Neutral Citation Number: [2019] EWHC 3508 (QB)

Case No: HQ17X00521

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2019

Before :

MRS JUSTICE YIP DBE

- -

Between :

SARAH JANE YOUNG	**Claimant**
- and -	
JOHN ANTHONY DOWNEY	**Defendant**

- -
- -

Lord Brennan QC and Ms A Studd QC (instructed by **McCue & Partners LLP**) for the **Claimant**
The Defendant was not in attendance

Hearing dates: 11 & 12 December 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE YIP DBE

Mrs Justice Yip :

1. This claim arises from the bomb attack in Hyde Park on 20 July 1982, for which the Irish Republican Army (the IRA) claimed responsibility. The bomb, concealed in a car boot, was detonated as members of the Household Cavalry rode past on their regular route from the Knightsbridge Barracks to Horse Guards for the Changing of the Guard. Four soldiers were killed by the bomb, 31 other people were injured, and seven horses were destroyed.

2. The claimant is Sarah Jane Young, who was aged four at the time. Her father, Lance Corporal Jeffrey Young, then aged just 19 years old sustained severe injuries and died the following day.

3. The others who died were Lieutenant Anthony Daly, aged 23, and Trooper Simon Tipper, aged 19, both of whom died at the scene and Squadron Quartermaster Corporal Roy Bright, aged 36, who died three days later.

4. There can be no doubt that this was a wicked, pre-meditated attack. Four young men lost their lives and the lives of many others were indelibly altered. The claimant was in the nursery at the Hyde Park Barracks. She knew that her father had gone off as part of the Guard. She heard the blast and, looking from the nursery window, witnessed the injured soldiers returning, many covered in blood and some with nails embedded in their bodies.

5. The defendant, John Anthony Downey, was arrested in connection with the explosion in May 2013. His involvement had been suspected from shortly after the bombing. During the 1980s, consideration was given to seeking his extradition. However, proceedings were not commenced. His arrest in 2013 resulted from him voluntarily travelling to Gatwick Airport. He was subsequently charged with four counts of murder and one of doing an act with intent to cause an explosion and was due to stand trial at the Central Criminal Court. On 21 February 2014, Sweeney J acceded to an application to stay the indictment as an abuse of process.

6. Sweeney J set out his reasons in a detailed judgment. The ruling triggered an independent review of the administrative scheme for 'on the runs' (OTRs) in Northern Ireland conducted by Dame Heather Hallett DBE. The report of the Hallett Review is also detailed and I shall not repeat that which has already been publicly stated. It suffices to say that the scheme was implemented as part of the Northern Ireland peace process. It was not intended to provide an amnesty for those who had committed terrorist offences or to impact on ongoing investigations. Had the scheme been properly administered, the defendant should not have received a letter of assurance under the scheme. However, a catastrophic failure led to the defendant being provided with assurance that he was not under investigation, which he relied upon in travelling to the United Kingdom mainland. This underpinned Sweeney J's ruling, although a short summary such as this cannot do justice to the full analysis of all the circumstances which is contained in his judgment, which remains readily available on the website of the Judiciary of England and Wales

7. Following the collapse of the criminal proceedings, the claimant decided to pursue this civil claim. The claimant seeks damages for her own psychiatric harm and consequential loss. She also brings an action on her behalf and on behalf of the

dependants under the Fatal Accidents Act 1976. Further, she seeks aggravated and exemplary damages. It is the claimant's openly stated aim to achieve vindication for the deadly attack on her father, in circumstances where the criminal case against the defendant cannot proceed. Through her lawyers, she makes it clear that she regards this as the only remaining route to seeking justice for the atrocity which led to the death of her father.

8. I accept that there can be no objection to civil proceedings being brought for a vindicatory purpose, see *Ashley v Chief Constable of Sussex Police* [2008] UKHL 25. Here though, the claimant seeks compensation and, unlike in *Ashley*, there has been no offer to satisfy her claim for damages. The motivation for bringing a valid claim for damages is of no concern to the court. I observe, as did Morgan J, in the claim brought in Northern Ireland arising out of the Omagh bombing (*Breslin & others v McKenna & others* [2009] NIQB 50), that the role of the civil court is not the same as in the criminal jurisdiction. In this court, there is no criminal charge in issue. The role of this court is to determine whether the claimant has succeeded in proving her claim on a balance of probabilities. Subject to the issue of limitation, which I must deal with first, that involves considering whether the claimant has established, to that standard, that the defendant was responsible for the unlawful killing of her father.

