

Neutral Citation No: [2025] NICC 30	Ref: [2025]NICC 30
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 19/077342
	Delivered: 23/10/2025

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE, BELFAST**

THE KING

v

SOLDIER F

**Mr Mulholland KC with Mr Turkington KC with Ms Kafaar (instructed by McCartan
Turkington Breen Solicitors) for the Defendant
Mr Mably KC with Mr Magee KC and Mr McNeill BL (instructed by the Public
Prosecution Service) for the Crown**

HHJ LYNCH KC

Introduction

[1] I will commence by thanking counsel for their assistance in dealing with the complex legal and factual issues as they arose during the course of the trial. I would also compliment the quiet dignity with which those who, often at great inconvenience, have attended the trial having to listen to, not I daresay for the first time, the sometimes harrowing detail of the tragic events on the day in question, 30 January 1972, colloquially referred to as “Bloody Sunday”

[2] The accused in this case has been granted anonymity both in terms of his name and personal appearance. As a result, he has attended court, sat behind a screen and has not been visible to the public, legal representatives, court staff or witnesses. I have been able to see him from my position and confirm that he has been in attendance at all times whilst the case has been sitting. He, likewise, obviously, cannot see the court but has been able to follow proceedings with the help of a video connection.

The charges

[3] Soldier F has pleaded not guilty to a total of seven counts on the present bill of indictment. Two of murder, that of James (Jim) Wray and William McKinney and

the attempted murders of Joseph Friel, Joseph Mahon, Michael Quinn, Patrick O'Donnell and a person unknown, all of which offences are alleged to have been committed on 30 January 1972.

[4] Soldier F was, at the time a Lance Corporal, in the Parachute Regiment of the British Army and was, along with colleagues, brought in that morning to deal with anticipated public disorder.

[5] The generality of the events of that day are well known, but I would emphasise that the focus of this court is limited to the intense and tragic events that took place in Glenfada Park North ("GPN") in a time span measurable in seconds and probably no more than a couple of minutes leaving two dead and four wounded by gunshot at the hands of members of the defendant's regiment.

[6] It is no function of this court to attempt to analyse or come to any view about the generality of the events of that day or their causes but is confined to a determination of the guilt or innocence of the defendant on the charges he faces.

[7] I remind myself of two fundamental principles, in this as in all criminal trials, that will guide my approach to the basic question of guilt or innocence:

- (i) The onus is upon the prosecution to prove the guilt of the accused. At no stage does the onus pass to the defendant to prove innocence or to establish facts from which innocence may be inferred.
- (ii) Before the accused can be convicted of the charges, or any of them, the court must be satisfied of his guilt "beyond a reasonable doubt." If during the course of this judgment I express the view that "I am satisfied" or am "sure" they should be taken as a shorthand or synonym for "satisfied beyond a reasonable doubt."

General background

[8] The context within which the events giving rise to these charges is a Civil Rights march from Bishop's Field in the west of the city, originally intended to go to the Guildhall in the centre. The events of the day are described in some detail in the statement of Mr Ivan Cooper, now deceased, which was read into the record and to which I now refer:

"As I walked from the Creggan some of the Paratroopers were hammering their batons on their hands. It seemed to me that the intention of the para's behaviour was to scare people from the march that afternoon. Their presence had the opposite effect ...

I set off on foot to Bishop's Field where the march was to start ... There was a carnival atmosphere in Bishop's Field as people were waiting for the march to start ...

Tommy McGlinchey's coal lorry was leading off the march. I knew it never had any prospect that the march would be able to proceed through to the Guildhall ... I had been informed by Chief Superintendent Lagan that there was to be a barrier at the eastern end of William Street and that the march would not be allowed to proceed through the barrier. I had already decided that a meeting would be created elsewhere, at Free Derry Corner.

I remember that the march proceeded down Southway. People near the front of the march, many young people were able to walk quite freely ... A number of people jumped on the lorry. There was a civil rights banner on the lorry. (T)he march approached the western end of William Street ... the atmosphere was still good. I noticed army to my left on the north side of William Street ... I knew that the march had to be wheeled away from William Street. There was never any question of attempting to march through the barrier ... The tactic of creating a division for the march by having a meeting away from the Guildhall had now quickly to be put into effect to prevent people from approaching the barrier in William Street ... The lorry turned towards Free Derry Corner. I followed it. I walked only a short distance south along Rossville Street before noticing that a number of young men had detached themselves from the main body of the march. There were a number of stragglers standing around near the junction of William Street and Rossville Street watching the beginnings of a confrontation between the young men and the army. I noticed some paras observing the march with their binoculars. I moved back to William Street to help urge people to head for the meeting.

I could see young fellas grabbing stones from the waste ground around William Street and throwing them at the soldiers behind the barrier. As I left the riot, I could hear rubber bullets being fired and I was conscious of CS gas flying around behind me ... I also saw a water cannon brought up to the barrier as I was leaving the scene ...

There were people running with me as I made my way towards Free Derry Corner.

I heard a number of distinctive “cracks” ... The army had come into Rossville Street ... I could smell gas. I continued to speak but then became conscious of something skipping along the ground. The skipping became more obvious ... there were at least 10 instances of skipping. Bernadette (Devlin) then said, “That’s lead Coops.” It then dawned on me that that the skipping was being caused by live gunfire and that lead was buzzing around me.

I could see the army ahead of me as I stood on the platform. I could see the soldiers taking aim and firing ... At this stage the gunfire was very heavy, and we were pinned down.”

[9] He then talks about getting the speakers off the stage and how the crowd in front of him had scattered and continues:

“I became more conscious of bullets, maybe 20 to 25 flying around. They appeared to be flying from straight in front of me (north and south) over my head and hitting the wall behind me. I was convinced at that time that shots were being fired from the City Walls.

I could see three or four APCs all moving south along Rossville Street and around 12 soldiers at the north end of Rossville Street near to Kells Walk ... moving stealthily south along Rossville Street and took up positions near to Kells Walk ... These soldiers were not taking cover. There were also soldiers in the general area of Rossville Street ... When I took a second look north along Rossville Street there were people around the rubble barricade who appeared injured. The firing was heavy as I continued to crawl towards the telephone box at the south end of Block 1 of the Rossville flats and bullets were spitting around me.”

[10] Mr Cooper made it to the telephone box and as the shooting continued he took cover behind it. He does have some observations about activity in Glenfada Park, the focus of this trial:

“Injured men were being carried by older men from the rubble barricade into (GPN) ... As I looked again towards

the north end of Rossville Street I saw two soldiers peering over the pramway by Kells Walk ... I recall being at the north end of (GPN). People were being carried around (GPN). There were a lot of people on the west side of (GPN). People were walking around with blood on their clothes ...

I saw a person lying on the ground close to me on the east side of (GPN) who appeared to be fatally injured ... I could still hear shooting."

[11] He then went to a flat to take a phone call and as he left the gunfire seemed to have intensified:

"The gunfire seemed to be coming from the south end of (GPN). There was a large burst of gunfire. There was utter chaos around me ... I ran along the east side of (GPN) in a north to south direction. As I was I running noticed three people in (GPN) lying dead or injured."

[12] As it would seem, marrying his account with other evidence that he was in the vicinity of the events giving rise to this prosecution, it may be presumed that the persons he saw on the ground were the two deceased, Messrs Wray and McKinney and the injured Mr Mahon.

[13] The Anti-Tank platoon of the Parachute Regiment had been deployed along with other paratroopers. This was the unit that F, G, H, and E were members of having been deployed, on the day from Holywood. They were transported into the Bogside in ACPs and debussed in Rossville Street.

Topography

[14] The Civil Rights march came into Derry/Londonderry (hereinafter referred to as Derry) from the west side of the city ending up travelling along William Street which traverses directly along an east/west axis. Rossville Street joins it in a T-junction and runs directly southwards towards "Free Derry Corner." On the east side of Rossville Street are the Rossville Flats consisting of three large multi-story blocks roughly in the shape of a "C." In front of the flats are two streets, Eden Place and Pilots Row, where the buildings have been demolished, leaving only the framework of the roads visible. This area has been referred to throughout the case as the "waste ground." On the opposite or west side of Rossville Street are, what appear to be derelict buildings, adjacent to Kells Walk. Travelling south along the same side is Glenfada Park North which is opposite block 1 of the Rossville Flats. It consists of two blocks of maisonettes on the east and west sides, a block of garages on its north and bounded by the rear of maisonettes forming one side of Glenfada Park South, an adjacent residential block of flats.

[15] GPN can be accessed from all four points of the compass. At the northeast there are two methods of access, one up to the first landing by a ramp or pramway or below the ramp into the central area of the square. From the Kells Walk area it is a distance of some 75 metres. An alleyway runs along the north side of the square behind the garages and leads to the northwest access point to the left and Columbcille Court to the right. At the south end of the square there is road access to Rossville Street where across the street itself is what is referred to as the "Rubble Barricade" a low level rather feeble structure, possibly the remnants of a more effective form of obstruction. To the southwest is a further small access/egress point under a walkway leading to Abbey Park, which I shall refer to as the "Abbey Gap." The central GPN is paved with markings for parked cars and a divide in the middle. It is 32 metres wide, the maisonettes on both sides are 38 metres long and the diagonal distance from the northeast corner to southwest some 58 metres. At the southwest corner, as can be seen from photograph 25.37 are two vehicles parked at right angles to each other close to the nearside kerb. From other evidence it appears one was up on blocks.

Status of soldier's statements

[16] As the Crown opened, their case is based upon the hearsay evidence of two of F's colleagues on the ground that afternoon, Soldiers G and H. As I will come to at a later stage, each made statements closely contemporaneous to the events themselves to members of the Royal Military Police ("RMP").

[17] In the case of *R v A and C* [2021] NICC 3, which related to the admissibility of statements made by two further soldiers, also members of the Parachute Regiment on duty that day, Mr Justice O'Hara stated:

"[27] The prosecution conceded in its written submission on the *voir dire* that the 1972 RMP statements are not in themselves admissible against the defendants. That concession was inevitable. The common law which applied at that time, before any Emergency Provisions Act or Police and Criminal Evidence Order, was summarised in Judges' Rules which were amended in 1964 in England and Wales - see Practice Note [1964] 1 WLR 152. Those rules were not adopted in Northern Ireland until 1976 (see Hansard 13 October 1976) but since they state what the common law was that later date is of no consequence.

[28] It is beyond dispute that at common law the statements would have to have been excluded because they were ordered rather than volunteered and because no caution was issued by the person taking them. The absence of a caution is easily explained by the limited

scope of W/O Wood's role - it was not part of a criminal investigation."

[18] The conclusions drawn by the court are unassailable in this regard, that the RMP statements and any further statements derived from the those originating documents, would be inadmissible as evidence against their makers.

[19] It would be reasonable to assume that F made a similar statement or statements, under compulsion, as his colleagues did. However, they are not, as conceded by the Crown, admissible as evidence against him under the principles set out in A and C. I am unaware of the contents of any such statement that may have been made by F and even if I were I would not be able to take it into account when considering the case against him.

[20] Evidential statements taken preparatory to the Widgery Inquiry (heard in 1972), evidence at the Inquiry itself and statements/evidence at the Saville Inquiry some three decades later are all, it is accepted inadmissible as against their makers. Again, if F made any such statements I am unaware of them and again could not constitute any part of the case against him.

Evidence of Soldiers G, H and E

[21] As I have stated above, the case against F depends wholly upon the evidence of G and H who were, by their account, on the ground with F and entered GPN at more or less the same time and, along with him involved in firing upon civilians therein. The evidence derives from their statements to the RMP, statements for the Widgery Inquiry and subsequent evidence and in the case of H to the Saville Inquiry. I summarise their evidence or those portions relevant to the issue before this court and upon which the Crown rely.

[22] The first statement made by Soldier G was recorded by Corporal Smith, RMP, and timed at 02:15 on 31 January 1972. In it he confirms that he was on duty with his platoon of eight men commanded by "G1." He states:

"(that) at about 1610 I moved into position in Little James Street ... The rioters were pushed back to Rossville Flats and my platoon moved in vehicles along Rossville Street and debussed at the junction of Eden Place.

We moved in pairs on foot along the north side of Rossville Street. I was with "F."

A barricade had been set up about fifty yards away on Rossville Street and a crowd of about four hundred had gathered behind it.

I ran up the alleyway with "F" into the Glenfada Park area. We were followed by two others ... On entering the square, I saw two men standing about 25 metres away, both of them were holding what appeared to be small rifles in their hands. There was a small group of people standing near to them. I fired three aimed shots at one of the men and I saw him fall to the ground. "F" fired at the same time, and I saw the other gunman fall. The group of people standing near to the gunmen picked up the weapons and ran off down an alleyway in a North Easterly direction. We split up and gave chase ... The people with the weapons had already turned off from the alleyway out of sight ... The bodies of the gunmen were left where they fell."

