08/79

HOUSE OF LORDS

DPP for NORTHERN IRELAND v MAXWELL

Viscount Dilhorne, Lord Hailsham, Lord Fraser, Lord Scarman and Lord Edmund-Davies

19 October 1978 — (1978) 1 WLR 1350; [1978] 3 All ER 1140; 68 Cr App R 128

CRIMINAL LAW – AIDING AND ABETTING – IS IT SUFFICIENT *MENS REA* THAT THE CRIME COMMITTED BY THE PRINCIPAL, ACTUALLY ASSISTED BY THE ACCUSED, WAS ONE OF A NUMBER THE ACCUSED KNEW THE PRINCIPAL WOULD PROBABLY COMMIT? – WAS THE GUILTY MIND WHICH MUST BE PROVED AGAINST AN ACCOMPLICE THEREBY PROVED AGAINST THE ACCUSED?

Maxwell was a voluntary member of the Ulster Volunteer Force (UVF) engaged in terrorist activities. As instructed he drove his own car to an inn, as a guide to 3 or 4 men in a following car. He then drove off and later learnt that what he described as a "job" for the organisation was an attempt to bomb the Inn. One of the occupants in the following car placed the bomb which was defused with the prompt thinking of the son of the Inn's proprietor.

Maxwell was charged with two offences:

> (a) That unlawfully and maliciously he did an act with intent to cause by explosive substances an explosion of a nature likely to endanger life or cause serious injury to property, in that he placed a pipe bomb with fuse lit inside Crosskeys Inn.
>
> (b) That unlawfully and maliciously he had in his possession or under his control a pipe bomb with intent to endanger life or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property.

Maxwell after being cautioned signed a statement, which in parts contained the following:–

On January 3, 1976, a man called at my house and told me to follow him in my car. When we got to Dunadry this man told me that I was to follow him for a distance and after he turned off the road on the Ballymena side of Kells I was to guide a car travelling behind me to the Crosskeys bar. He told me that when I did this I should go home. The car he mentioned, a silver Cortina, was waiting at Dunadry when we arrived. It looked like there were three or four people in the car. They seemed to be all men. None of the men in this car were local men and I did not know what job they were going to do. The three cars then drove off towards Ballymena and I guided this other car to the Crosskeys bar. When I got to the bar I did not stop but drove on home. After I passed the bar, the car was no longer behind me. I later heard that this was an attempt to bomb the bar but the bomb did not go off. I want to say that just after the death of my father I was told by my .C. that I would not be used for any further military actions and that I would be doing welfare work only. I therefore should not have been used on this job and do not know why I was told to go on this job.

At the trial, it was submitted that there was no evidence that the appellant knew the nature of the job that was to be done or that he knew of the presence of the bomb in the Cortina and that he could not be convicted of aiding and abetting in the commission of crimes of which he was ignorant. This submission was rejected. It was repeated before the Court of Criminal Appeal in Northern Ireland and rejected by them. They, however, certified that the following point of law of general public importance was involved, namely:

> "If the crime committed by the principal, and actually assisted by the accused, was one of a number of offences, one of which the accused knew the principal would probably commit, is the guilty mind which must be proved against an accomplice thereby proved against the accused?"

The defendant appealed to the House of Lords pursuant to leave granted by the Court of Criminal Appeal of Northern Ireland.

HELD: Appeal dismissed.
A person can be convicted of aiding and abetting the commission of an offence without his having knowledge of the actual crime intended. The question to be decided in the present case is what conduct on the part of those in the Cortina was the appellant aiding and abetting when he led them to the Crosskeys Inn. He knew that a 'military' operation was to take place. With his knowledge of the UVF's activities, he must have known that it would involve the use of a bomb or shooting or the use of incendiary devices. Knowing that he led them there and so he aided and abetted whichever of these forms the attack took. It took the form of placing a bomb. He must have known that the means

of execution of the attack were in the Cortina. He aided and abetted the control of those means and as those means were a bomb, in the possession and control of the bomb. The conclusion is inescapable that he was rightly convicted.

