI 15), Arts 2(2),6(3).

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The applicant was assaulted with a broken bottle in November 1983 and claimed compensation for criminal injury. It was established that in June 1979 he had planted a hoax bomb at the hotel at which he worked, as he had been refused time off and hoped that he and the other staff would be sent home. It was further established that later in the same year he had set fire to an abandoned car near a
C residential area and that he had taken part in a sectarian disturbance on a sports ground. The Secretary of State refused to pay compensation because he claimed that the applicant was barred from entitlement on the ground of his previous activities. The claim was dismissed in the county court and the applicant appealed.

Held, allowing the appeal, that –

(1) Article 6(3)b of the Criminal Injuries (Compensation)
D (Northern Ireland) Order 1977, which restricted the payment of compensation, was widely framed so that terrorists were ineligible for criminal injury compensation even though there was no connection between the incident giving rise to the claim and an act of terrorism. Terrorism was defined in Article 2(2) as the use of violence either for political ends or for the purpose of putting the public or any section of the public in fear. It was not necessary to establish that there were
E political implications where it was shown that the use of violence had put a section of the public in fear (see page 255B). *McCann v Secretary of State* (1983, unreported), *Houston v Secretary of State* (1985, unreported), *McCabe v Secretary of State* (1985, unreported), *Kinnear v Secretary of State* [1985] 6 NIJB 92 considered.

(2) It had not been established that any of the acts of the appellant had been for political ends, nor that the applicant's purpose was to
F put the public or a section of it in fear, even though it was possible to infer that from consideration of the natural and probable consequences of an applicant's acts. The applicant was not disentitled from claiming criminal injury compensation (see page 256F).

Per curiam. It is doubtful whether the placing of a hoax bomb constitutes the 'use of violence' (see page 000). *Booth v Secretary of State for Northern Ireland* (1990, unreported) considered.

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The following cases are referred to in the judgment:

Booth v Secretary of State (1990, unreported)
Devlin v Armstrong [1971] NI 13
Doran v Secretary or State [1986] 12 NIJB 47
Houston v Secretary of State (1985, unreported)
H *Kinnear v Secretary of State* [1985] 6 NIJB 92
McCabe v Secretary of State (1985, unreported)
McCann v Secretary of State (1983, unreported)

APPEAL from an order of the county court judge for the Division of Belfast dismissing an application by Paul Macklin for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The facts appear sufficiently in the judgment.

B MacDonald (instructed by *Norman Shannon & Co*) for the appellant.
P Lyttle (instructed by the *Crown Solicitor)* for the Crown.

Cur adv vult

CARSWELL J. This appeal is brought from a decision of the county court judge for the Division of Belfast given on 29 June 1989, whereby he dismissed the applicant's claim for compensation for a criminal injury.

The applicant was assaulted on 19 November 1983 at about 12.15 am, apparently in the region of the Antrim Road, Belfast, between Carlisle Circus and New Lodge Road. He had been drinking in the Orpheus Bar, where some trouble developed between the group of youths who attacked him and the applicant's associates. In consequence the applicant was pursued as he went homewards, caught by his assailants and attacked with a broken milk bottle. He sustained quite substantial lacerations to his head, hands and forearms, with some damage to the extensor tendon of his left little finger.

The Secretary of State refused to pay compensation, because he claimed that the applicant was barred from entitlement to compensation on the ground of his previous activities, which brought into effect Article 6(3)(b) of the Criminal Injuries (Compensation) (Northern Ireland) Order 1977. The terms of the material part of Article 6(3) are as follows:

> "Without prejudice to Article 5(2), compensation shall not be payable to or for the benefit of, or in respect of a criminal injury to, any person –
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> . . .
>
> (b) who has been engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever, or is so engaged."

This draconian and widely cast provision has been considered in several cases in this court. Its obvious purpose is that terrorists shall be ineligible for criminal injury compensation at any time. It is so widely framed, however, that, as Gibson LJ observed in *Houston v Secretary of State* (1985, unreported), there need be no connection whatsoever between the incident giving rise to the claim and the act of terrorism, which may be totally unrelated in time, place, character and degree. "Terrorism" in this context bears the meaning attributed to it in the definition section, Article 2(2) of the 1977 Order:

> "'Terrorism' means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear."