The procedural history of this claim

9. The claim form in these proceedings was issued on 15 February 2017. Third party disclosure was obtained from the Metropolitan Police pursuant to an order dated 20 June 2017. The claimant obtained an order for service out of the jurisdiction. The claim, with detailed Particulars of Claim, was served on 18 August 2017 and the defendant acknowledged service promptly. By a Defence dated 12 September 2017, the defendant denied any involvement in the planning and planting of the bomb. Further, he raised issues relevant to limitation.

10. The Particulars of Claim identified that the claimant relied upon evidence gathered by the Metropolitan Police to establish that the defendant was involved in carrying out the bombing. That evidence fell into two main categories, namely identification evidence and fingerprint evidence, linking the defendant to the car in which the bomb was planted. The claimant also relied upon the defendant's conviction in 1974 in the Dublin Special Criminal Court of being a member of an unlawful organisation, namely the IRA.

11. By his Defence, the Defendant challenged both the identification evidence and the fingerprint evidence. He contended that the identification evidence has since been discredited and that the fingerprint evidence is unreliable. He did not dispute the fact of his conviction in 1974 but maintained that on another occasion he was acquitted of a similar offence. A Defence having been filed, this claim has proceeded as a defended claim.

12. A case management conference took place on 30 October 2018. In advance of that hearing, the defendant sent a note to the court. He raised an issue as to the representation of the claimant. Although not strictly a matter for the court, I raised this with Lord Brennan QC and was assured that no conflict of interest existed. The defendant said that he was unable to be represented. His note concluded:

> "I therefore notify the Court and the parties that such proceedings as may continue, will have to take place without my active participation. What I have to say has already been set out. I have always made it clear that none of the comments I have made should in any way be taken as disrespect to the Claimant herself and her integrity."

13. The court directed a split trial of liability and quantum and that the trial on liability should include the issue of limitation. I am therefore required to determine the issues of limitation and liability only at this stage. If liability is established, the amount of recoverable damages will be determined later.

The defendant's absence from the trial

14. The defendant has not engaged with the Court since submitting his Note in 2018 and he did not attend the trial. He is currently detained in Maghaberry Prison in Northern Ireland, following his extradition from the Republic of Ireland to face charges arising out of a car bomb attack in Enniskillen in 1972 which killed two members of the Ulster Defence Regiment.

15. Had the defendant wished to attend the trial, arrangements could have been made for him to do so. If not possible for him to attend in person, a video-link could have been arranged. In my experience, the attendance of parties and witnesses by video-link works well within civil proceedings and is a perfectly acceptable alternative to attendance in person. In advance of the pre-trial review, the claimant's solicitors wrote to him suggesting he may wish to seek the facility of a video-link for that hearing. He did not respond. He made no application to adjourn the trial or for directions to allow his participation in any way. Although unrepresented in this claim, the defendant has lawyers acting for him in the criminal proceedings in Northern Ireland. He has not made any contact through them, either with the Court or the claimant's solicitors.

16. I am entirely satisfied that the defendant has chosen not to participate in the trial. In the circumstances, I considered it appropriate to proceed without him being present.

The conduct of the trial

17. Given the defendant's non-attendance, much of the evidence relied upon by the claimant was presented in the form of written statements. The key evidence was read to the court, although I had the opportunity before the start of the trial to read all the material in the trial bundle. I heard oral evidence from a total of four witnesses, including the claimant.

18. Simon Utley was the first to be called. He was one of the troopers riding on the day of the bombing. He was just 18 years old and it was his first ever Changing of the Guard duty. He suffered injuries and his horse had to be destroyed. He gave moving evidence, describing the moment the bomb went off and the split second in which his excitement and pride changed to sheer horror. While I entirely understand the need for the victims' voice to be heard publicly and have every sympathy for Mr Utley and all those affected, I remind myself that it is vital to put emotion aside and to judge this claim by careful analysis of the relevant evidence. Without wishing to be dismissive

of Mr Utley's powerful account, it has not influenced the decisions I must make in this claim.

19. Given the gravity of the allegations against the defendant, I considered it essential to pay close attention to the evidence presented by the claimant. Although not challenged by way of cross-examination, I had in mind the contents of the Defence. I tested the claimant's evidence by reference to the issues raised by the defendant.

20. In the case of witnesses who were deceased or no longer traceable, I required sight of copies of their statements in their original signed form, which were provided by the Metropolitan Police at my request during the overnight adjournment. In that way, I was able to satisfy myself that evidential weight could properly be given to the unsigned typed copies in the trial bundle, in respect of which Civil Evidence Act notices had been served on the defendant.

21. I heard oral evidence from the expert witnesses, Kim Simpson (explosives) and Stephen Hughes (fingerprints). It was helpful to hear from the experts in person and I was able to ask questions to obtain clarification as needed.