[23] Shortly after this another statement was taken from him at 01:42, in which having been shown a collection of photos he asserts:

"I am reasonably certain that I shot this man in an incident in the Glenfada Flats during a full scale riot on 30 Jan 72. The youth was throwing nail bombs."

[24] And again, in another statement apparently also taken on this date he states

"I am reasonably sure that I shot this man in an incident in Glenfada Flats during a full scale riot. This youth was armed with a small rifle."

[25] In the typed statement the words "armed with a small rifle" overwrote the typed original entry of something illegible and "nail bomber."

[26] In a further statement dated 14 February 1972 he states:

"I wish to add that the gunmen I saw in Glenfada Park were accompanied by a third man. Because this man did not have a rifle like the others I did not pay any more attention to him. I shot one of the gunmen. I heard "F" fire at the same time and because the two gunmen fell to the ground I automatically thought the second gunman had been engaged by "F." However, in view of the fact that I fired 3 shots it is possible that I hit both men and the third man who was with them, I later saw was lying on the ground but not moving. Therefore, it is likely that he was shot by "F."

[27] The Crown further rely upon a statement prepared for the Widgery Inquiry:

“When we were operating I usually work with a senior soldier (F) ... I saw “F” start to move forward, so as it was a short distance to the next cover I moved with him. I think F might have stopped in the alleyway to cover me and I went to the wall at the end of the alleyway ...

We moved quickly into the alleyway, and I remember looking round for F who was just behind me. There is an archway into the courtyard of Glenfada Park. There was a car parked close to the mouth of the archway, and I went round to the right hand side of the car with F close beside me. As I got round to the end of the car two men attracted my attention in the opposite corner of Glenfada Park ... These men were armed ... I think they were short rifles like an M1 carbine ... I immediately dropped to one knee and fired three aimed shots at one of the men. F was firing beside me, and I saw both men fall.

There were a fair number of people on the opposite side of the courtyard. When the men fell a small crowd gathered around quickly. I could not actually see anyone pick up a weapon because there were too many people in front. I did not fire at them. The crowd ran off quickly up a little alleyway only a couple of yards behind them.

F moved down the wall of the eastern building to the big opening by the barricade and I worked round the other two walls. We could not run straight across the courtyard because it is open on a number of sides and we could have been fired on. By the time we reached the far corner the crowd had completely vanished.

With regard to the men in Glenfada I assumed at the time I had made my earlier statement that I had shot one and F had shot the other of the two I was observing, as they were right together it is quite possible that I shot them both, while F shot a third man whom I was not observing.

This is the reason I was asked to make a supplementary statement on the 14th February explaining this point. This statement has now been read out and I don't think it is an accurate record of what happened. I did not have a third man under observation near the two identified targets that I have mentioned earlier. I know I may have shot these two, but I certainly could not have shot the third

man. If F was firing at the same time it is possible he may have shot the third man, but I do not know.

I confirm that I was shown a photograph of a man called Young and identified as the man I was reasonably sure was the man I had shot. It is quite wrong to say that the man I shot was throwing nail bombs, I cannot recall saying that."

[28] In his evidence to the Widgery Inquiry, he stated that he had been in Northern Ireland since September 1970. On "snatch" operations he would operate in pairs with his partner "F." He had never been in this area before. Having debussed he took up position against the wall of an old building on the right hand side facing down the street. This, I infer, to refer to the building beside Kells Walk. He says F was with him:

"We were against this wall, and shots came over the top of us down Rossville Street from the flats area ... Just as we got to this wall we were fired at again. There was a burst of fire and some single shots and there ... I took it to be a Thompson ... automatic fire.

Q. Did you then see F start to move forward?

A. That is right ... (he) went round the wall ... (I went) too.

Q. Where did you next take cover?

A. A little wall just about here ... I was shouted to about a gunman just up the alleyway ... I could just see up the alleyway ... F was behind me. He had moved from this first wall, wherever it was, he had gone a few yards, stopped to cover me, I had passed him, and I was looking up this alleyway."

[29] He states that he took up a firing position and he saw someone dodging about running in half crouched position and:

"I could see he had something in his hand, which after being warned, which I got a glimpse of, was a weapon of some description ... he turned left and started dodging round the wall and looking back towards us ... from what I seen I was satisfied that he was a gunman, so we had to move from there and I took aim and fired two aimed shots up this alleyway.

He took back round the corner. I could see both shots strike the wall. We hung on for a few seconds but that was the last we saw of him at that time.

Myself and F and E went into this alleyway ... I think it has a cover over the top. I just came over to the right and there was a car parked ... I looked over to the far side ... and this is where I saw these two gunmen standing.

Q. You saw two men standing at the southwest corner?

A. That is right sir ... they were both holding weapons ... short rifles of the M1 sort ... I immediately went down into a kneeling position and fired three aimed shots ... I was particularly aiming at one.

Q. You fired three aimed shots. Was F firing at that time?

A. I knew that F had fired. He was by the side of me. I could tell that he had fired.

Q. Do you think F was firing at one of them?

A. I thought at the time he was.

Q. Had you seen a third man in Glenfada Park on the other side at the time you fired?

A. At the time I fired I was not seeing anyone else. I was just concentrating on these two.

Q. You saw both men fall?

A. Yes ... There was a fair crowd (about 15 people) along this footpath. They immediately ran past these two and when they had run past the weapons had gone as well."

[30] They, that is G and F made their way up to where the bodies were, to find the weapons although just as they got there they were recalled.

[31] However, when others were ferrying arrestees, he was warned that a gunman was firing from a window. H located the window and when they came under fire again from that position, he, G, fired one shot which he thought missed the window and hit the wall just above it.

[32] In cross-examination from Mr Hill, he confirmed that he did not see anyone with a nail bomb in Glenfada Park, just the two gunmen:

“Q. How many other (soldiers) were there?

A. I think there were two others.

Q. Could you see in what direction F was firing?

A. No sir.

Q. Did you form the impression, however right or wrong that he was firing at the other one of those two gunmen?

A. At the time I did sir.

Q. Do you now know that is wrong?

A. I now believe it is wrong.

Q. Then did you make correcting statements?

A. No sir. All I said was that at the time I had observed two gunmen. I fired at one of the gunmen in particular. They were right close together. It was quite easy that I hit both of them but seeing as no one discussed it I naturally assumed, which was quite an easy thing to do, that F next to me had fired at the other one, but I wasn't observing the rest of the park.

Q. And there were altogether how many soldiers in Glenfada Park?

A. ... when we first moved in I think there were four of us.”

[33] The evidence of Soldier H is similarly contained in RMP statements and a statement prepared for the Widgery Inquiry but additionally evidence to the Saville Inquiry. In his first statement, he stated he debussed at the junction of

William Street and Little James Street tasked to carry out a foot patrol of Rossville Street with a view to making as many arrests as possible:

"A crowd of about 1,000 people had congregated along Rossville Street on the road and the waste ground at a barricade consisting of old cars and paving stones.

There were four gunmen located in the crowd behind the barricade, they were continually firing at us as we moved from the junction of William Street towards the crowd. My location was on the north side of Rossville Street, on the waste ground ... we then pursued these youths through the gap between the two flats about 15 metres wide. At the gap we saw the group of youths hiding behind a broken down car ... On seeing us they began to throw bricks and any other material on the wasteland. I saw three youths at a distance of about 70 metres hiding behind the wall ... With me were "F" and "G." I saw the three youths in possession of nail bombs. I cocked my rifle, took aim at the youth in the middle of the group and fired 2 7.62 rounds at the centre of the stomach. The other two soldiers fired 7.62 rounds at the other persons. I could recognise nail bombs in their hands. All three youths fell to the ground. A youth then appeared from the northwest block of flats ... He picked up an object from one of the youths that had been shot and ran in the direction of the north block of flats across the wasteland. I aimed my SLR and fired one aimed 7.62 round at him which struck him on the shoulder ... He was about 20 metres from me.

G1 examined the bodies of the three youths. He later informed me that they were dead."

[34] After these events they were making their way back up Rossville Street towards William Street:

"There is a block of flats extending east towards Chamberlain Street. On the west side of the flat about 200 metres from my passing location the patrol came under fire from a concealed sniper, using a high velocity rifle. I located his position to a toilet facing me. He was firing from a window about 1 ft square. I took covering position cocked my rifle and fired 17 aimed shots at the sniper. I then changed my magazine, loaded the rifle with a fresh magazine and fired 2 7.62 shots. He did not return fire."

[35] A further statement was taken at 02:30 on 31 January 1972. In it, he states that they debussed near the junction of Eden Place, and he took up a position along the east wall of the block of flats. He put on his gas mask and:

“The section advanced towards the Rossville Flats where I could see a large mixed crowd had gathered around a barricade. On seeing us advancing they began to run in all directions.

We continued our advance and after moving about 10 yards a group of about five youths appeared in an alleyway leading to a block of garages in Glenfada Park. The alleyway is situated about 50 yards Northwest of the Northwest corner of block 1 Rossville Flats.

Following the other two members of my section I ran up the alleyway which leads into a large square formed by the garages and three blocks of flats. We entered the square from an opening in the Northeast corner. On entering the square, I saw the other two members of my unit positioned behind the rear of a parked civilian car in the aim position. These two men I later identified as being “F” and “G”, both members of my section.

I saw “F” fire at a man near an opening in the Southwest corner of the square. I positioned myself behind the front of the car which was parked near to the first garage facing East.

I saw a youth aged between eighteen and twenty-two years standing about five feet Northeast of the Northeast wall of number 59 Glenfada Park. He had his right arm drawn back in a throwing position and was about 50 yards Southwest of my position. I saw that he had in his hand a round object about the size of a coco cola tin which looked like a nailbomb. I fired two aimed shots at the youth, and he fell to the ground ... The nail bomb did not explode.

I saw another youth of about the same age ... run from the gap in the Southwest corner ... He picked up the nailbomb which was lying on the floor near to the fallen youth. The youth turned and faced towards the gap he had ran from. I fired one 7.62 mm at the youth. I saw him

stagger and then run Northeast and into the gap where I noticed other people had assembled. I then withdrew ...

G1 carried out a follow up action and discovered that the youth I first fired at was dead."

[36] He repeats his assertion that he fired shots at a gunman:

"I heard the sound of a single shot being fired. I saw a puff of smoke come from a toilet window in 57 Glenfada Park. I could see the shape of a man and the muzzle of a rifle pointing out of the window. I fired the remainder of my magazine in aimed shots at the window to prevent the gunman from further firing because F and G were both still in the square without cover. I changed my magazine and fired a further two aimed shots at him. I saw him fall and believe I hit him."

[37] He made a further statement:

"At approximately 1600 ... I was positioned behind a parked civilian car in the Northeast corner of the Glenfada Car Park with other members of my platoon including "F." To the southwest of our position were a group of civilian youths numbering between 5 and 7, their ages ranged from 18 to 22 years. They were on a footpath at an estimated distance of 70 metres.

I am positive that two of these youths were carrying nail bombs. I cannot say if the others carried weapons of (sic) offensive weapons. In the earlier statement I have described my action, however, shortly before I fired at one of the youths carrying a nail bomb I saw him fall to the ground. This was followed by more shots from the members of my platoon, and I can say that four of the youths were shot dead. I did not actually see who shot the other youths. This was because I was watching a youth who appeared from the west side of the Glenfada car park. He ran to where the bodies lay, picked up a nail bomb and as he turned I fired one shot from my SLR and hit him in the right upper arm or shoulder but he continued and left the area the way he had come."

[38] In his statement prepared for Widgery he describes:

“There was a barricade across Rossville Street in front of us. There were people milling about behind them, some facing us. There were other people behind them moving away. The people moving away were mainly behind the barricade though there may have been a few still on our side of it. Led by F and G I moved along a low wall leading forward from the Columbcille Court building. In front of us was an alleyway leading into Columbcille Court ...

We chased the youths. They ran down the alleyway and turned left under an archway into Glenfada Park. We chased after them.

Through the alleyway in Glenfada Park there was a car parked. I stayed at one end and F and G at the other. I leaned on the bonnet in a firing position. F and G were about two seconds in front of me. I saw F fire. I saw a lad at the end of the line marked 2 on the photograph. He had an object like a coca cola tin in his hand. He was drawn back in a throwing position. I fired two shots at him, and he fell to the ground ... I am still sure it was a bomb. It did not explode. There was an alleyway at the opposite corner of the square from which the youth ran. I fired one round at him, and I think I hit him in the right shoulder or upper arm. He was able to stagger away. He did not drop the bomb.”

[39] In his evidence to the Widgery Inquiry, he refers to five youths approaching one of whom threw an object at them (he was with F and G), and they pursued the youths into GPN where he took up position behind the bonnet of a parked car:

“I cannot remember his letter now but one of them did actually fire ... I took up a firing position.”