In *McCann v Secretary of State* (1983, unreported) MacDermott J held that the use of the word "includes" had the effect of enlarging the meaning of the definition of terrorism beyond the limits of the words contained in the

previous phrase. This conclusion has been followed in a succession of decisions in this court, and I respectfully accept its correctness. The common feature of the acts contemplated by the definition is the use of violence; when that is established one then has to ask whether it was used for political ends, or to put any section of the public in fear, which may have no political implications – see *Houston v Secretary of State*, per Gibson LJ, at page 2 of his judgment.

The test of political ends may be satisfied by proof that the violence was used in connection with the activities of a paramilitary group, or that in some manner there is a "flavour of terrorism" about the applicant's acts. On the correct construction of the definition section I do not think that it is necessary for the respondent to establish that there is such a flavour when the applicant's acts are brought within the latter part of the definition. In *McCabe v Secretary of State* (1985, unreported) MacDermott J said that the flavour of terrorism is implicit in Article 6(3), and it might be said that there is an implication in the terms of his judgment that this is required before either part of the definition can be regarded as satisfied. In *Kinnear v Secretary of State* [1985] 6 NIJB 92 O'Donnell LJ expressed agreement with MacDermott J's statement, and said:

> "The definition section appears to concentrate not so much on the act, as the underlying reasons for the act. In other words a court must look at the mind of the actor, as well as at the act itself. This construction would appear to be in keeping with the apparent reason for article 6(3)(b) namely, that a person who has engaged in acts of terrorism for the purpose of undermining the state, cannot look to the state for compensation for criminal injury."

When one examines the circumstances of the acts in question in each of these decisions, it appears that the remarks of MacDermott J and O'Donnell LJ are directed towards the first part of the definition, the use of violence for political ends. In *McCabe's* case the acts were two armed robberies of shopkeepers with an imitation firearm and the hi-jacking of a car. In none of these cases does there appear to have been any question of putting the public or a section of the public in fear, so the judge must have been referring in the context of the case to the use of violence for political ends when he stipulated that there must be a flavour of terrorism. Similarly, in *Kinnear's* case the acts were throwing petrol into a tyre depot and setting it on fire, and on another occasion throwing bottles and stones at police land rovers. O'Donnell LJ held that no persons were in the vicinity of the tyre depot and that the police were not put in fear by the acts. In following MacDermott J and categorising the applicant's acts as "violent hooliganism", he was accordingly distinguishing them from violence used for political ends. This appears at page 94 when he says that the acts did not qualify as terrorism since they lacked "the ideological commitment implicit in article 6(3)(b)." It seems to me that the wording of the definition section clearly does not require proof of political ends in applying the second part, and that the importation of a flavour of terrorism into the second part would not as a matter of construction be justified.

The acts of the applicant upon which the respondent relied were committed on three separate occasions. The first in time was on 23 June

1979, when he planted a hoax bomb at his place of work in the Chester Park Hotel. He had been refused a night off to attend a concert, so he decided to cause a bomb scare in the hope that he and the other staff would be sent home, he could then go to the concert. He made a device designed to look like a bomb, placed it in a lavatory and reported its presence to the manager. The entire hotel was evacuated, the Bomb Squad was sent for and the surrounding area was cleared.

The second occasion was on 16 August 1979, when he set fire to a Ford Escort at Castleton Gardens, Belfast. He claimed that it was an old wrecked car, which was sitting outside a derelict house. There was no trouble in the neighbourhood, and there was no particular reason for him to burn the car, which his mates egged him on to do. The area is one which forms a border between Protestant and Catholic areas, but there were no residents in the immediate neighbourhood of the opposite faction, and there is no evidence that any section of the public was put in fear by the incident.