22. Finally, I heard also from the claimant. It had been intended that her statement should stand as her evidence. However, I felt it would be useful for me to hear her evidence on the limitation issue in person and she was called for that purpose alone.

23. As I hope is apparent from the above, I sought to ensure that the defendant received a fair trial notwithstanding that he chose not to participate in it.

Limitation

24. The claimant's claim for damages for her own personal injury is governed by section 11 of the Limitation Act 1980. The claim in respect of the death of her father under the Fatal Accidents Act 1976 is covered by section 12 of the Limitation Act. Under both sections, the normal limitation period is three years from the date of injury / death. However, the claimant was a child and limitation did not start to run for her until she reached her majority. Therefore, the earliest limitation could have expired for her was January 1999. The Act provides that if the claimant's "date of knowledge" is later than the date of injury / death, the three year period will run from that later date. Section 14 defines "date of knowledge". For the purpose of this claim, the essential component is the date on which the claimant knew the identity of the defendant. It is the claimant's case that her date of knowledge was 21 February 2014 when Sweeney J handed down his ruling staying the indictment. If that is right, her claim was brought in time. In the alternative, the claimant invites the Court to exercise its discretion to allow the claim to proceed pursuant to section 33 of the 1980 Act.

25. Pursuant to section 13 of the 1980 Act, where a fatal accident claim is brought for the benefit of more than one dependant, the time limit under section 12 is applied separately for each of them. It is conceded on behalf of the claimant that the claim on behalf of her mother was brought outside the primary limitation period applicable to her. I am invited to allow her claim to proceed under section 33.

26. Limitation having been raised in the Defence, the onus is on the claimant to establish her date of knowledge and/or that the discretion should be exercised in her favour.

27. In his Defence, the defendant maintained that his name had been in the public domain as a suspect for over 30 years. He referred to a press report broadcast in 1983 and an article in the Sunday Times in 1984.

28. The claimant's evidence was that she did not know the defendant's identity as a suspect for the bombing until after Sweeney J delivered his ruling in February 2014. I confess that I did not find the brief written evidence from the claimant wholly convincing. However, having heard her in person, I am satisfied that her evidence was truthful. I have seen evidence about the claimant's psychiatric condition. In the course of the brief evidence she gave to me, I formed the impression that she was a vulnerable person. She said that no one had talked to her about the defendant while she was growing up. All she knew was that the IRA had killed her father. She did know that the defendant had been arrested in 2013 and that her mother had gone to court. However, her head was "away with the fairies" then and the first time she had understood about the defendant's involvement in the death of her father was when her mother sat her down after the ruling and explained what had happened. I accept that account.

29. I must have regard to section 14(3) of the Act. That section provides that "knowledge" for the purpose of section 14 includes knowledge which the claimant might reasonably have been expected to acquire from facts observable or ascertainable by her.

30. There are a significant number of authorities dealing with the application of section 14. I do not intend to add to the list by embarking on lengthy consideration of the point, particularly in circumstances where I have not heard argument from the defendant and have had only limited submissions for the claimant. I note that it is unusual for consideration of date of knowledge to focus on knowledge of the identity of the defendant.

31. Although I accept what the claimant told me, it does seem to me that she could have established the identity of the defendant had she actively enquired into whether there were known suspects. It is certainly difficult to maintain that her date of knowledge pursuant to section 14 was later than 2013. Bearing in mind it is for the claimant to establish her date of knowledge, I consider that it is appropriate to approach the issue of limitation on the basis that the primary limitation period had expired before the issue of proceedings. That leads me to consider whether I should exercise my discretion under section 33 to allow the claim to proceed.

32. For reasons which I shall explain, I do not consider that the way in which I should exercise my discretion would be materially affected by precisely when the primary limitation period expired. I must, in any event, consider the exercise of discretion in relation to the claimant's mother's claim on the basis that the primary limitation period had long since expired for her. In the circumstances, I consider it unnecessary to make a finding as to the precise date on which the claimant is to be deemed to have had the requisite knowledge pursuant to section 14.

33. Section 33 of the Limitation Act 1980 allows the court to disapply the provisions of sections 11 and 12 if it appears that it would be equitable to allow the action to proceed. In deciding whether to exercise that discretion, I am required by section 33(3) to have regard to all the circumstances of the case and in particular to the six factors set out in that sub-section. Paraphrasing, these are:

    a) the length of, and the reasons for, the delay on the part of the claimant;
    b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the claimant or the defendant is or is likely to be less cogent than if the action had been brought within time;
    c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the claimant for relevant information;
    d) the duration of any disability of the claimant arising after the date of the accrual of the cause of action;
    e) the extent to which the claimant acted promptly and reasonably once she had the relevant knowledge to bring an action;
    f) the steps, if any taken by the claimant to obtain advice, including legal and expert advice and the nature of any such advice.