VISCOUNT DILHORNE: Mr Kennedy for the appellant conceded that the appellant was involved in a terrorist military type attack while maintaining that as the appellant did not know what form that attack would take, he could not be found guilty of aiding and abetting the commission of a crime which he did not know was to be committed.

In this connection he relied on Lord Goddard CJ's observations in *Johnson v Louden* (1950) 1 KB 544; (1950) 1 All ER 301. In that case three partners in a firm of solicitors were charged with aiding and abetting the sale of a house at above the permitted price. One partner knew that a price in excess of that permitted had been paid. The other two were ignorant of it. At the commencement of his judgment Lord Goddard CJ said at p546 (KB):

> 'Before a person can be convicted of aiding and abetting the commission of an offence he must at least know the essential matters which constitute that offence.'

The court held that the justices had erred in dismissing the information against the partner who knew what had happened but did not think it unlawful.

In *R v Churchill (No.2)* (1967) 2 AC 224; [1967] 1 All ER 497 that statement of Lord Goddard's was approved by this House. In my opinion it is clear that a person cannot properly be convicted of aiding and abetting in the commission of acts which he does not know may be or are intended.

What was the state of the appellant's knowledge in this case? In the course his judgment MacDermott J (presiding at the trial) said:

> '... the facts of this case make it clear to me that the accused knew the men in the Cortina car were going to attack the inn and had the means of attacking the inn with them in their car. The accused may not, as he says, have known what form the attack was going to take, but in my judgment he knew the means of the attack, be they bomb, bullet or incendiary device, were present in that car.'

When the appellant was told what he was required to do he must have known that he was required to take part in a UVF 'military' operation. He cannot have thought that at that time of the evening welfare was involved. Mr Kennedy however contended that he could not properly be convicted unless he knew either as a moral certainty or possibly beyond reasonable doubt or arguably on a balance of probabilities that a bomb was to be placed in the bar and that the Cortina was carrying it.

I do not agree. In *R v Bainbridge* (1960) 1 QB 129; [1959] 3 All ER 200 Bainbridge, was convicted of being an accessory before the fact to office-breaking. A bank had been broken into and oxygen cutting equipment left there. It was found to have been bought by Bainbridge some six weeks earlier. On appeal it was contended that he should not have been convicted unless it was shown that when he bought the equipment, he knew it was to be used for breaking into that bank. Lord Parker CJ, delivering the judgment of the Court of Criminal Appeal, while recognising that it was not enough to show that a man knows that some illegal venture is intended, said that it was unnecessary that knowledge of the particular crime which was in fact committed should be shown to his knowledge to have been intended.

That case establishes that a person can be convicted of aiding and abetting the commission of an offence without his having knowledge of the actual crime intended. The question to be decided appears to me to be what conduct on the part of those in the Cortina was the appellant aiding and abetting when he led them to the Crosskeys Inn. He knew that a 'military' operation was to take place. With his knowledge of the UVF's activities, he must have known that it would involve the use of a bomb or shooting or the use of incendiary devices. Knowing that he led them there and so he aided and abetted whichever of these forms the attack took. It took the form of placing a bomb. To my mind the conclusion is inescapable that he was rightly convicted.

He must have known that the means of execution of the attack were in the Cortina. He aided and abetted the control of those means and as those means were a bomb, in the possession and control of the bomb. I would dismiss the appeal.

LORD HAILSHAM: The only question in debate in the present appeal is whether the degree of knowledge possessed by the appellant was of the 'essential matters which constitute' the offence in fact committed, or to put what in the context of the instant case is exactly the same question in another form, whether the appellant knew that the offence in which he participated was 'a crime of the type' described in the charge.

For that purpose I turn to two passages in the findings of fact of the judge. The first is as follows:

> 'In my judgment, the facts of this case make it clear to me that the accused knew the men in the Cortina car were going to attack the inn and had the means of attacking the inn with them in their car. The accused may not, as he says, have known what form the attack was going to take, but in my judgment he knew the means of the attack, be they bomb, bullet or incendiary device, were present in that car.'