The third incident was on 16 September 1979 at Dunmore Stadium, when he took part with other youths in a disturbance which occurred there. In a statement which he made to the police the applicant said that they were rioting and that there was "a big riot" going on. They chased the "Prods" and wrecked a bicycle which one of them left behind in his flight. In his evidence in court the applicant admitted that there was chanting and shouting of slogans between the groups, which he said numbered about twelve on either side. He denied that any bricks or bottles had been thrown, then later said that some had come over into their part of the stadium. I had no direct evidence about the effect of the riot on other people in the neighbourhood, but I am mindful of the court's right and duty to draw proper inferences from the facts proved about the consequences of the riotous acts: see *Doran v Secretary of State* [1986] 12 NIJB 47, 55, where Hutton J applied the observations of Lord MacDermott LCJ in *Devlin v Armstrong* [1971] NI 13, 37.

I am not satisfied that there was any ideological content in the applicant's acts on any of these occasions, and I hold that it has not been established that on any of them he used violence for political ends. Nor am I satisfied that in burning the car or taking part in the disturbance at Dunmore Stadium he put in fear the public or any significant part of it. Nor does it appear from the evidence that it was at any material time the applicant's purpose to put other persons in fear, though it is possible in a suitable case to infer that from consideration of the natural and probable consequences of an applicant's acts.

I should be willing to infer from the facts of the bomb scare incident that the applicant appreciated quite well that people in the hotel and the areas surrounding it might be put in fear by his acts. In order to bring the case within Article 6(3)(b), however, it is necessary for the respondent to establish both that the applicant used violence (this not being a case of preparation or instigation) and that his purpose in doing so was to put the public or a section of the public in fear.

I have some difficulty with the suggestion that creating such a bomb scare can be regarded as the use of violence. On the ordinary use of words planting a hoax bomb is certainly not a direct use of violence. It has, however, been said that it can be regarded as an indirect use of violence. In

a recent decision *Booth v Secretary of State for Northern Ireland* (1990, unreported) Nicholson J held that planting a hoax lorry bomb on a public road with the intention of putting members of the public in fear of threat to their lives or property was an act involving the use of violence. His reasoning was that the applicant must have been aware that it was likely that a controlled explosion would be carried out on the lorry (as in fact happened), which would put people in fear, and must be taken to have intended that. He formulated the proposition that,

> "An act involves the use of violence if it is an act designed to threaten the lives and property of others or intended to lead others to believe that their lives or property are endangered."

He held that planting the hoax bomb was an act involving the use of violence comparable with the aiming of an unloaded gun at a crowd of persons who had no means of knowing that the gun was unloaded, with the intention of frightening them.

It may be possible to distinguish *Booth's* case from the present, on the basis that the applicant in *Booth* must have known that a controlled explosion in that location could endanger people, or at least property, in its vicinity. Such risk appears to have existed only in respect of the fabric and contents of the hotel in the present case. With great respect to the learned judge, I should not myself be willing to adopt the proposition which I have quoted in the form in which he enunciated it, since its breadth would make it capable of including many acts which I should find it hard to say constituted "the use of violence". If it were accepted as it stands, it could readily be argued that the planting of the hotel hoax bomb in the present case involved the use of violence, a conclusion which I should not find it easy to reach. However reprehensible acts of this kind may be, and however much they may be regarded as falling within the spirit of the provisions of Article 6(3)(b), I should have grave reservations about bringing them within its wording. One has to guard against the risk of creating an undesirable distortion of the statutory wording in order to bar the claim of an unmeritorious applicant.

I do not, however, have to decide the matter on this point, because it has not in my opinion been established on the evidence that it was the applicant's purpose to put the public or a section of it in fear. One may be somewhat sceptical about his account of his reasons for planting the hoax bomb, but it was not challenged and no evidence was called to discredit it. In these circumstances I do not think that the respondent has discharged the onus of proof of all of the elements required for him to bring the case within Article 6(3)(b).

The applicant is accordingly not disentitled by Article 6(3)(b) from claiming criminal injury compensation in the present case. I do not think that on the facts proved before me it has been established that his behaviour contributed to the criminal injury within the meaning of Article 5(2). I therefore award him compensation for the criminal injury, which I assess in the sum of £3,000.

Appeal allowed

PSG