34. Although all six matters set out in s.33(3) are important, since Parliament has singled them out for special mention, inevitably some will be of greater significance than others in any particular case. The court must take account of all the circumstances of the case to address the test set out in s.33(1), namely whether it would be equitable to allow the action to proceed having regard to the degree to which:

    a) the claimant is prejudiced by the application of sections 11 and 12 of the Act; and
    b) the defendant would be prejudiced by exercising the discretion to allow the claim to proceed.

35. In *Carroll v Chief Constable of Greater Manchester Police* [2017] EWCA Civ 1992, the Master of the Rolls helpfully drew together the principles emerging from the numerous reported cases on section 33 [see para. 42]. Having had regard to the whole of that paragraph, I summarise the key principles in the context of this case:

    i) The discretion is unfettered and requires the judge to look at the matter broadly.
    ii) The matters set out in section 33(3) do not place a fetter on the discretion but are intended to focus attention on matters likely to call for evaluation and must be taken into consideration.
    iii) The essence of the proper exercise of the judicial discretion under section 33 is that the test is a balance of prejudice, and the burden is on the claimant to show that his or her prejudice would outweigh that to the defendant.
    iv) The burden on the claimant is not necessarily a heavy one. How heavy or easy it is for the claimant to discharge the burden will depend on the facts of the particular case.
    v) While the ultimate burden is on a claimant to show that it would be inequitable to apply the statute, the evidential burden of showing that the evidence adduced, or likely to be adduced, by the defendant is, or is likely to be, less cogent because of the delay is on the defendant.

vi) The prospects of a fair trial are important. It is particularly relevant whether, and to what extent, the defendant's ability to defend the claim has been prejudiced by the lapse of time because of the absence of relevant witnesses and documents.

vii) Subject to considerations of proportionality, the defendant only deserves to have the obligation to pay due damages removed if the passage of time has significantly diminished the opportunity to defend the claim.

viii) The reason for delay is relevant and may affect the balancing exercise. If it has risen for an excusable reason, it may be fair and just that the action should proceed despite some unfairness to the defendant due to the delay.

36. I shall assume in the defendant's favour that the claimant could have been expected to acquire knowledge of the defendant's identity around the time of reaching her majority so that the delay is lengthy. In her mother's case, I will assume a date of knowledge in the 1980s and therefore an even lengthier delay.

37. The reasons for the delay are, in my judgment, wholly excusable and very relevant to the exercise of my discretion. The claimant did not contemplate bringing these civil proceedings until the collapse of the criminal proceedings. Until then, the claimant and other victims were entitled to hold the reasonable expectation that the state would seek to bring those responsible to justice through criminal prosecution. It would be unusual and surprising for relatives to mount a civil claim for damages in relation to an allegation of murder before any criminal proceedings had concluded. Such a claim would risk prejudicing a subsequent prosecution and might well be subject to an application for a stay. It seems to me that, as a matter of public policy, it would be highly undesirable to actively encourage civil claims for damages to be brought while the prospect of prosecution remains. The sensible course in a case of this nature is to give priority to action in the criminal jurisdiction. The claimant has made it clear that monetary compensation is not her primary motive for bringing this claim. Rather, she seeks justice for her father's death. The need for her to do so through the civil jurisdiction only arose in 2014 when it was determined that the defendant's criminal prosecution could not proceed.

38. I also bear in mind that the claimant's vulnerability, while not amounting to a lack of capacity to bring proceedings, appears to have played its part in her not being aware of the identity of the defendant at an earlier stage.

39. The claimant has acted promptly since 2014. Her claim was brought within three years of the decision of Sweeney J. It has been prosecuted expeditiously and has come to trial in a reasonable period.

40. Having heard the evidence adduced at trial, I am satisfied that the evidence relied upon by the claimant is no less cogent than it would have been if the claim had been brought earlier. The essential evidence relied upon is the scientific evidence, including fingerprint evidence. The original evidence remains available and open to independent verification. The claimant has instructed experts to review the source material. I am entirely satisfied, having heard the expert evidence, that the cogency of that evidence is unaffected by the passage of time.

41. The defendant has called no evidence. He has offered no explanation for or challenge to the fingerprint evidence. He has not discharged the evidential burden on him of

showing that his evidence has become less cogent because of the lapse of time. He has simply chosen not to participate in the trial. He has not demonstrated, or even claimed, any prejudice resulting from delay.