[40] In cross-examination, he said that he saw one soldier firing, but cannot remember which one, and whilst it was possible that the other soldier was firing too he could not remember.

[41] In his statement prepared for the Saville Inquiry he remembers being in GPN but was unsure how he got there. F and G probably went ahead of him, and he was along with Soldier E. Upon entering a civilian threw a nail bomb at him although he didn't see it land, and it didn't explode. H then saw another youth at the far end:

“Holding a smoking object in his hand. I was absolutely sure it was a bomb ... (he) was standing in what I would

describe as the "airfix" position ... as if ... he was going to lob it at me. I don't know if it was the same person ... I fired two quick shots at (him) ... I hit him with one of my shots. The youth fell to the ground.

I have no memory of what F and G were doing, nor of what shots they may have been firing.

... Another youth ran out ... he picked up the bomb and started running holding the bomb. I fired one shot and hit him in the shoulder. He did not fall to the ground and continued running. There was no explosion."

[42] He goes on to describe the sniper although no longer certain where it was but at the time he thought it was somewhere in the southern block of GPN. In an answer to a specific question posed he stated:

"I cannot remember either of them (F or G) shooting in GPN or anywhere at all in the Bogside that day ... I cannot remember whether, and if so when either of them fired, but I do not think anyone fired in GPN before I did."

[43] In his evidence at the Saville Inquiry, it was specifically put to him re the 19 shots after contradictory evidence was pointed out:

"Q. So, it tends to suggest, using common sense, that the frosted window, if it was a window, must have been somewhere else?

A. Yes Sir ... I thought it was in Glenfada Park, but the evidence points otherwise."

[44] Soldier E relates advancing along Rossville Street towards the flats taking up position on the right hand side of the road on the opposite side, which seems to correspond with Kells Walk.

[45] He then describes how rioters moved off to their right:

"We moved position to try and head them off and we moved about 10 metres to our right into an archway at Glenfada Park. There were about six men coming towards us and then a petrol bomb exploded in the square in front of us. This was followed by the explosion of a nail bomb nearby and other missiles were thrown at us. We deployed and took up firing positions. The

rioters stopped and continued to bombard us with missiles including petrol bombs and nail bombs. I heard shots from around me and saw two of the rioters fall to the ground.

I then saw one of the men who was about 30 metres from my position had what appeared to be a petrol bomb and a nail bomb in his hands. I saw him light one of those objects and throw it in our direction and then a petrol bomb exploded near us. I saw him light the other. I shouted at him to drop it. I don't know if he heard me or not but he threw it in my direction. I fired two aimed shots at this man. The first shot missed but I saw the second struck him in the chest and he was knocked backwards and he fell to the ground. Immediately after I fired a nail bomb exploded near my position."

[46] In his Widgery statement, he describes a lot of shooting going on and that he saw two more bodies falling. The crowd was still aggressive as he and his colleagues moved forward to effect arrests. In his Widgery evidence he confirms that the person he shot was at the southeast corner of GPN and that he did not know who fired the shots causing the two other men to fall down.

[47] The only mention of Soldier F appears in the cross-examination by Mr Read when he says that F probably assisted in the follow up arrests.

[48] The final military witness is David Longstaff, now deceased, whose only record of the events of that day appear in his Saville statement and evidence. Having debussed in Rossville Street he followed F, G, J and others and entered GPN from the northwest corner and was looking towards Columbcille Court when he heard gunfire from behind him. He did not look round as he was giving cover to his colleagues. He was involved in the subsequent arrest operation.

[49] In summary, the Crown maintains that this evidence establishes:

- (i) That Soldier F entered GPN directly behind Soldier G with Soldier E shortly behind.
- (ii) A number of soldiers opened fire upon civilians in the square.
- (iii) F was firing along with G at the same time as he was.
- (iv) As a result, a number of civilians were killed or injured.
- (v) Given the nature of the weapons and the range at which they were fired there can be no doubt that the intention of the shooters was to kill.

- (vi) The evidence establishes that the accused, as proven by his actions either was a principal, personally shooting the victims, or an accessory. As an accessory his presence was giving support to those who shot the victims and that he intended to give that support knowing the principal(s) intended to kill.

Murder/Joint Enterprise

[50] To establish the offence of murder the prosecution must prove to the criminal standard, beyond a reasonable doubt that the accused killed a person, without lawful excuse, with the intent to kill or cause grievous bodily harm. I will deal with the issue of lawful excuse at a later stage.

[51] In relation to the charges of attempted murder the prosecution must prove that the accused did an act which was more than merely preparatory to the commission of the offence and at the time had the specific intention to kill. An intention to cause grievous bodily harm would not suffice.

[52] I am satisfied that the soldier or soldiers who opened fire on persons within GPN did so with the intention to kill given the nature of the weapons, high velocity SLR rifles, the range no more than about 50 yards (G at one stage indicated he could hit a person at 300 yards) their training in the use of such weapons and the injuries to the wounded and deceased all on the upper body as will be seen from medical and pathology evidence.

[53] As can be seen from the above summary of the soldier's evidence the Crown cannot establish by whose hand the fatal shots were fired, nor those that wounded Messrs Friel, Mahon, Quinn or O'Donnell. Of necessity therefore they rely upon the proposition that the accused is guilty either as a principal offender or as an accessory in each of these offences. As was stated by Lord Hughes in *R v Jogee* [2017] AC 387 at para [1] of the judgment:

“Sometimes it may be impossible for the prosecution to prove whether a defendant was a principal or an accessory, but that does not matter so long as it can prove that he participated in the crime as one or the other. These basic principles are long established and uncontroversial.”

[54] In count seven, he is indicted as a principal on the basis that he fired a shot or shots, which may or may not have caused death or injury, but were directed at an unidentified person or persons with the intent to kill and without lawful excuse.

[55] The law of secondary liability in the criminal law has had a fraught history since the case of *Chan Wing-Siu v The Queen* [1985] AC 168, which established that if two people set out to commit a crime and in the course of that crime one commits

another offence then the second person is guilty of that second crime if he foresaw or contemplated the possibility of it being committed and, with that foresight, went ahead then that would bring him within the scope of an accessory to that second crime. The classic example is of a bank robbery where the principal goes into the bank with a firearm and shoots and kills a bank teller. The second man is a getaway driver who knows that the principal is armed. The basic plan is, obviously, to rob the bank, but if the driver contemplated that his colleague may in the course of the robbery use the firearm to injure or kill then he may be guilty of the murder. This is a wider than a “conditional intent” referred to in *Jogee* – see below.

[56] In the case of *R v Maxwell* [1978] 1 WLR 1330 an accessory was convicted on a different basis (following a line of authorities starting with *Bainbridge* [1960] 1 QB) being held that it was sufficient for the accessory giving the aid knowing the type of offence to be committed or the essential elements constituting the offence. In that case the appellant was a member of a paramilitary organization, and that with that knowledge acted a guide on a “Job” which as McDermott J in the original convicting judgment stated:

“(is)... synonymous with military action which raises, having regard to the proven activities of the UVF, the irresistible inference (that) the attack would be one of violence in which people would be endangered or premises seriously damaged.”

[57] *Maxwell* was convicted of doing an act with intent to cause an explosion at a public house even though it could not be proved that he knew of the specifics of the plan ie it was to be a bombing only knowing, in general terms, the type of offence or offences to be committed.

[58] The *Chan Win Siu* principle reached its apogee in the case of *R v Powell and Daniels* [1999] 1 AC 1 establishing that it was not necessary that the secondary party intended the killing, but the contemplation or foresight of the possibility was sufficient. Lord Steyn stated:

“It is just that the secondary party who foresees that the primary party might kill with sufficient intent for murder and assists and encourages the primary offender in the criminal enterprise of murder.”

[59] Lord Hutton added:

“My Lords, I consider that there is a strong line of authority that where two parties embark on a joint enterprise to commit a crime, and one party foresees that in the course of the enterprise the other party may carry out, with the requisite mens rea, an act constituting

another crime, the former is liable for that crime if committed by the latter in the course of the enterprise.”

[60] Lord Steyn had his reservations:

“I (feel) at liberty to mention a problem which was not addressed in argument. That counsel did not embark on such an argument is not altogether surprising. After all, in *R v Cunningham* [1982] AC 566, the House of Lords declined to rationalise and modernise the law on this point. Only Lord Edmund-Davies expressed the hope that the legislature would undertake reform. In my view, the problem ought to be addressed. There is available a precise and sensible solution, namely, that a killing should be classified as murder if there is an intention to kill or an intention to cause really serious bodily harm coupled with awareness of the risk of death.”

[61] The revision Lord Steyn refers to came in the shape of the case of *Jogee* (supra) considering “Parasitic Accessory Liability”, a term invented by Sir John Smith to describe, in disparaging terms, the then existing state of the law. *Jogee* expressly reversed the *Chan Wing-Siu/Powell and Daniels* line of authorities in express terms and, by doing so arguably, simplifies the law. This principle was summarised by Lord Hughes:

“[100] The effect of putting the law right ... (t)he error identified, of equating foresight with intent to assist rather than treating the first as evidence of the second is important as a legal principle ... ”

[62] What matters is whether (the accessory) encouraged or assisted the crime whether it be murder or some other offence. He need not encourage or assist a particular way of committing it though he may sometimes do.

[63] At para [17] Lord Hughes states:

“Secondary liability does not require the existence of an agreement between the principal and the secondary party to commit the offence. If a person sees an offence being committed or is aware that it is going to be committed, and deliberately assists its commission, he will be guilty as an accessory. But where two or more parties agree on an illegal course of conduct (or where one party encourages another to do something illegal), the question has often arisen as to the secondary party’s liability where

the principal has allegedly gone beyond the scope of what was agreed or encouraged.”

[64] Under the rubric of “Restatement of the principles” the judgment continues at paras [89] and [90]:

“In cases of alleged secondary participation there are likely to be two issues. The first is whether the defendant was in fact a participant, that is, whether he assisted or encouraged the commission of the crime. Such participation may take many forms. It may include providing support by contributing to the force of numbers in a hostile confrontation.

The second issue is likely to be whether the accessory intended to encourage or assist D1 to commit the crime, acting with whatever mental element the offence requires of D1 ... If the crime requires a particular intent, D2 must intend (it may be conditionally) to assist D1 to act with such intent. To take a homely example, if D2 encourages D1 to take another’s bicycle without permission of the owner and return it after use, but D1 takes it and keeps it, D1 will be guilty of theft but D2 of the lesser offence of unauthorised taking, since he will not have encouraged D1 to act with intent permanently to deprive. In cases of concerted physical attack there may often be no practical distinction to draw between an intention by D2 to assist D1 to act with the intention of causing grievous bodily harm at least and D2 having the intention himself that such harm be caused. In such cases it may be simpler, and will generally be perfectly safe, to direct the jury (as suggested in *Wesley Smith* and *Reid*) that the Crown must prove that D2 intended that the victim should suffer grievous bodily harm at least. However, as a matter of law, it is enough that D2 intended to assist D1 to act with the requisite intent. That may well be the situation if the assistance or encouragement is rendered some time before the crime is committed and at a time when it is not clear what D1 may or may not decide to do. Another example might be where D2 supplies a weapon to D1, who has no lawful purpose in having it, intending to help D1 by giving him the means to commit a crime (or one of a range of crimes), but having no further interest in what he does, or indeed whether he uses it at all.”

[65] The liability of F as an accessory, therefore, depends upon proof that:

- (i) F's conduct assisted the offender(s), the principal(s) who actually caused the deaths, and the woundings, if not F himself. That assistance may be rendered by mere presence. Referring back to *Jogee* para [11]:

"With regard to the conduct element, the act of assistance or encouragement may be infinitely varied. Two recurrent situations need mention. Firstly, association between D2 and D1 may or may not involve assistance or encouragement. Secondly, the same is true of the presence of D2 at the scene when D1 perpetrates the crime. Both association and presence are likely to be very relevant evidence on the question whether assistance or encouragement was provided. Numbers often matter. Most people are bolder when supported or fortified by others than they are when alone. And something done by a group is often a good deal more effective than the same thing done by an individual alone. A great many crimes, especially of actual or threatened violence, are, whether planned or spontaneous, in fact encouraged or assisted by supporters present with the principal lending force to what he does. Nevertheless, neither association nor presence is necessarily proof of assistance or encouragement; it depends on the facts."

- (ii) F intended that his conduct would assist such principal(s) even if there is not a specific meeting of minds between them. Intention is not to be confused with foresight although "Foresight may be good evidence of intention though is not synonymous with it" *Jogee* at para [9].
- (iii) The Crown do not have to prove that F's conduct actually had a positive effect on the principal's actions; *Jogee* at para [11]:

"Once encouragement or assistance is proved to have been given, the prosecution does not have to go so far as to prove that it had a positive effect on D1's conduct or on the outcome: *R v Calhaem* [1985] QB 808. In many cases that would be impossible to prove. There might, for example, have been many supporters encouraging D1 so that the encouragement of a single one of them could not be shown to have made a difference."

