Neutral Citation No: [2025] NICC 29 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Ref:*** **[2025] NICC 29** ***ICOS No:*** **19/077342** ***Delivered:*** **16/10/2025**

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

THE KING

v

SOLDIER F

RULING ON DIRECTION APPLICATION

HHJ LYNCH KC

Introduction

[1] At the conclusion of the Crown case it was submitted by the defence that I should direct the (notional) jury to acquit the accused on all seven counts on the present bill of indictment.

[2] Guidance in relation to such applications was given in the case of *R v Galbraith* [1981] 73 Cr App R 124, a decision of the Court of Appeal in England and Wales delivered by Chief Justice, Lord Lane. He stated the proper approach to be taken in the following terms

> "(1) If there is no evidence that the crime alleged has been committed by the defendant there is no difficulty — the judge will stop the case.
>
> (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence:
>
> (a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it,

it is his duty, on a submission being made, to stop the case;

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

[3] In *R v Shippey*, as summarised in the Criminal Law Review (1988) 767, refined the approach to the second limb of *Galbraith*:

> "His Lordship found that he must assess the evidence and if the witnesses' evidence was self-contradictory and out of reason and all commonsense then such evidence is tenuous and suffering from inherent weakness. He did not interpret the judgment in *Galbraith*… as intending to say that if there are parts of the evidence which go to support the charge then no matter what the state of the rest of the evidence that is enough to leave the matter to the jury. Such a view would leave part of the ratio of *Galbraith* tautologous. He found that he had to make an assessment of the evidence as a whole. It was not simply a matter of the credibility of individual witnesses or simply a matter of evidential inconsistencies between witnesses, although those matters may play a subordinate role. He found that there were within the complainant's own evidence inconsistencies of such a substantial kind that he would have to point out to the jury their effect and to indicate to the jury how difficult and dangerous it would be to act upon the plums and not the duff."

[4] It was submitted that I should stop the case at this stage under either or both limbs of *Galbraith*. The first limb, that there is no evidence is advanced on the basis that I should, at this stage, hold the hearsay evidence of G and H to be inadmissible, the consequence of such a ruling being that there would be, as the Crown accept, no evidence against the accused.

[5] At an earlier stage in the trial I deemed that their various statements, written and in oral testimony should be admitted but I am obligated to consider, or

reconsider, my original ruling see Article 29 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004:

> "***Stopping the case where evidence is unconvincing***
>
> 29.-(1) If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that-
>
> (a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and
>
> (b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,
>
> the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury."

[6] The proper approach to applications under Article 29 of the 2004 Order was dealt with by Hughes LJ in *Riat* (2013) 1 WLR 2592

> "Section 125 (our Article 29) is a critical part of the apparatus provided by the CJA 03 for the management of hearsay evidence.
>
> In a non-hearsay case, the jury must be left to assess the evidence. It is not for the judge to do so. The judge's power to stop the case upon a submission that there is no case to answer is limited to doing so if the necessary minimum evidence does not exist upon which a jury, properly directed, could convict the defendant. The judge does not assess the reliability of the evidence. Thirty years ago *Galbraith* [1981] 1 WLR 1039 disposed of the contention that the judge is entitled either to weigh up the reliability of the evidence or to decide at that stage whether or not any resulting conviction would be safe, and see the recent re-statement of that rule in *R v F* [2011] EWCA Crim 1844.
>
> It is essential to understand that the rule is different for hearsay cases. There, the judge is required by s. 125 to look to see whether the hearsay evidence is so

unconvincing that any conviction would be unsafe. That means looking at its strengths and weaknesses, at the tools available to the jury for testing it, and at its importance to the case as a whole. The passing observation in *Joyce & Joyce* [2005] EWCA Crim 1785,to the effect that there is no difference between this duty and an ordinary *Galbraith* question, was made in a case where the point did not arise, because the court held that it would have been an affront to justice not to leave that case to the jury including the hearsay evidence; moreover it cannot stand either with the terms of the statute or the analysis in *Horncastle* (CACD) at [74]:

> 'The hearsay evidence…is not to be disregarded at the stage of considering whether there is or is not a case to answer – it falls to be considered in the same way as any other evidence in accordance with the principles of *Galbraith*. But at the close of all the evidence the judge is required, in a case where there is a legitimate argument that the hearsay is unconvincing and important to the case, to make up his own mind, not as a fact-finder (which is the jury's function) but whether a conviction would be safe. That involves assessing the reliability of the hearsay evidence, its place in the evidence as a whole, the issues in the case as they have emerged and all the other individual circumstances of the case. The importance of the evidence to the case is made a specific consideration by the statute.'"

[7] The test under Article 29 is clearly a more subjective one than that under *Galbraith* with the judge having a more interventionist role, if I may so express it.

[8] As stated, I must, reconsider my earlier ruling under Article 29, and also or in the alternative, to exclude the statements under Article 76 of the Police and Criminal (Northern Ireland) Order 1989 which provides that in "any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

[9] I have also to consider the common law power to exclude evidence whose probative value is outweighed by its prejudicial effect.

[10] Having listened carefully to the submissions by the defence and the Crown and having revisited the issues in the context of all the evidence before the court, I determine that the statements are still to be admitted and the question of what weight to be attached to them to be a matter of assessment by the tribunal of fact, the notional jury.

[11] Under the second limb of *Galbraith*, I determine that the issues raised by the defence (and prosecution) are matters appropriately determined by a jury and therefore I decline to direct a verdict of not guilty on this basis. This relates to all counts on the indictment whilst acknowledging there are different considerations between counts 1 to 6, where he is charged as an accessory and count 7 as a principal.

[12] I will give my reasons for these conclusions at a later stage as required.