42. I consider that a fair trial has been possible. I have been able to consider and analyse the evidence relied upon by the claimant without feeling that the passage of time has made that task more difficult. I note that Sweeney J had no doubt that a fair trial in the criminal jurisdiction would have remained possible in 2014. But for the assurance provided to the defendant in error, he could have been tried for murder and faced a sentence of life imprisonment. To suggest that he should not have to face a claim for damages because of the passage of time would seem wholly inconsistent. The opportunity for the defendant to defend this claim has not been so diminished that he deserves to have the prospect of paying damages removed

43. As was said in *Carroll*, the burden on the claimant is not necessarily a heavy one. She has sufficiently explained the reasons for the delay and pointed to the prejudice she will suffer if she is not permitted to have her claim adjudicated upon in the civil jurisdiction. The defendant has not demonstrated any prejudice to him in allowing the claim to proceed outside the primary limitation period. If the claim is not allowed to proceed, the defendant will avoid a determination on the evidence within this jurisdiction, having avoided adjudication in the criminal court due to an error on the part of the state. Having regard to all the circumstances of the case, I do not believe that would be an equitable outcome. I therefore exercise the discretion under section 33 of the Limitation Act 1980 to disapply the provisions of sections 11 and 12 and allow this claim to proceed (including insofar as it is brought for the benefit of the claimant's mother).

The legal framework for the claim

44. This claim was brought in trespass to the person, intentional infliction of harm and conspiracy to injure. However the claim is framed, there can be no doubt that the intentional, unlawful killing of a person amounts to tortious conduct giving rise to a claim for damages. In their closing submissions, Lord Brennan QC and Ms Studd QC acknowledged that the latter two claims add nothing to the first and indicated that the claimant did not pursue them.

45. It is the claimant's case that the defendant participated with others in a plan to detonate the bomb with the aim of murdering soldiers and that he is accordingly liable as a joint tortfeasor for the acts that killed her father. An act done in pursuit of a concerted joint enterprise is the joint tort of those involved, see *Brooke v Bool* [1928] 2 KB 578.

46. In *Shah v Gale* [2005] EWHC 1087, Leveson J said [at para. 39]:

> "The concept of common design is equally applicable in civil as in criminal law."

He went on to note that actual presence at the time was not a prerequisite and noted then quoted the observation of Stuart-Smith LJ in *Credit Lyonnais v E.C.G.D.* [1998] 1 Lloyds Rep 19 at 35:

> "It seems to me to be well established that a person who acts with another to commit a tort in furtherance of a common design will be liable as a joint tortfeasor. It is not enough that he merely facilitates the commission of the tort unless his assistance is given in pursuance and furtherance of the common design."

47. I must therefore decide whether the evidence establishes that the defendant was part of a joint enterprise, participating in the common design to commit the tortious conduct which led to the death of her father. The essential factual question is whether the defendant actively participated in the bombing and therefore the unlawful killing of the claimant's father.

48. If the claimant establishes that, she will be entitled to recover the damages which flow from her father's death. A finding that the defendant is responsible for the death of her father is sufficient for the claimant to succeed on the issue of liability. The extent of the damages she is entitled to would then fall to be determined later, with all issues as to the heads of recoverable loss and assessment of damages being reserved to the quantum stage.

49. In relation to the claimant's own claim for psychiatric injury as a secondary victim, my preliminary view, based upon the evidence I have seen so far and subject to representations to the contrary, is that a finding that the defendant is liable for the death of the claimant's father is likely to allow her to recover for her own personal injury claim.

Burden and standard of proof

50. The claimant brings this claim and the burden of establishing the allegations against the defendant rests on her. That remains the case notwithstanding his absence at trial and the fact that he has called no evidence.

51. The burden of proof is the civil standard. In *Shah v Gale*, Leveson J said that it would be wrong to approach a case involving an allegation of murder on any basis other than the balance of probability, with appropriate respect paid to the need for cogent evidence to reflect the serious nature of the allegation. That approach is supported by the subsequent decisions of the House of Lords in *Re D* [2008] UKHL 33 and *Re B* (Children) [2008] UKHL 35.

52. I am therefore required to decide whether the claimant has proved her case on the balance of probabilities.

The evidential basis of the claimant's case

53. In order to prove her case, the claimant relies upon evidence obtained by the Metropolitan Police in the course of their criminal investigation and the independent expert evidence she has obtained.

54. The police began their investigation into the bombing immediately. Many of the statements in the trial bundle therefore date from 1982. Further evidence was generated in the course of the criminal proceedings in 2013/14. Where possible, the

relevant witnesses have been traced and have provided statements in the civil proceedings by which they confirm the truth of the typed statements obtained from the police. Due to the passage of time, some witnesses have died, and others cannot be traced. Where I do not have signed civil statements, I have seen the original signed statements given to the police. Although this evidence has not been tested by cross-examination, I have absolutely no reason to doubt the source of the evidence or the truth of it.