- (iv) Alternatively, that F intended that his act(s) would assist the principals (or one of a limited number of crimes within F's contemplation – the *Maxwell* principle) in the commission in this case of murder. However, I hold that

there is nothing to suggest that F and colleagues had any such wide-ranging plan.

Evidence from civilians

[66] In total, the court received evidence from 20 civilian witnesses who were in the vicinity that afternoon. Five gave oral evidence and 15 being unable to attend for miscellaneous reasons, had their statements and, in some instances, other evidence read by agreement. Whilst their evidence does not directly implicate F it is important in that it gives a context to the allegations and is important in relation to the actions of the crowd in GPN.

[67] Joseph Mahon, (who gave evidence in the trial) was then 16 years old, and attended the Civil Rights march from Bishop's Field and accompanied it down to the city centre. He was at the back of the march and became aware of some disturbances at the army barrier at William Street/Rossville Street hearing the sounds of rioting and the deployment of a water cannon. As a result, he cut off from William Street to his right. He then heard a rumour that two people had been shot and had been taken into a house at Columbcille Court so went to a house at that location standing outside with other persons until they were asked to move on. Upon hearing someone say that the Paras were coming in on an arrest operation he went to GPN which the locals classed as a safe area as the army did not come that deep into the Bogside. He came into the square from the northwest corner and then down to the corner just behind the barricade to the gable wall at the southeast of the square.

[68] There was a crowd of about 30 or 40 there some of whom, maybe five or six, were throwing stones. He could hear firing, but was not sure if they were live rounds or rubber bullets:

“There were people lying on the ground at the barricade and I heard shouts that they had been shot. This was not like the Derry riots that happened every weekend with live shots being fired. People were panicking. I stayed in Glenfada Park and didn't go near the barricade itself.

[69] Then somebody shouted, “The Paras are coming in” and he saw soldiers coming in from the top right hand corner of the square, in a small group of three or four:

“A. They stayed along that footpath as they came in, they were on that footpath at the back of the maisonettes ... The right-hand side where you see a dotted kerb line coming down from where it says “walkway.”

Q. And so, the soldiers when they came in, you said they were, they stayed you said on the pavement?

A. Yes.

Q. ... dealing with the first soldier that came through, what did you see him doing?

A. He had the rifle under his arm hanging down (pointing towards the ground) and he opened fire, firing from, the rifle was at which you would call firing from his hip ... it was a fan, like moving from side to side."

That is in the direction of the persons on the south side of the square:

"A. Not just me, there was a lot of people there ... (trying) to run through (the bottom right-hand corner) but there was a jam, a jam lock of people. So we proceeded above us left, ran up to the top right, top left where it says "walkway" to try and get out of there ... (The other soldiers were) behind him, well it's only a narrow footpath.

Q. But did you, at that stage did you see the other soldiers doing anything?

A. No."

[70] Mr Mahon described then deciding to go out the other entrance and ran towards the Abbey Gap. There were people in front of him, he being one of the last, trying the yard gates at the rear of the houses but they were locked:

"(then) I found myself on the ground ... I thought I was hit by a rubber bullet because I know it might sound stupid or funny because when you see somebody getting shot on TV they are rolling about in pain and all this. I wasn't that way. It might seem stupid but that's the way it was. And I heard a voice beside me, there was a gentleman to my right or lying somewhere on the road and he says, "I'm hit son, I'm hit." Twice, he said to me."

[71] Later he discovered this was Mr McKinney. He did not see who had shot him, that is Mr Mahon himself. There was another person lying just in front of him. This, it is common case was Mr Wray:

"Q. Now, as you were lying on the ground did you come to see any of the soldiers or any soldier?

A. I seen one walking across the square from the entrance where they came in walking towards, diagonally across the square towards where we were lying.

Q. ... could you tell whether it was the first soldier?

A. It was the first soldier came in. The thing that stuck out the most was his jacket ... It seemed ..., a different colour from the rest of them, a different pattern, ... more like a smock, a smock combat jacket and it was ...

Q. And what happened when he approached?

A. He walked past me and Mr McKinney and ... before he did come across I heard a voice, a woman calling 'Lie still, pretend you're dead.' I must have moved, I didn't know I was shot at the time, I still thought it was a rubber bullet for I was going to try and get up and run and I lay and let on I was dead.

And he walked, he walked past us ... Mr Wray moved and as he approached Mr Wray he fired two shots into him ... (then) went under the walkway and I don't know where he went then ... he came back ... leaned against the wall and took the helmet off and rubbed the back of his, rubbed his forehead with his hand. (And said). 'I've got another one Dave.' ... (He had) blond hair ... there was a lot of shouting behind me 'We're pulling out Dave.'"

[72] The soldier then walked back to the direction he had originally come in from. At the stage when he shot Mr Wray the other soldiers were still towards the other end of the square 20 or 30 yards, or more, away. Mr Mahon stated:

"I thought he was away, so I lifted my head up to look to see if he was away as I still didn't know I was shot and he seen me and he knelt down around the middle of the square and aimed his rifle at me. I turned my head away towards the fence, right round, after I seen what

happened to Jim Wray I expected the same. I turned my head towards the fence waiting to be shot. I heard a voice shouting 'First aid, don't shoot.' A shot, I didn't see who fired it, I just heard a shot."

[73] The shot did not hit him.

[74] He was taken to Altnagelvin Hospital and was found to have been hit by a single bullet, which had entered his body just over the right pelvic bone. On examination, there was no exit wound. The bullet had passed through the abdomen and was found in the muscles beyond the left pelvic bone and extracted in an operation performed by Mr Bennett, Consultant Surgeon. The injury was life-threatening but in the following weeks Mr Mahon made a good recovery. Other evidence suggest that before striking Mr Mahon it had struck an intermediate object.

[75] Joseph Friel, aged 20 at the time, joined the march somewhere between the Bogside and the gas yard and arrived at the junction of William Street and Rossville Street where he saw the disturbances taking place at the barriers. He then walked towards Free Derry Corner. As he did so, he heard shots being fired causing panic as the crowd dispersed in all directions. Mr Friel intended to make his way to his home in the Rossville Flats but thwarted by the dense crowds, made his way to GPN.

[76] He also gave evidence at the trial.

"(I ran) between Rossville flats and getting into (GPN) ... I blanked out whatever I saw at the local barricade. Just left my mind completely ... when I got into Glenfada Park I was totally terrified.

I heard shots but I wasn't sure whether it was shots. And then I saw the crowd running in panic. And then my first instinct was to go back. I lived in that block of flats facing Rossville Street, (inaudible). So, I tried to go back into the flats where I lived, couldn't get in because there was hundreds literally trying to get into the entrance to the flats ... right at the entrance, there was two cars parked. And there was a crowd hiding behind the cars. I actually went to that crowd ... nine up to 20 people, could have been more, behind those two cars ... I was behind the black car. (I was hoping) just to get out of the area altogether.

Shooting was still going on but then there seemed to be a lull, we're talking seconds, and that's when the crowd behind the two cars decided to run to get out of (GPN)

and I joined them. I was running up that pavement towards that far (corner) ... that's when I heard a - a cry from a young boy called Gregory Wylde. He shouted something out like, "Here's the Brits" or something like that."

[77] At that stage he was at the block on the left-hand side looking at the map:

"I instinctively turned to my right because that's where the shots came from, and as I turned to my right that's when I saw soldiers ... at least two. and I've a vague memory of a third one entering GPN but I definitely saw two."

[78] Confirming that they were entering from the northeast corner:

"No more than I would say two/three yards (into the square)

No more than that ... there was a burst of gunfire, at least two or three shots before I was shot.

Q: You've indicated on your plan that this soldier was some way out into the - into the courtyard area ...

A. He was at the front. There was a soldier to his right immediately behind him. No more than a foot or two behind him. (and) to his right ... There was definitely the two. One soldier that was doing the firing and the other soldier right behind him.

(He) was bent over, the gun was just above his hip, and he was moving from left to right. He was the only one could have been firing shots because the soldier behind him if he had have fired would have shot the soldier in front. The soldier behind him was moving. As I say, this is all in a matter of seconds but the soldier doing the firing wasn't moving forward, he was static. I just felt a thud in my chest and coughing up blood. And I staggered round the corner into Glenfada Park South.

Q. Did you notice anyone else firing shots at that time?

A. No."

[79] He felt a thud to his chest and blood started to gush out of his mouth. He managed to stay on his feet and staggered into Glenfada Park South and fell to the ground.

[80] He was operated on by Mr Bennett at Altnagelvin, where he was found to have been hit by a single bullet. The entry wound was to the right of the sternum, a little below the clavicle with a more ragged exit wound in almost the same place, to the left of the sternum described as an "*almost near miss*." The shot had cracked Mr Friel's sternum, but the wound was found to be minor, and Mr Friel made a good recovery.

[81] Joseph Gallagher after being involved in rioting up at William Street as soldiers started coming down Rossville Street retreated making his way across to GPN as he knew some people there and could get shelter. He describes shooting being all round him. As he went into the square, he saw a man lying on the ground over to his left. Then:

"I saw Jim Wray fall in front of me ... I didn't know where Jim Wray was coming from but there was a Brit coming into GPN from Columbcille Court. He was shooting, not from a standing position but from the waist ... he was still coming ... and firing steadily. ... (T)he soldier had fair hair but apart from that I can't remember anything particular about him ... I bent down to grab him I felt a bullet go through my hair ... As I came back up ... two more shots were fired at me ... the soldier (had advanced) ... he was still shooting ... after the bullet went through my hair another man who I now know to be Joe Friel was shot. He fell ... and was lying on his side ... I ran off. I could still hear shooting as I ran out of GPN. I never saw any other soldiers in GPN apart from the soldier with fair hair."

[82] Michael Quinn aged 17 in 1972 went on the march with some school friends meeting with them in the Creggan before joining it. For a short while he was persuaded by Jim Wray to take one pole of the Civil Rights banner. By the time he got to William Street several people were throwing stones at the army who were behind the barrier. As soon as he arrived the water cannon was deployed, he got soaked so he walked around the streets for a while in order to dry off. He then started to make his way to Rossville Street/Eden Place via a laneway when someone at the end of the road shouted "They're coming in" and he saw a Saracen coming down Rossville, so he ran in the direction of the flats and then to the rubble barricade:

"I could see the soldiers deploying, jumping out of the back of the Saracens ...

Q. When you got to the rubble barricade, did you cross it?

A. Yeah. I stood there looking back because as I was getting over the rubble barricade, I heard four shots [which he could identify as being fired by the Army from the William Street direction] and that really threw me. I couldn't understand why they were shooting because I hadn't heard anything fired at the army ... when I turned around that I saw the soldiers ... it would've been to my left, Kells Walk area. A group of soldiers, perhaps four, five, not sure. Think there was a soldier with a radio, so ...

I walked around into (GPN) through that main opening there on Rossville Street ... So, I walked down, really halfway down to take shelter as I thought I'd be safer if, like, with the protection of the maisonettes."

[83] He saw two young men with what he took to be a nail bomb but an older man, possibly IRA told them to put them away as they could get people killed and they duly left.

"(T)here was a growing intensity of gunfire. (T)here was sustained gunfire for a period of time."

[84] Whilst there were no soldiers in the square he did see someone being injured at the northwest corner:

"Yes, he was looking in [the direction of the ramps] and suddenly, I heard him call out, scream. I looked at him and I could see - in fact, what I saw was blood, a ring of blood emerging on his leg, you know, and he was collapsing to the ground. I didn't rush over to him. I looked down to my right to that entrance wondering had he been shot?"

[85] He did not hear the shot or where it had come from. When he looked again this man had gone. This incident as described is isolated from the events in Glenfada and does not constitute a charge against Soldier F. Soldier G, as referred to above does speak to shooting at someone in the alleyway behind the garages at the north side of GPN in the area of the north west gap before they all entered into the square, and could be a reference to this incident:

"Later on, I heard someone shout, "There's people dying out here ... then I saw a group of people carrying the body of a young man across Glenfada Park, passing in front of me, moving diagonally I think ... a north-westerly direction. I think I recognised Jim Wray even though I didn't know him personally because of our previous encounter as it were ...

It was then that I heard someone shout, "They're coming in." I decided I was going to get out and look to get to Abbey Park ... I ran, sort of crouching across the courtyard. I think I remember jumping over the piece in the middle, the raised piece of ground in the middle.