In the second passage MacDermott J said:

> 'In my judgment the accused knew that he was participating in an attack on the inn. He performed an important role in the execution of that attack. He knew that the attack was one which would involve the use of means which would result in danger to life or damage to property. He can in my view be properly charged with possession of the weapon with which it is intended that life should be endangered or premises seriously damaged.'

The fact that, in the event, the offence committed by the principals crystallised into one rather than the other of the possible alternatives within his contemplation only means that in the event he was accessory to that specific offence rather than one of the others which in the event was not the offence committed. Obviously there must be limits to the meaning of the expression 'type of offence' and a minimum significance attached to the expression 'essential ingredients' in this type of doctrine, but it is clear that if an alleged accessory is perfectly well aware that he is participating in one of a limited number of serious crimes and one of these is in fact committed he is liable under the general law at least as one who aids, abets, counsels or procures that crime even if he is not actually a principal. Otherwise I can see no end to the number of unmeritorious arguments which the ingenuity of defendants could adduce. This disposes of the present appeal, which seems to me to be lacking in serious plausibility.

LORD FRASER: He did not physically do an act of placing the bomb in position, nor did he physically have the bomb in his possession, but he was a member of a gang of four or five men acting in concert, other members of which conveyed the bomb to the place where they intended to explode it and placed it in position. The appellant's part in the enterprise was to act as guide by leading the way in his own motor car while other members of the gang followed in another car. He led them to the Crosskeys Inn, where the bomb was placed and the fuse ignited. His part was important because the other members were strangers to the district, and he was familiar with the road.

In these circumstances, the answer to the question whether he was rightly convicted depends upon the extent of his knowledge of the common plan when he took part in it.

The appellant was a member of the UVF and there was evidence from a police officer that UVF had been responsible for various kinds of violent incidents, including murders and bombings of public houses and other premises owned by Catholics. (The owner of the Crosskeys Inn was a Catholic.) On the occasion in question the appellant knew that he was being sent on a 'job'.

In my opinion it is clear that when the appellant was ordered, as his part in the job, to lead another car to the Crosskeys Inn, he must have known that any form of attack which was practised by the UVF was to be expected as the plan for that night. Further he must have known that the bombing of premises necessarily involved doing an act with intent to cause an explosion by explosive substances. And also being in possession of explosive substances. If he did not know the particular type of operation planned when he took part in it, he must have intended to assist in any one or more of these types of operations being content to leave the choice of the actual operation to others, perhaps members of the gang or some higher commander.

The possible extent of his guilt was limited to the range of crimes any of which he must have known were to be expected that night. Doing acts with explosives, and possessing explosives were within that range and when they turned out to be crimes committed on that night he was therefore guilty of them. If another member of the gang had committed some crime that the appellant had no reason to expect, such as perhaps throwing poison gas into the inn, the appellant would not have been guilty of using poison gas.

LORD SCARMAN: The Chief Justice of the Court of Criminal Appeal in Nth. Ireland (Sir Robert Lowry CJ) said in his comments on this case,

> "The relevant crime must be within the contemplation of the accomplice and only exceptionally would evidence be found to support the allegation that the accomplice had given the principal a completely blank cheque."

The principle thus formulated has great merit. It directs attention to the state of mind of the accused — not what he ought to have in contemplation, but what he did have: it avoids definition and classification, while ensuring that a man will not be convicted of aiding and abetting any offence the principal may commit, but only one which is within his contemplation. He may have in contemplation only one offence, or several: and the several which he contemplates he may see as alternatives. An accessory who leaves it to his principal to choose is liable, provided always the choice is made from the range of offences from which the accessory contemplates the choice will be made. I accept it as good judge-made law in a field where there is no statute to offer guidance.

If the appellant contemplated, as he clearly did, a bomb attack as likely, he must also have contemplated the possibility that the men in the car, which he was leading to the inn, had an explosive substance with them. Though he did not know whether they had it with them or not, he must have believed it very likely that they did. The appellant was rightly convicted, and I would dismiss his appeal.

[Lord Edmund-Davies also ruled the appeal be dismissed. Ed.]