55. The evidence obtained by the police linked the defendant to the car in which the bomb was planted through fingerprints and evidence of identification by witnesses who had seen the car in the days before the bombing.

56. The claimant's case against the defendant at trial was founded upon the fingerprint evidence. Lord Brennan QC and Ms Studd QC indicated that the claimant would not rely on the identification evidence, although such was included in the trial bundle.

57. That was a sensible stance to take. The defendant had raised issues about the circumstances in which photofits and an artist's impression had been produced and about the reliability of the identification evidence. The claimant and her advisors had no knowledge of these matters. Unlike in the case of the fingerprint evidence, it was not possible for her to have the identification evidence independently verified to meet the concerns raised in the Defence.

58. In the circumstances, I have ignored the identification evidence in making my findings of fact and have focused on the fingerprint evidence. I proceed on the basis that there is no evidence other than the fingerprints to link the defendant to the car.

Evidence about the bomb

59. As is a matter of record, the explosion occurred at 10.43am. Mr Utley described how the Guard was trotting along South Carriage Drive, passing cars parked on their left when the bomb went off. He described the formation of the troop, which included mounted policemen at the front and rear and the senior men three abreast in the centre.

60. Richard Raynsford, a retired troop leader of the Household Cavalry, was in Hyde Park at the time. He provided assistance in the aftermath. His statement, read to the Court, confirmed the regularity of the routine adopted by the Guard. Strict timings were maintained so that the Guard would arrive at the arch of Horse Guards Parade at exactly 11.00 a.m.

61. The explosives expert, Ms Simpson, provided clear and helpful evidence about the bomb. She has considerable experience in the investigation of explosions spanning thirty-two years. She spent twenty-six years at the Forensic Explosives Laboratory (FEL). The FEL falls under the control of the Ministry of Defence and carries out investigations into explosive incidents on the United Kingdom mainland. In 2013, she was asked to carry out a review of the historical evidence which related to the Hyde Park explosion. She produced statements for the criminal proceedings but, given the course that those proceedings took, was never called to give evidence.

62. It was clear that Ms Simpson had carried out a thorough review of the relevant material and that she was knowledgeable and well-informed in relation to the findings of the investigation. I have no hesitation in relying upon her evidence and accepting the conclusions that she reached.

63. Ms Simpson's evidence confirmed that the explosion was caused by a remote controlled improvised explosive device consisting of approximately 25 lbs of Frangex explosive, which had been placed inside the boot of a blue Morris Marina, registration number LMD 657P. A large quantity of four and six inch nails had been placed between the skin of the car boot and the charge as additional shrapnel. The car had been parked opposite to the direction of travel. In positioning it that way, it brought the IED as close as possible to the passing Guard. The nails had been placed in such a way as to be directed towards the troop. The nails would have been distributed at the speed of a bullet being fired, if not more. Their only purpose was to increase the likelihood of causing death or serious injury. Remote controlled devices such as this were operated by someone with a line of sight to the bomb, allowing for specific targeting of victims.

64. It is apparent that the bomb was detonated precisely as the centre of the troop passed the car in which the bomb was located. It is no coincidence that the three soldiers riding in the middle of the formation were killed, together with Trooper Tipper who was one place back on the left side. The precision with which the bombing was executed is frankly chilling. I am left in no doubt that the killing of these soldiers was intentional.

65. It is likely that the bombing was carefully planned. About three weeks earlier, the witness Mark Chrusciel had seen two men in a car near to the bomb scene. He noted they had a camera and clipboard and saw the driver taking photographs of the Horse Guards. He saw them again the following day. It is probable that this was a reconnaissance.

66. Based upon her experience and information contained within the FEL database, Ms Simpson found compelling evidence that this was an IRA device. That accords with the contents of the telex message received by BBC Belfast at 12.55 on the day of the bombing. The receipt of that telex was evidenced through the statements of Chester Stern and Richard Kempshall. The telex signed "P O'Neill, Irish Republican Publicity Bureau" included the statement:

> "The Irish Republican Army claim responsibility for today's bomb attack in London on members of the Household Cavalry."

Evidence about the car used in the bombing

67. The witness Christine Smale was an assistant cashier at the British Car Auctions in Enfield. Her evidence confirms that the Morris Marina was purchased by a man with an Irish accent on 13 July 2009 (a week before the bombing).

68. The police established that the car used in the bombing had been parked in the NCP Portman Square car park from the afternoon of 17 July until teatime on 18 July. It was then parked at the NCP Royal Garden Hotel car park between 18.39 on 18 July

until 6.51 on the morning of the bombing, 20 July. This is evidenced by statements and documents obtained from parking attendants at the two car parks.