(A)s I was approaching the exit into Abbey Park, I felt my, felt being struck by the bullet and like, it grazed my shoulder, the jacket I was wearing and then went through my face and exited through my nose. For some reason, I kind of slowed down and I could actually see the flesh and blood breaking away from my face. I stumbled and as I stumbled, I could see to my right someone - I remember thinking someone else has been shot because I could see them falling forward, their head hitting the (kerb). He was a few feet ahead of me ... he didn't try and save himself at all. ... (I) stayed on my feet ... (it) had to be close to that corner, you know."

[86] Mr Quinn made it into Abbey Park where he received treatment and subsequently was taken to hospital, where it was found that he had been hit by a single bullet which had entered his right cheek, causing a large wound, and exited through the left side of his nose. The anterior wall of the maxilla was largely missing. Fragments of bone, tissue, foreign bodies and lead fragments were lodged in the nose. The bullet had passed through the anterior part of the septum, leaving by an exit wound on the left side of the nose. He made a good recovery and was discharged on 10 February.

[87] He did not actually see any soldiers in the courtyard.

[88] Brendan Coyle, aged 15 going on 16 in January 1972, was at the march and suffering from the effects of the CS gas deployed near barricade 14, made his way down Rossville Street reaching the rubble barricade and then into GPN to the north side beside the garages where he felt he would be safe. He heard a number of high velocity shots which he believed came from the Columbcille area.

[89] He thought, initially, that his best bet would be to stay where he was but changing his mind joined a number of people running mostly towards the southwest corner. He saw soldiers at both the northeast and northwest corners, as he was running away, when he was pulled into the yard of one of the maisonettes, the last one on the west side of the square whereupon, not being able to enter the house itself, he viewed matters from between the slats of the wooden fence. From that point he saw three men lying on the ground on the south footpath close to each other. The man nearest to him raised his head and said, "I can't move my legs" and Mr Coyle responded saying "Pretend you're dead. Don't move." He heard another shot and the man groaned. Mr Coyle saw sparks on the concrete and then "he was gone." He couldn't say where the shot had come from. He saw one soldier, bare headed and looking "dangerous", angry, and unstable who had moved forward from his colleagues at the north end of the square walking down to the south. The first soldier came on, walking towards the southwest corner before turning and looking at several people beside the barricade and said, "I'm going to shoot you Irish bastards." The man with Mr Coyle suggested that they'd best come out of cover with their hands over their heads which they did. By this stage there was quite a lot of soldiers at both ends of the square, eight to ten in total. The first, dangerous, soldier went over to the persons at the barricade. One man, close to the bodies turned and ran whereupon the "angry" soldier turned and fired at him but may or may not have hit him.

[90] Derek McFeely age 17, had joined the Civil Rights march along with Daniel Dunn. He witnessed a shooting in William Street when a Mr Donaghy was shot, by a soldier, from a derelict building to the north. He and others picked him up and brought him down to Columbcille to be looked after. He intended to go further into the Bogside for his own safety, and this brought him into GPN entering through the southwest corner, intending to leave by the road exit to get to the Rossville Flats:

"On entering the courtyard, it is my recollection there were two bodies that were lying on the ground, as we entered in ... more or less just in front of me. I (went) over to the body that was on the left-hand side, on that corner, as you entered into the Glenfada Park. I knelt down to examine the person. The body was still - I couldn't see any evidence of blood or anything there. My first impression is, has he had a heart attack or just collapsed? When I knelt down to that person ... I saw no soldiers at all ...

My intention was to turn him over. And all of a sudden, there was a call, "There's the army coming." Coming from directly across, that would be ... (the) top right-hand corner of Glenfada, there was possibly four or five soldiers ... It's my recollection that they actually had just

come into the courtyard ... moving from that top right-hand corner, through into Glenfada Park ... the rifles were across their body, as they were running ... in a group.

I decided basically, to make a fast exit back the way we entered into it."

[91] As he ran away, he heard three or four shots as he exited through the Abbey Gap.

[92] John Shiels having been on the march was making his way down Rossville Street towards Free Derry Corner and had reached about Kells Walk when a number of Saracens came roaring down the street. He heard three shots fired by a soldier firing from his hip. Mr Shiels, panicking ran to GPN up the ramp at the northeast corner and turning to his left sought safety in the second flat as did a number of others. He did not see any soldiers at that time. He left it after a short time and sought refuge in another flat further down, the second one from the end. He looked out the window and he says:

"I saw a soldier coming in from my right-hand side and there was a girl going on towards the gap at Abbey Park. ... approximately halfway across...he was coming in walking fairly sharply, (and stopped) ... halfway across ... there was a lot of rifle shots. There was a lot of shots - there was a lot of shooting going on."

[93] He could not identify where the shooting was coming from. There were people running towards the Abbey gap:

"(the soldier) shouldered the rifle and fired it and shot a fellow that was running toward the gap. I saw the individual fall ... between the kerb and the road. He had nothing in his hands; he was just running. I only saw him fire one shot."

[94] He did not see this man move after he had fallen to the ground. The people in the flat urged him to get away from the window in case soldiers started shooting at it:

"There was a fellow with a first aid box, he was a Knight of Malta guy who had the first aid box, he pointed to the box he was carrying and the soldier done that with his rifle, two hands and ... pushed him away."

[95] George Hillen aged 18, was involved in the rioting that occurred earlier in the area of the barriers. As he later made his way down Rossville Street, he heard a burst of gunfire, seemingly from Chamberlain Street. He and his friends went down the side of Kells Walk and believing the Army was coming in they made their way in GPN towards the southeast end. He decided he would have to get out of the square and made his way to the Abbey Gap which however was blocked, as so many people were trying to get out the same way. He noticed Jim Wray. Then as he was pushing his way to the gap he looked round and saw a soldier just inside the north east corner, lift his gun to his shoulder and, although he cannot say if he fired, Jim Wray fell forward saying "I'm hit."

[96] Donald Campbell was in the company of William McKinney as the panic in Rossville Street ensued after shooting broke out. They were taking cover at an area of the south gable end of block 1 of the Rossville Flats. McKinney had a camera with him and seeing that something was happening in GPN wanted to get across the road and after being restrained three times eventually ran across Rossville Road and as Mr Campbell describes it:

"I stayed focused on him as he ran. There was also a group of people standing at the gable end of GPN. William McKinney joined a group of three or four other people who were surrounding a body lying on the ground. He leaned over to look at the body and then suddenly fell down fairly near to it ... I did not hear a shot. He rolled onto his back.

[97] Mr Campbell ran over and helped get Mr McKinney away. He saw two other persons lying there.

[98] Terence O'Keefe had been on the march, and when the Saracens came down Rossville Street, he took refuge at the gable wall of GPN along with others. Four young men became very agitated and shouted, "we're going to run for it." One was physically restrained but the other three made a run for it to the Abbey Gap:

"They had only taken a few steps into GPN courtyard when a further and recognisably separate burst of gunfire rang out. The three boys fell to the ground in a row. I think that the first and third boys fell on the pavement and that the middle boy fell slumped at an angle across the pavement ... it was shocking ... they all looked to be dead although I later learned that one of them may have survived ... Shortly after the three boys fell I recall that a single soldier came racing out of the GPN courtyard and around the corner of the gable end to where we were ... he pointed his rifle at us and ordered us to stand still ... saying "move or your dead."

[99] He goes on to describe how he and the others were then arrested.

[100] Joseph Donnelly was in GPN when he saw three paratroopers enter the square from the north east entrance at which point the people who had been carrying Michael Kelly dropped him so he, Mr Donnelly, took him in his arms and carried him off. Of the three soldiers, one knelt down and took aim as the others had their rifles hip high then “bullets started bouncing off the fence.” He could not say who was firing just that they were coming from his right as he was running off to the left.

[101] Hugh O’Boyle ran into GPN initially taking cover behind the gable wall as the shooting intensified and then ran to take shelter behind a car at the southeast corner along with a young boy age about 12 and two or three others:

“I could see people running through the passageway to my right which led ... to Glenfada Park South. I saw someone fall as he or she ran through that passageway ... At that time I was not aware of any soldiers having entered GPN—I looked to my left towards Abbey Park and saw three people lying on the ground ... I didn’t see them running but they definitely weren’t there when I first got behind the car ... After we were there for 5 to 15 minutes a soldier.... shouted “Up. Hands above your head.”

[102] Mr O’Boyle thought they would be shot until a second soldier came and said, “Don’t shoot press.” They were then led away.

[103] Dennis McLaughlin (age 16) found himself at the gable wall, grabbing Father Bradley for security, when he saw soldiers approach the gable wall with one out first on his own. This soldier shouted “Stop or I’ll shoot” and then pointed his rifle and fired and one boy fell down. Other soldiers were in his vicinity although not side by side.

[104] Patrick O’Donnell’s statement reads:

“I was with the march on 30 January. The march was halted in William Street. I went down Rossville Street with the others to avoid the gas and rubber bullets. I was affected by the gas.

I moved down Rossville Street with the others. As we got to Rossville flats someone said a man had been shot. We heard that they had been taken to a house in Columbcille

Court so 20 or 30 went there. ... After waiting about 10 minutes I set off for the meeting at Free Derry Corner.

I was crossing Glenfada Park when I heard the sound of shooting, a sharper sound than the rubber bullet or gas guns. People around started shouting and running. I went to the corner of Glenfada nearest Rossville Flats to see if I could get across ... I turned back into Glenfada Park. After a bit of hesitation, I started off for the other corner ... I saw a woman crouched down behind a wooden fence... I jumped over her and pressed down as close to the ground as I could get. As I pressed down, I heard a crack against the wall behind me. I looked and saw a hole in the wall behind me, then a hole in my coat in my right shoulder. I realised I had been shot. I moved just round the corner and sat at the gable wall. Then I saw a soldier standing over me with his gun pointing at me. More soldiers came, made us all get up and we were searched.

The rifle shooting I heard in Glenfada was the first I had heard that afternoon. I had no weapon."

[105] He goes on to describe being processed by the soldiers and later being taken to Altnagelvin Hospital.

[106] There was some discussion in his Widgery evidence as to where he was when shot. He describes being at the wooden fence at the southern corner of the eastern block. He saw soldiers, some of whom were firing from the opposite side of Glenfada. One soldier had advanced to the centre of the square.

[107] Mr Bennett found that he had a wound to his right shoulder. An X ray showed multiple small foreign bodies in the area. The wound was excised and sutured and a tiny piece of metal was extracted. Dr John Martin, Principal Scientific Officer opined that the bullet may have first gone through the wooden fence, or hit the wall, fragmenting up as it did so and then hit him.

[108] Julian Daly was at Kells Walk when bullets began hitting the pavement close to where he was situated so he began to run into GPN. He went along the north end of the square, turned left along the western side and exited from the southwestern corner in the direction of Abbey Park. There were about half a dozen others running in the same direction with a couple of other people squeezing themselves against the walls of the eastern block. He saw Jim Wray to his left and said "Yes" to him. He did not hear any shots as he was in GPN but when he reached the Abbey Gap heard a burst of shots, by which he meant a quick sequence of single shots.

[109] Eamonn McAteer having heard shooting instinctively ran into GPN to the gable wall from where he could see soldiers at Kells Walk one of whom was in a firing position. He could hear a number of shots. He saw several people helping the injured Mr Kelly. He saw people run towards the northwest corner and into the Abbey Gap. Then he heard shooting, and he saw two persons going down and remaining on the ground on the pavement on the opposite side to him and up towards the top of GPN. Some soldiers then came down into the square.

[110] John McCourt had been at a funeral earlier in the day, joined the march but as soon as it became apparent that there was trouble told his family to go to his wife's grandmother's house in GPN. He himself stayed behind but then as he was making his way down Rossville Street he was struck by a rubber bullet whereupon he ran as fast as he could to GPN. There was pandemonium in the square, and he heard shots that seemed to come from all directions. He made his way to the house and pulled a young fellow into the yard with him. From there he could see men lying down on the pavement, including as he subsequently realised Jim Wray. He then heard two or three more shots. When he looked out through the slats he could see a soldier in a kneeling position at the northeastern corner pointing his rifle towards the southeastern corner. This soldier was the one who shot him with the rubber bullet. Two other soldiers were detaining people at the southeastern corner. At the Saville Inquiry he confirmed that "I did not see anyone killing anyone."

[111] Jim Wray was certified dead by Dr Ian Gordon on his admission to Altnagelvin Hospital.

[112] Dr Derek Carson, State Pathologist, carried out the post mortem examination. He found that Mr Wray had been struck by two bullets. The first bullet made an entrance wound on the right side of the back, 4cm below the tip of the shoulder blade, associated with an exit wound on the back of the left shoulder. A second bullet made an entrance wound also on the right side of the back, 7cm below and 2½ cm to the right of the first, exiting on the back of the left lower chest. Internal bleeding resulting from the wounds, and the release of air into the chest cavity from the left lung, caused death which would have been fairly rapid but not instantaneous.

[113] The range of the shots was indicated as greater than 30 feet.

[114] Dr Ian Gordon certified William McKinney as deceased on his admission to Altnagelvin Hospital.

[115] Dr Carson opined that Mr McKinney had been hit by a single bullet which passed through his body and then his arm. The first entrance wound was on the right side of the back, 9 cm below the shoulder blade and 13 cm from the midline and exited the body below the left armpit, and had gone on to hit the left forearm, causing entry and exit wounds. His injuries, and the associated internal bleeding

had caused death, which would have been rapid but not instantaneous. The range of the shot was indicated as greater than 30 feet.

Conclusions from civilian witnesses

[116] What do I take from this evidence? I remind myself of the timescale of the shootings in GPN which was likely to have been little more than a minute or two in which at least six shots were fired, and certainly several more, in rapid succession. Each witness was, undoubtedly, in a state of heightened tension because of the dramatic unfolding of events and in extreme fear as a result of being in an exposed position under lethal fire from close range. The evidence of each witness is, necessarily, limited to his own perception and individual view of events as they unfolded. If there is a divergence in accounts that is only to be expected. For the court to try and impose a coherent narrative of its own would be fruitless but, nonetheless, there were several salient points that emerged and which I summarise:

- (i) A large crowd, mostly young men, moved south down Rossville Street to the vicinity of the rubble barricade and the gable end of the eastern block of maisonettes at GPN. This was in response to military vehicles coming down Rossville Street from William Street and positioning themselves in the general area of the waste ground with several soldiers then debussing.
- (ii) Shots were fired by unidentified soldier or soldiers from the north in the general direction of the rubble barricade hitting Mr Michael Kelly who collapsed and subsequently died from his wounds. A number of individuals gathered round to try and assist including, as can be seen in photographs 25.32, Mr McKinney and Mr Wray 25.35. Mr Kelly was carried over to GPN.
- (iii) The “brick” of which F was a member having debussed ended up beside Kells Walk on the western side of Rossville Street adjacent to a derelict building.
- (iv) One member of the brick, the evidence pointing to Soldier G, fired an aimed rubber bullet at Mr McCourt hitting him in the leg.
- (v) The soldiers then made their way from Kells Walk to the alleyway at the rear of garages which run along the north side of GPN. Shots were fired by G possibly injuring an unarmed civilian in the leg. There is no charge referable to this incident.
- (vi) Three or four soldiers entered GPN by the northeast corner.
- (vii) The appearance of the soldiers armed, and seeming to behave aggressively caused panic in the crowd a number of whom made their way to the Abbey Gap to escape out of GPN.

- (viii) The lead soldier, who from all the evidence was G, opened fire at a range of no more than 50 metres.
- (ix) There is no evidence from the civilian witnesses of any other soldier firing, though that does not preclude the possibility of others doing so.
- (x) Six people were wounded, two fatally, by a volley of shots from the northeast corner of GPN. At least six shots were fired though there were certainly more as, for instance, Mr Joseph Gallagher, who felt a bullet whizzing through his long hair.
- (xi) Three of the wounded managed to get away leaving Messrs Wray and McKeever fatally injured and the wounded Mr Quinn all on the pavement at the south side of the square.
- (xii) The soldiers progressed into the square and proceeded to carry out arrests
- (xiii) I am satisfied that none of the members of the crowd in GPN were armed with firearms of any description, nail bombs or petrol bombs as variously alleged by E, G and H. I derive this conclusion from the civilian evidence set out above supported by a number of photographs taken shortly before the shootings. For instance, Mr Wray can be seen in 25.35 and 25.36 close by people assisting Mr Kelly with nothing in his hands. Mr McKinney can be seen close to Mr Kelly as people crowd round the prone Mr Kelly, similarly without any form of weapon. Some, but very few, members of the crowd can be seen with stones in their hands but that is all.

Additionally, swabs were taken from Mr Wray and Mr McKinney and no evidence of firearms or explosives residues were found on their person or clothing.

Self defence

[117] This has been raised, in evidence, by witnesses G, H and E alleging that the persons confronting them were armed with variously M1 carbines (G), nail bombs (H) or nail bombs and petrol bombs (E). I can deal with this issue in short form. From my conclusions in relation to the civilian evidence and considering the irreconcilable contrasting evidence of the soldiers themselves I am satisfied beyond a reasonable doubt that:

- (i) The soldiers did not need to defend themselves in fact; and
- (ii) They did not perceive that they needed to.

[118] Therefore, I am sure that they did not act in lawful self defence in shooting persons in GPN.

Statements from E, G and H and Inquiry evidence (Circumstances of taking)

[119] In the immediate aftermath of the shootings members of the RMP (Special Investigatory Branch, SIB) interviewed and took statements from, amongst others, Soldiers E, G and H. The object of such statements was to:

“Inform the higher military command of what happened and to make evidence available if required to settle any future claim or for a Coroner’s Inquest (per Warrant Officer Wood).”

[120] The statements were taken under compulsion, the interviewees were not cautioned and had no access to independent legal advice. For the reasons set out in the case of *R v A and C* (supra), any information contained in such statements, as I have stated above, is inadmissible as against the maker. In relation to the Widgery Inquiry, the statements taken for the purposes of the Inquiry and the evidence given by witnesses the following facts have been agreed:

“Statements from military witnesses for the purposes of the Widgery Inquiry were also taken by the SIB and the Treasury Solicitor’s Inquiry Team in the same circumstances as the earlier RMP statements, i.e. under orders, without caution and without independent legal advice. At the outset of the Inquiry the Chairman gave a general indication to the effect that witnesses could not be required to answer questions that might incriminate them. There is no evidence that any military witness was privy to that indication and no such indication was provided when each attended to give evidence over the following weeks. When the soldiers gave oral evidence to the Widgery Inquiry, there was representation for the Army, not for individual soldiers. Witnesses gave evidence on the basis of the statements they had already given to the SIB and the Treasury Solicitor’s Inquiry Team. Witnesses were not advised that their evidence might be used against them, or against any other soldier, in subsequent criminal proceedings.”

[121] Similar to the written statements recorded by the RMPs the written and oral testimony to Widgery cannot be used against the maker. In relation to the Saville “Bloody Sunday” Inquiry the following facts have been agreed:

“Before giving statements, and before giving oral evidence to the Bloody Sunday Inquiry, the witnesses were given a formal assurance by the Attorney General

that their statements and evidence would not be used against them in subsequent criminal proceedings, except for any proceedings in which they were charged with having given false evidence in the course of the Inquiry or with having conspired with or procured others to do so.”

[122] For these reasons nothing that may have been said, orally or in statement form, could be used against F. Nor could any statements made by E, G or H be used against them in criminal proceedings

[123] I have determined that the miscellaneous statements made by the three soldiers, but particularly by G and H are to be admitted as evidence in the case. However, the question of what weight to be attached to the evidence contained therein is the issue to be determined by the tribunal of fact. It is clear to me, from the evidence that:

- (i) The RMP’s intention was to obtain a coherent narrative of the events of that day by taking and collating statements from the military participants.
- (ii) It was not intended that they be used as statements against interest, nor in my view, were they intended to be used forensically as witness statements.
- (iii) I take the view that the RMPs in gathering information compared statements made by the various soldiers and returned to them to put any contradictory account to enable them to amend their own statements.
- (iv) I regard the alteration in H’s account, where in its first iteration he places the events in the area of the waste ground proximate to the Rossville Flats, only to amend it, shortly afterwards, to GPN, a different area with a totally different topography, an enclosed square as opposed to an open area, as strong evidence of such a process.

[124] This methodology gives cause for concern in terms of the accuracy of statements taken in this form. Any inaccuracies that leach into a witness’s account are likely to remain as part of their, possibly false, if genuine memory or alternatively a lie which they feel obliged to perpetuate.

[125] Whether this was a concerted act to cover up the true events of the day by those in authority or the attempts by individuals to cover up their own culpability is beyond the competency of this court to determine and is irrelevant to the issue of the guilt or otherwise of the defendant.

[126] However, this methodology, in my view, introduces serious issues in terms of the accuracy and dependability of those statements *ab initio*.

[127] Can the evidence of the two soldiers be considered as mutually supportive? I deem not for the simple reason that because of the way the statements were taken, the comparative exercise that took place the possibility of cross contamination cannot be eliminated. The witnesses cannot be held to be giving evidence truly independent of each other.

Warnings to the jury

[128] In the case of *R v Muncaster* [1998] EWCA Crim 296, the Court of Appeal in England and Wales reviewed the authorities on the necessity or otherwise of warning a jury to take special care in assessing a witness because of particular issues in their evidence. In this case the main witnesses G and H fall into this category on two bases:

- (i) That they are, in effect, just as guilty as F, on the Crown case. They are in effect unindicted co-accused and whilst this term has no legal standing it is descriptive of the status of G, H and E. It is a term used in another Common Law jurisdiction the USA. The most notable example being that of then President Nixon who was named by a Grand Jury in Washington DC as an unindicted co-conspirator in the "Watergate" case. As sitting President he could not be actually indicted and tried for a criminal offence. He never managed to achieve the status of indicted conspirator as he was pardoned by his successor President Ford after his ignominious resignation. I deem that G and H (and E) should, in effect, be treated as co-accused for the purpose of the consequent warning(s) to the notional jury.
- (ii) I hold that they have been established to have told lies about important events of the day namely the self-serving assertions that the persons they shot at were armed.

[129] The approach of the court in directing a jury where a witness (or witnesses) have been shown to be unreliable or potentially unreliable was set out in the case of *R v Makanjuola* [1995] 1 WLR 1348 in the Court of Appeal in England and Wales in a judgment of the court delivered by Lord Taylor CJ:

"Whether, as a matter of discretion, a judge should give any warning and if so its strength and terms must depend upon the content and manner of the witness's evidence, the circumstances of the case and the issues raised. The judge will often consider that no special warning is required at all. Where, however, the witness has been shown to be unreliable, he or she may consider it necessary to urge caution. In a more extreme case, if the witness is shown to have lied, to have made previous false complaints, or to bear the defendant some grudge, a stronger warning may be thought appropriate and the

judge may suggest it would be wise to look for some supporting material before acting on the impugned witness's evidence. We stress that these observations are merely illustrative of some, not all, of the factors which judges may take into account in measuring where a witness stands in the scale of reliability and what response they should make at that level in their directions to the jury. We also stress that judges are not required to conform to any formula and this Court would be slow to interfere with the exercise of discretion by a trial judge who has the advantage of assessing the manner of a witness's evidence as well as its content."

[130] In *Muncaster*, the appellant and his co-accused were both charged with possession of LSD found in the glove compartment of a car driven by him though also by his co-accused Ms Keith with whom he shared accommodation. She was initially to be used as a prosecution witness until her fingerprints were found on the packaging containing the drugs. Muncaster did not give evidence though Ms Keith did, essentially putting the blame on Muncaster. She was acquitted. In reviewing the approach the court should take in these cases Buxton LJ delivering the decision of the court stated:

"It is recognised that certain types of evidence must be the subject of particular directions, broadly expressed in terms approved by the Court of Appeal. The only types of evidence that appear to fall with certainty into this category are evidence of identification (*Turnbull* [1977] QB 224); lies told by the defendant (*Goodway* (1994) 98 Cr.App.R. 11; *Burge and Pegg* [1996] 1 Cr.App.R. 163); evidence of the accused's character, good or bad; and the evidentiary status of a failure on the part of the defendant to testify (*Cowan* [1996] 1 CrAppR 1), ... However, in such cases the judge still has an obligation to tailor his direction to the facts of the case.

Directions as to particular categories of witness have a different status. For many years this area of practice was dominated by the corroboration rules. They required, not merely as a matter of discretion but as a matter of law, that in the case of two categories of witness, accomplices and complainants in sexual cases, the judge must address the jury in respect of their evidence in formalised terms ... Attempts were made, by defendants, to extend the number of categories to which the obligation to give the corroboration direction applied, but those attempts failed ... significantly for our present case, in relation to the

evidence of co-defendants (*Knowlden* (1983) 77 Cr.App.R. 94). However, perhaps with the precedent of the corroboration rules in mind, it was said that in such cases the judge was obliged to advise a jury to proceed cautiously where there was material to suggest that the witnesses' evidence might be tainted (*Beck* [1982] 1 WLR 461), and to give "the customary clear warning" to look at the evidence of co-defendants with care (*Knowlden*, at page 100).

All of these latter authorities have now to be looked at afresh in the light of two developments: the total abolition of the corroboration rules by section 32 of the Criminal Justice Public Order Act 1994; and the subsequent review of the current position ... in *Makanjuola* ... its observations are, in our view, to be read as applying generally to all cases where a witness is or may be suspect because he falls into a particular category.