The fingerprint evidence

69. Having identified where the car had been parked in the days before the bombing, the police obtained the parking tickets associated with the vehicle. Ayinla Awojobi, a car park attendant at the Portman Square car park, was able to identify that three tickets were issued at the time that the car entered the car park, one of which was therefore the ticket issued to the driver of the car. Those three tickets were produced to the police and became exhibits KS/1, KS/2 and KS/3.

70. Olufemi Bankole was a car park attendant at the Royal Garden Hotel car park. He was able to produce a ticket, on which he had written "L/S", which stood for long stayer and the registration number LMD 657P. He recalled writing on the ticket when the car left. That ticket became the exhibit OB/2.

71. In August 1982, David Tadd, a senior fingerprint officer, obtained the tickets from the Portman Square car park. He treated them with chemicals to develop any fingerprints and had them photographed. In November 1983, having obtained the defendant's fingerprints, he found a match with marks on KS/1.

72. On 19 May 2013, Ian King, a police officer, attached to the Counter Terrorism Command, took a full set of prints from the defendant following his arrest in connection with the Hyde Park bombing.

73. A statement from Ann Cunningham, a senior reporting fingerprint examiner with the Metropolitan Police confirms that the Royal Garden Hotel ticket (OB/2) was received into the Metropolitan Police Fingerprint Laboratory on 21 July 1982 and was later subject to chemical treatment to develop any fingerprints and was photographed. In 2019, she obtained the photographs of the prints on OB/2 and KS/1 and compared them with the defendant's prints taken in 2013, concluding that the defendant's prints matched marks on both tickets.

74. In his Defence, the defendant disputed the fingerprint evidence. He suggested that the authorities had been reluctant to rely on the fingerprint evidence for the purpose of prosecution. He then said this:

> "At the present moment, I can only guess at the reasons for it, however, I point to the question marks that were raised following the arrest of an alleged co-conspirator, Gilbert McNamee, in August 1987, who was charged with involvement in the Hyde Park bombing on the basis of a claimed finding of his fingerprints (on masking tape attached to an improvised explosive device in turn said to be identical to a fragment of circuit board found by a passer-by in Hyde Park shortly after the bombing. The claimed fingerprint finding was subsequently considered to be unsupportable.
>
> In December 1998, and after he had served 11 years in prison, Gilbert McNamee's conviction was quashed by the Court of

> Appeal and he was later, I have read, awarded substantial compensation.… The reference was based on two issues, that his "fingerprints" were wrongly identified by a Metropolitan Police fingerprint expert as his and that there was crucial non-disclosure of evidence that could have exonerated him."

75. I have considered the judgment of the Court of Appeal Criminal Division, *R v McNamee* [1998] 12 WLUK 408. In that case, the Crown relied upon three fingerprints found on bomb-making components in three separate finds. It is not in dispute that two of the three fingerprints were Mr McNamee's. His case was that they had been transferred in innocent circumstances, something which the Court of Appeal thought was implausible. The Court described those fingerprints as being "very powerful evidence" against Mr McNamee. The third fingerprint was a thumbprint, which Mr Tadd had identified as belonging to Mr McNamee. That evidence was not challenged at trial. However, on appeal, further fingerprint evidence was admitted. In total, the evidence of 14 experts was admitted and the Court of Appeal heard evidence over seven days. The Court noted that there was no unanimity between the experts and that there were very substantial areas of disagreement. Mr Tadd's evidence was not discredited in the Court of Appeal. The Court of Appeal accepted that it would still have been open to the jury to accept his evidence of a match but said this:

> "Having heard all the expert evidence called before us, it is impossible to say with confidence which conclusion a jury would have reached. It would have been open to them to conclude not only that the thumb mark could be read, but also that they were sure that it was the Appellant's print. On the other hand they might have concluded that they were not sure that it was the Appellant's print."

76. That was material, particularly because the trial judge had placed considerable emphasis in his summing up on the presence of 3, as opposed to 1 or 2, incriminating fingerprints. This in combination with the non-disclosure of other potentially exculpatory evidence led to the Court of Appeal finding that the conviction was unsafe.

77. Here, the evidence of Mr Tadd and Ms Cunningham is relied upon only so far as it is relevant in looking at the continuity of the fingerprint evidence. There is no basis for suggesting that the *McNamee* appeal casts doubt on the integrity of Mr Tadd's evidence generally.

78. The claimant commissioned an independent expert, Stephen Hughes, to review the fingerprint evidence and offer an opinion in this case. I found Mr Hughes to be an impressive expert.