That *Makanjuola* has the wide reach that we have suggested is a matter of common sense ... It is true that *Beck* speaks of an "obligation" to give a warning in respect of a suspect witness, but the case also emphasised that the strength of the advice must vary according to the facts of the case: [1982] 1 WLR at page 469A. As to co-defendants, Lord Taylor Chief Justice in *Cheema* (1994) 98 Cr.App.R. 195 at page 203 described "a warning in suitable terms as to the danger of a co-accused having an axe to grind" as "desirable", but cited the observation of Watkins LJ in *Knowlden* at page 100:

The content of whatever kind of warning or advice is given is best formulated by the trial judge and, although invited to, we decline to introduce through this judgment a formula which trial judges should use no matter what circumstances confront them ...

In some cases, it may be appropriate for the judge to warn the jury to exercise caution before acting upon the unsupported evidence of a witness. This will not be so simply because the witness is a complainant of a sexual offence nor will it necessarily be so because a witness is alleged to be an accomplice. There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. An evidential basis does not include mere suggestions by cross-examining counsel."

[131] I hold that witnesses G and H fall into categories where a warning to the jury would be appropriate. I hold that the witnesses have told lies about the events on several occasions. This includes committing perjury, twice in the case of H, to Widgery and Saville and once in the case of G to Widgery. Witnesses established to have told serious untruths about matters central to the commission of the offences the subject of this criminal case would attract a strong warning to the jury and, accordingly, I warn myself of the necessity of taking care before relying upon such evidence and to closely scrutinise it.

[132] The same, in my view, applies in relation to their status as, by their own account, they were involved in the same actions as those attributed to F. Had there been admissible evidence against them they would have been in the dock along with F. The problems with relying upon “unindicted co-accused or conspirators” is that there is a clear incentive for the witness to shift blame partially or totally (as in the case of *Kidd* supra) upon the other persons indicted with them. Although there is no automatic requirement for a court to give such a warning I deem it appropriate to do so in this case. There is a clear incentive for G and H to assert that not only did he perceive that he was fearful of immediate attack with firearms in G’s case or with nail bombs in H’s, but that F also opened fire under the same apprehension. Their self defence case would be undermined if one of their number found no necessity to defend himself and his colleagues by opening fire as they allege F did.

[133] In the light of these issues, I would, as a juror, look for support for the evidence of the two witnesses. I have already determined that due to the possibility of cross contamination of their evidence by the method the RMP went about taking the statements I could not be satisfied that they were truly independent of each other and do not constitute supportive evidence.

[134] The Crown contend that the civilian witnesses do support many of the basic facts as alleged by G and H. Superficially that is correct in the sense of describing soldiers coming into GPN and opening fire etc but on the vital issue in this case, the actions of F and the inferences to be drawn therefrom I derive no assistance and deem that their evidence does not provide any independent support of the Crown’s case.

Hearsay evidence

[135] The conviction or acquittal of F is dependent upon the court’s assessment of the reliability of the witness statements of G and H. I have determined that the evidence should be admitted on the basis that a jury could place reliance upon them. This is a very different test to that which I, as the notional jury, must apply at this stage namely whether the evidence can be relied upon as proof beyond a reasonable doubt of guilt. In determining admissibility, I only decided that the evidence was fit to be put before the jury.

[136] Deeming that they were potentially reliable was not a determination that as a juror, they should in fact be relied upon.

[137] In *Grant v The State* [2007] 1 AC 1, Lord Bingham giving the judgment of the Privy Council in relation to a statutory scheme similar to the Criminal Justice (Evidence) (Northern Ireland) 2004 stated at para 21(4):

“The trial judge must give the jury a careful direction on the correct approach to hearsay evidence. The importance of such a direction has often been highlighted: ... It is not correct to say that a statement admitted under section 31D (equivalent to our legislation) is not evidence, since it is. It is necessary to remind the jury, however, obvious it may be to them, that such a statement has not been verified on oath nor the author tested by cross-examination. But the direction should not stop there: the judge should point out the potential risk of relying on a statement by a person whom the jury have not been able to assess and who has not been tested by cross-examination, and should invite the jury to scrutinise the evidence with particular care. It is proper, but not perhaps very helpful, to direct the jury to give the statement such weight as they think fit: presented with an apparently plausible statement, undented by cross-examination, by an author whose reliability and honesty the jury have no extraneous reason to doubt, the jury may well be inclined to give it greater weight than the oral evidence they have heard. It is desirable to direct the jury to consider the statement in the context of all the other evidence, but again the direction should not stop there. If there are discrepancies between the statement and the oral evidence of other witnesses, the judge (and not only defence counsel) should direct the jury’s attention specifically to them. It does not of course follow that the omission of some of these directions will necessarily render a trial unfair, but because the judge’s directions are a valuable safeguard of the defendant’s interests ... ”

[138] In *R v Horncastle* [2009] UKSC 14, amongst the safeguards for an accused, in a case where hearsay evidence is sole or decisive, specified by Lord Phillips are:

- “(iv) The judge has to direct the jury on the dangers of relying on hearsay evidence.
- (v) The jury has to be satisfied of the defendant's guilt beyond reasonable doubt.”

[139] The ability of the jury or tribunal of fact to assess the witnesses upon which they are invited to depend is an important element in our criminal justice system. That assessment has two elements:

- (i) The ability to cross-examine a witness which may undermine, or indeed enhance, his or her evidence. Although in a case where a jury is invited to rely upon hearsay evidence, as here, information can be adduced which may tend to undermine its reliability, it is not the same as seeing a witness dealing with such issues in the cut and thrust of a well conducted cross examination testing the accuracy, reliability and honesty of him/her.
- (ii) The demeanour of a witness giving evidence is a method which, with care, can assist in the assessment of truthfulness and reliability of a witness.

[140] A 53 year old statement cannot be cross examined, nor can I assess the demeanour of sheet of A4 paper.

[141] These limitations emphasise the care a tribunal of fact must take in evaluating such evidence and, accordingly, I warn myself of the dangers of relying upon such evidence.

Delay

[142] The events giving rise to this prosecution occurred over 53 years ago. None of the delay is attributable to the defendant. The defence have highlighted numerous examples where documents have, by virtue of the passage of time, been destroyed or gone missing. Many may have shed light on, for instance, the method by which the RMPs conducted their enquiries, any other accounts recorded from the witnesses and any evolution or change of same. All this is now lost and has, or may have, compromised the defence in advancing points that may have undermined Soldiers G and H. These matters, I consider, have placed the defendant at a real disadvantage in defending himself on these charges, and I take them into account in his favour when deciding whether the prosecution had proved his guilt beyond reasonable doubt.

Assessment of witnesses G and H

[143] In his first statement taken at 02:10 on 31 January 1972, H gives his initial description of the events that at that stage had occurred literally hours beforehand. He refers to seeing four gunmen as he puts himself on the:

“North side of Rossville Street on the waste ground moving close to the gable walls of the buildings which lined the street, about 25 metres from the north west

footpath ... We the pursued these youths through the gap between the two flats."

[144] He puts himself in the Rossville Street area and the flats he refers to must be the Rossville Flats:

"At the gap we saw the group of youths hiding behind a broken down car."

[145] Presumably the original four gunmen he referred to. However, they seem to have moved out of view and now his attention is drawn to:

"... three youths at a distance of 70 metres ... in possession of nail bombs I took aim at the youth in the middle of the group and fired 2 7.62 rounds at the centre of his stomach."

[146] A few lines later he says:

"A youth appeared from the north west block of flats. He ran from a crowd of people ... picked up an object from one of the youths that had been shot and ran in the direction of the north block of flats across the waste land."

[147] The waste land can only refer to the area in front of the Rossville flats and to the east of Rossville Street. H shot him in the shoulder from a distance of 20 metres and he:

"Disappeared into a crowd of people converging on the 3 youths who were lying at the side of the broken car."

[148] The difficulties in this first account are manifest. He refers to four gunmen, no other witness in his brick sees them and they drop out of his narrative after this first statement never to appear again. If, it was true, then both this important fact should have been a consistent theme of his evidence and also featured in the recollections of his colleagues G, H and E, which it does not. The location is in Rossville Street, an open area at the time with a large waste ground totally distinguishable from the enclosed space of GPN and the restricted access points from the north side.

[149] H refers to Soldier G1 checking out the three bodies of the youths who had been shot. G1 was a superior officer but did not, the Crown accept, do so. It is not easy to discern why H would tell a lie about such a detail and is an example of the impossibility making sense of H as a witness.

[150] Then after G1 had examined the bodies, in his account:

“The patrol then continued along Rossville Street towards the barricade this was finally broken up by the company.

I then returned along Rossville Street towards the junction of William Street.”

[151] So back in the direction from which they had originally come. It is to be noted that Glenfada is not mentioned at all by name his description of the shooting cannot be matched to that location.

[152] The second RMP statement recorded, according to the certification at 02:30 elaborates. If the timings are to be accepted this is just 20 minutes after the first was recorded:

“After applying my gas mask the section advanced towards Rossville Flats where I could see a large mixed crowd had gathered around a barricade which was across Rossville Street positioned half way along the West of Block 1 Rossville Flats ... We continued our advance and after moving about ten yards a group of about five youths appeared in an alleyway leading to a block of garages in Glenfada Park. The alleyway is situated about 50 yards North West of the North West corner of Block 1, Rossville Flats.

We continued our advance and after moving about ten yards a group of about five youths appeared in an alleyway leading to a block of garages in Glenfada Park.”

[153] This is the first mention of Glenfada Park, and this brings into question what and why a second statement was taken so shortly after a full account had just been given. It is impossible to avoid the conclusion, as I have already stated, that he has been influenced by comparison between his account and that provided by others. Whether G and H spoke to each other, or their statements were collated and compared to each other matters little.

[154] There is a block of garages on the north side of Glenfada, so he does now identify the area where the shootings the focus of this case occurred. One had, what he took to be a nailbomb which he threw at H without exploding. This youth got away.

[155] The four gunmen have disappeared from this account, and the first identifiable armed persons are the putative nail bombers one of whom he shoots dead in the vicinity of 59 Glenfada and another he shot and injured.

[156] There is no mention of G firing at all.

[157] His third statement was made on 5 February, for clarification purposes, he refers to two nail bombers on a footpath 70 metres away and repeats the assertion that he shot this individual in the shoulder. He speaks of four youths being shot dead, two at his hands but could not say who shot the others. He knew that F had fired but could not say who at.

[158] In his statement for the Widgery Inquiry he states:

“There was a barricade across Rossville Street in front of us. There were at least two gunmen at the barricade firing at us.”

[159] This is the first time that he alleges seeing gunmen (apart from a sniper which I shall return to) actually firing at them. An extraordinary omission if it actually happened and I am forced to the conclusion that this was a fabricated event in order to justify his subsequent actions in shooting at nail bombers and a supposed sniper. He goes on to describe his brick being attacked in Columbcille Court:

“Led by F and G I moved along a low wall leading from the Columbcille Court building. In front of us was an alleyway leading into Columbcille Court. A group of lads appeared just at the end of this wall. One of them had an object which I thought was a nail bomb ... The lad threw the bomb in our direction although I did not watch it land, I heard it hit the ground near us. It did not then explode ... They ran down the alleyway and turned left under an archway into Glenfada Park. We chased after them.”

[160] This preliminary attack is the explanation for their going into Glenfada in the first instance. This attack is noticeably absent from previous accounts.

[161] I will now deal with a further discrete issue that is of 19 unaccounted for shots.

[162] In his original statement he describes how, after the shooting of the nail bombers and G1 inspecting the bodies:

“I then returned along Rossville Street back towards the junction with William Street. My patrol numbered approximately 14 men as I neared the junction of the first shooting incident. There is a block of flats extending east towards Chamberlain Street. On the west side of the flat about 200 metres from my passing location the patrol

came under fire from a concealed sniper using a high velocity rifle. I located his position to be a toilet facing me. He was firing from the window about 1 foot square. I took a covering position, cocked my rifle and fired 17 aimed shots at the sniper. I then changed my magazine, loaded the rifle with a fresh one and fired 2 7.62 shots. He did not return fire."

[163] Insofar as it is possible to locate the firing point from the description, given that Chamberlain Street runs down to the Rossville Flats and is on the east side of Rossville Street and behind the waste ground it would appear he is describing engaging a sniper in Rossville flats, possibly Block 1.

[164] Whatever may be case about this alleged sniper the witness places it well away from, and totally distinct from the Glenfada shootings.

[165] In the next statement after describing how he shot the youth who picked up a nail bomb and ran off then:

"I then withdrew from my position and took up a position behind a low wall about four feet high next to the north east corner of the block of garages in Glenfada Park. Whilst in this position I heard the sound of a single shot being fired. I saw the puff of smoke coming from a toilet window in 57 Glenfada Park. I could see the shape of a man and the muzzle of a rifle pointing out the window. I fired the remainder of my magazine in aimed shots at the window to prevent the gunman from firing from further firing because "F" and "G" were both still in the square without cover. I changed my magazine and fired a further two aimed shots at the gunman. I saw him fall and believe I hit him. Then ceased fire just as the order to cease fire was given."