79. Mr Hughes was initially provided with the photographs of the exhibits which had been prepared by the Metropolitan Police. However, he requested sight of the original parking tickets. He attended the fingerprint bureau in Lambeth in March 2019 for that purpose. He was supplied with the exhibits KS/1 and OB/2. He noted that the marks had faded somewhat in the intervening years. However, there was still

sufficient ridge detail for him to make a proper comparison with the defendant's prints (those taken in 2013).

80. Mr Hughes explained how prior to 2001, eight ridge characteristics were required to identify, and 16 ridge characteristics were required to present a case in court.

81. In *McNamee*, the Court of Appeal said:

> "Evidence of fewer than 16 characteristics is not inadmissible as evidence of identification. As we were told by the experts, much depends on the quality of the print itself and the quality of the matching characteristics."

The currently accepted practice is not to require a specific number of ridge characteristics but to adopt a holistic approach based on all the information available from the fingerprints. That was the approach adopted by Mr Hughes in this case.

82. Mr Hughes confirmed that the continuity of the exhibits KS/1 and OB/2 appeared to be in accordance with standard police procedures. I have reviewed the continuity of the exhibits carefully. I am satisfied that the exhibits KS/1 and OB/2 which were provided to Mr Hughes were the original parking tickets seized from the Portman Square car park and the Royal Garden Hotel car park. I am also satisfied that KS/1 was one of three tickets issued at the time that the Morris Marina entered the Portman Square car park and that OB/2 was the ticket issued when it was parked in the Royal Garden Hotel car park.

83. Referring to the fingerprints on the tickets and cross-referencing the defendant's fingerprints taken in 2013 Mr Hughes told me:

> "I have absolutely no question whatsoever that these marks were made by the same person who fingerprints these are, no doubt."

84. He was clear that he found enough ridge characteristics in the prints on both tickets to be confident of a match in relation to both. One of the prints (labelled A) on exhibit OB/2 (from the Royal Garden Hotel car park) was a particularly good mark, easily exceeding 16 ridge characteristics (I note Ms Cunningham found 21). He accepted that some experts might have had less confidence in some of the prints using the criteria applied prior to 2001. It seems to me that this might explain any earlier hesitancy in relying upon the fingerprint evidence, <u>if</u> what the defendant says about that is right. However, Mr Hughes said that he would have put forward a positive identification based upon these prints had he been viewing them in the 1980s.

85. Having heard Mr Hughes' evidence and after reviewing all the fingerprint evidence, I am satisfied that the fingerprints on KS/1 and OB/2 were made by the defendant.

86. The defendant has provided no explanation as to how his fingerprints could have been on those tickets other than that he had been responsible for parking the Morris Marina in the Portman Square and Royal Garden Hotel car parks in the days leading up to the bombing.

Findings of fact

87. My analysis of the evidence presented to me leads me to find the following facts are established to the necessary standard:

i) The claimant's father, Lance Corporal Jeffrey Young was unlawfully killed (as were the three other soldiers) by persons acting together in the name of the IRA.

ii) The deaths resulted from a deliberate, carefully planned attack on members of the military as they were on their way to carry out their ceremonial duties in the Changing of the Guard at Horse Guards.

iii) The explosion was caused by a radio-controlled improvised device in the boot of the Morris Marina, registered number LMD 657P, which had been designed and carefully assembled to kill and maim with the addition of nails as shrapnel.

iv) The car was bought at auction on 13 July 1982 by an Irishman, whom it can reasonably be inferred was one of the bomb conspirators.

v) The car is likely to have remained in the possession of the conspirators in the week leading up to the bombing, during which time the bomb was assembled in its boot.

vi) The car was parked in Portman Square between 17 and 18 July. It was then parked at the Royal Garden Hotel car park from 18 July until the morning of the bombing.

vii) The defendant's fingerprints were on the tickets for both car parks.

viii) There can be no sensible explanation for the defendant's fingerprints to be on the car parking tickets other than that he was responsible for moving the car between the car parks. It is probable that he was driving it on the morning of 20 July 2019.

ix) The defendant was a member of the IRA, as evidenced by his conviction in 1974.

x) In the circumstances, it is reasonable to infer that the defendant was knowingly involved in the concerted plan to detonate the bomb in Hyde Park specifically targeted at the passing Guard.

Conclusion

88. I find that the defendant was an active participant in the Hyde Park bombing which caused the death of the claimant's father and the other soldiers.

89. I find that the defendant's participation was part of a concerted plan aimed at killing or at least doing really serious harm to members of the Household Cavalry.

90. As such, the claimant has established that the defendant is responsible as a joint tortfeasor for the unlawful killing of her father and she is therefore entitled to recover damages from him. The extent of those damages will be determined later. Since damages remain to be assessed, I intend to say no more at this stage about the impact of this dreadful event on the claimant. I will remit the claim to the Master for further directions in relation to the quantum stage.