[166] This dramatic engagement is totally unnoticed by Soldier G.

[167] In his clarification statement he asserts that he believes that he hit the gunman with his 19th shot and saw him fall. He repeats this account in his Widgery statement and again in questioning at the Inquiry itself in answer to questions from Mr Underhill. He was cross examined by Mr McSparran and said he'd be surprised at evidence that there were no bullet holes in the building as described by him and one bullet hole in a clear glass window in the building next to it.

[168] He made a further statement for the Saville Inquiry and in dealing with this aspect of his evidence essentially repeated his evidence as set out above.

[169] In his evidence to the Inquiry itself the absence of any evidence to support his claim to have shot at a house in Glenfada was put to him and he said:

“I fired at a frosted window sir, I agree with what you are saying. All I can say I must be wrong about the location, but I fired ...

Q. Into a frosted window, where is this frosted window?

A. I thought it was there at the time. I still think it ...

Q. ... The sole point I want to make is that when you gave this description of firing at a toilet window to the Royal Military Police at 2.10 on the 31st you put yourself in Rossville Street approaching William Street ... it was not in Glenfada Park at all was it?

A. It probably by the evidence I would agree... I thought it was Glenfada Park, I have said that all along but the evidence points otherwise.

Q. I think you are prepared to accept and recognize that it cannot have been Glenfada Park North, all right.

A. Yes sir.”

[170] The cross-examination continues and the suggestion is made that there is no evidence of 19 shots having been fired in the manner described anywhere in the Bogside although he was shown a photograph of a clear glass window in a maisonette with six bullet holes.

[171] It is difficult to know what to make of this evidence, apart from the fact that it is manifestly untrue. The soldiers had to explain all rounds expended and he had 22 to account for. He married the GPN shootings when he, G and E were allegedly coming under threat to account for his supposedly legitimate firing of the rounds.

[172] Soldier INQ 444 in Saville Inquiry speaks of a soldier, he believes to be H, holding his rifle under his arm at a position between his shoulder and waist and firing between 10 and 20 shots at a 30-40 degree angle towards the Rossville Flats.

[173] This would explain his invention of a sniper in Glenfada to cover up his arbitrary, and unjustified firing of unaimed shots at a residential block of flats.

[174] That H is prone to arbitrary ill-disciplined and dangerous actions has been evidenced elsewhere in that Soldier INQ 96, in a statement to Saville, said that in the context of Operation Motorman on the Shankill Road after relief had arrived and the shooting was over H:

“(became) very trigger happy, blasting his way up the street. The battle was over, but Soldier H was blasting away, and we had to physically stop him shooting.”

[175] Apart from the general issue of credibility how could the court be assured that H’s actions in GPN were confined to the shootings that he accepts. At least six shots, and certainly several more, were fired. How many were attributable to H? But, in truth, the question is unanswerable.

[176] The inconsistencies, the lies, the uncertainty of his role in these events all give rise to extreme concern as to what, if any, weight is to be attached to his evidence.

[177] On the face of it G gives a much more consistent account of events giving rise to the present charges. He relates, coming under fire from Rossville flats, which from all the evidence I seriously doubt occurred he then engaged a gunman behind a wall at the end of an alleyway to give cover to one of his colleagues firing two shots. The supposed gunman then went to ground.

[178] There is no mention of this in H’s account, though he, H, purports to see a nail bomber who throws the bomb at him which correspondingly is not mentioned by G.

[179] Having run up the alleyway, inferentially from all the evidence leading into the north east corner of Glenfada he:

“... saw two men standing about 25 metres away both of them holding what appeared to be small rifles in their hands.

I fired three aimed shots at one of the men and I saw him fall to the ground. F fired at the same time and I saw the other gunman fall. A group of people picked up the two weapons and ran off down an alleyway in a North Easterly direction.”

[180] In an undated subsequent statement, he purports to be able to identify one of the persons he shot, although that individual is not one of the deceased or injured in this case. Originally the statement said this individual was “throwing a nail bomb” amended in handwriting to “armed with a small rifle.” No explanation for this anomaly has been given. G in his evidence to the Widgery Inquiry could not recall saying the man he shot was throwing nail bombs and thought there was a mix-up when this statement was taken with a number of others.

[181] In a supplementary statement on 14 February 1972 he says that:

“... the gunmen I saw was accompanied by a third man. Because this man did not have a rifle I ignored him. I shot at one of the gunmen and I heard “F” fire at the same time and because the two gunmen fell to the ground I automatically thought that the second gunman had been engaged by “F”, However in view of the fact that I fired three shots it is possible that I hit both men and the third man who was with him.”

[182] This appears to him resiling from his description in the first statement where he states:

“F” fired at the same time, and I saw the other gunman fall.”

[183] These clarifications, the introduction of a third man and the possible exoneration of F from responsibility of the fatalities are not easily explained and indeed no explanation has been forthcoming.

[184] This confirms my view that those collating information found anomalies in the various accounts given and reinterviewed the soldiers informing them of same and giving them an opportunity to review and to amend or qualify their account. Not only is this inappropriate for an interviewee as suspect but just as undesirable for a witness, especially as in this case where the Crown rely upon such statements to prove their case against the defendant.

[185] Upon entering into Glenfada he describes in his evidence to the Widgery Inquiry, that “F” was just behind him, and he saw two armed men with short rifles like M1 carbines:

“I immediately dropped to one knee and fired three aimed shots at one of the men. F was firing beside me and I saw both men fall. There were a fair number of people on the opposite side of the courtyard. When the men fell a small crowd gathered around quickly. I did not actually see anyone pick up a weapon because there were too many people in front.”

[186] He stands over his amended statement to the extent that he accepts that he may have shot both gunmen but:

“... while F shot a third man whom I was not observing.”

[187] He deals with the explanatory statement of 14 February 1972:

“With regard to the men in Glenfada Park I assumed at the time that I had made the earlier statement that I had shot one and F had shot the other of the two I was observing. As they were both right together it is quite possible that I shot them both, while F shot the third man when I was not observing. This is the reason I was asked to make a supplementary statement on 14 February to explain the point. This statement has now been read to me, and I do not now think it is an accurate record of what happened.”

[188] Nor is there any reference to a sniper at 57 Glenfada, or elsewhere in the square. However, at a later stage when he had returned to his vehicle, by now in the Glenfada area they came under fire again and he fired one round at the window where the gunman was located.

[189] In his Widgery evidence he states that when he entered the square he saw two gunmen at the southwest corner carrying short firearms like M1 carbine type. He took cover behind a car. He then states:

“Q. You fired two shots?

A. I fired three shots, and I was particularly aiming at one ...

Q. ... Was F firing at that time?

A. I knew F had fired. He was by the side of me. I could tell that he had fired

Q. When you fired what happened to the men?

A. I saw both men fall to the ground ... I know that I definitely hit one and I could have quite easily have hit both.

Q. Did you think that F was firing at one of them?

A. I thought at the time that he was.”

[190] In cross examination by Mr Hill:

“Q. When you went into the alleyway did you decide to go or did F decide to go first?

A. ... I follow F sir.

Q. F was beside you (when you shot one of those men)?

A. Yes sir.

Q. Did you form the impression ... that he was firing at the other one of those two gunmen?

A. At the time I did sir ... I now believe it to be wrong."

[191] G's perception of the role played by F, as can be seen, is uncertain – as to whether he fired at one of the two gunmen. The Crown proposition is that the accused was acting in concert with other soldiers and for that purpose requires a close analysis of the sequence of events to try and establish a joint intent on the part of F and the other soldiers at that scene, in particular Soldier G.

[192] G has varied his perception of the role of F in firing at the supposed gunmen.

[193] I am satisfied that he was the first to open fire and that he is not being truthful on two counts, namely that he was shooting at gunmen in self defence, and that he has not properly described the arbitrary manner of his opening fire as described by the scene witnesses.

[194] I have to remind myself that the analysis being carried out in depth of the statements and implied intentions of the individuals concerned relate to an event that took place in the space of probably no more than two minutes some 53 years ago.

Article 4

[195] One voice that has been silent through these proceedings has been that of Soldier F himself. I am unaware of any explanation he may have given about his movements on that fateful day to RMP's, Widgery or Saville and, as I have already stated, even if I did, I could not take them into account in determining his guilt or innocence.

[196] He has not given evidence which is his right and he is entitled to make the prosecution prove his guilt beyond reasonable doubt. The law is that I may draw such inferences as appear proper from his failure to do so, if I think it is a fair and proper conclusion, and satisfied, that the prosecution's case is such that it clearly calls for an answer by him; and second, that the only sensible explanation for his silence is that he has no answer, or none that would bear examination.

[197] I should not find the defendant guilty only, or mainly, because he did not give evidence.

[198] The defendant was interviewed by the PSNI and stated through his solicitor:

“While I am sure I properly discharged my duties as a soldier on that day, I no longer have any reliable recollection of those events. I am not therefore able to answer your questions and will not be drawn into speculating or guessing. For that reason I will not be answering any questions put to me.”

[199] He was as good as his word and declined to answer any questions although he was not asked about the accounts that the prosecution now rely upon to convict him.

[200] The prosecution submit that he should have a memory of the crucial question – did he fire his weapon in GPN? The defence submit that his attitude evinced at his interview was a reasonable one and that no inference could be drawn in relation to an event 53 years ago and in such a narrow compass.

[201] I hold that it would not be fair and proper to rely upon Article 4 of the Criminal Evidence (Northern Ireland) Order 1988. In any event it could not, of itself, prove guilt and is only one of many factors the court may have regard to in assessing guilt or innocence.

Good character

[202] The defendant has no criminal convictions. This gives rise to two propositions. Firstly, that a man in at least his seventies, with no criminal convictions is less likely to have committed an offence particularly one of this gravity. It is by no means determinative but is a matter I am obliged to take into account in his favour.

[203] Secondly, although he has not given evidence in this case his explanation for not doing so at interview is imbued with added credibility.

Conclusions

[204] The following facts have, I am satisfied, been established.

[205] Shortly after 4pm on 30 January 1972, a number of soldiers, members of the Parachute Regiment, entered Glenfada Park North and immediately, or almost immediately opened fire with high velocity weapons at unarmed civilians at a

distance of 50 metres or less. This resulted in two persons, Messrs McKinney and Wray being murdered and four (possibly five) others unlawfully wounded.

[206] Soldiers G, H, F and E were part of the initial group of soldiers who entered the square and were responsible for the deaths and woundings. They had totally lost all sense of military discipline.

[207] They were members of a regiment formed in 1942, at the behest of Prime Minister Churchill, and had a proud record in World War Two. Perhaps most notably in Operation Market Garden in the, ultimately failed, attempt to capture bridges over the river Rhine which would, in all likelihood, have foreshortened the war if successful. Those who fought valiantly against SS Panzer Divisions in 1944, have had their Regiment sullied by some of their successors, shooting in the back unarmed civilians fleeing from them in the streets of a British city. Those responsible should hang their heads in shame.

[208] However, there is no concept of “collective guilt” in our jurisprudence. An individual is only responsible for his or her own actions and to establish guilt, in this case, the Crown must establish that the defendant was knowingly and intentionally assisting in the shootings, with intent to kill or was shooting himself with that intention.

[209] The sole evidence against him on this issue is that of Soldiers G and H.

[210] I have indicated already the difficulties in relying upon their evidence.

[211] Their statements, the sole and decisive evidence, cannot be tested in a way that witnesses giving evidence from the witness box would be.

[212] Delay has, in my view, seriously hampered the capacity of the defence to test the veracity and accuracy of the hearsay statements.

[213] The two witnesses are themselves, on the basis of the Crown case guilty of murder as, in essence, accomplices with a motivation to name F as a participant in their murderous activities.

[214] I find that they have been serially untruthful about matters central to events giving rise to this prosecution. They have committed perjury, G once to the Widgery Inquiry and H twice to the Widgery and Saville Inquiries.

[215] This is the evidence the Crown present as proving the guilt of F.

[216] Whatever suspicions the court may have about the role of F, this court is constrained and limited by the evidence properly presented before it. To convict it has to be upon evidence that is convincing and manifestly reliable.

[217] The evidence presented by the Crown falls well short of this standard and signally fails to reach the high standard of proof required in a criminal case; that of proof beyond a reasonable doubt.

[218] Therefore, I find the accused not guilty on all seven counts on the present bill of indictment.

[219] In those circumstances I need not give my reasons for admitting the hearsay evidence of G, H and E – for not excluding it under Article 29 or PACE nor for refusing to direct myself to acquit at the conclusion of the Crown case.