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IN THE CROWN COURT IN NORTHERN IRELAND
SITTING IN BELFAST

THE QUEEN

v

RAYMOND O'NEILL

RULING (NUMBER 5)
ON ADMISSIBILITY OF KEVIN McCAUGHLEY'S BAD CHARACTER

David McDowell QC and Michael Chambers (instructed by the Public Prosecution Service for Northern Ireland) for the Crown
Martin O'Rourke QC and Colm Fegan (instructed by McIvor Farrell Solicitors Ltd) for the Defendant

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SCOFFIELD J

Introduction

[1] The defence yesterday made an application for leave to adduce evidence of the bad character of Kevin McCaughley, a prosecution witness, pursuant to Article 5 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 ("the 2004 Order"). The bad character evidence relates to Mr McCaughley's convictions on two counts of false imprisonment and two counts of causing grievous bodily harm with intent in respect of an incident culminating in the notorious killing of two corporals from the British Army, Cpl Wood and Cpl Howes, who had got caught up in what the judge described as an 'IRA funeral' in West Belfast on 19 March 1988; and certain comments of the trial judge in relation to the veracity of Mr McCaughley's evidence.

Relevant statutory provisions

[2] Article 5(1) of the 2004 Order provides as follows:

> "In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if—
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> (a) it is important explanatory evidence,
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> (b) it has substantial probative value in relation to a matter which—
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> (i) is a matter in issue in the proceedings, and
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> (ii) is of substantial importance in the context of the case as a whole, or
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> (c) all parties to the proceedings agree to the evidence being admissible."

[3] The defence do not submit that Mr McCaughley's previous bad character is important explanatory evidence; nor is there agreement from the prosecution that it is admissible. Accordingly, gateway (b) is the only relevant gateway in relation to the present application. It is clear from Article 5(4), therefore, that the evidence of Mr McCaughley's bad character cannot be given without leave of the court.

[4] Article 5(3) provides further assistance as to the concepts mentioned in Article 5(1)(b). It provides as follows:

> "In assessing the probative value of evidence for the purposes of paragraph (1)(b) the court must have regard to the following factors (and to any others it considers relevant)—
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> (a) the nature and number of the events, or other things, to which the evidence relates;
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> (b) when those events or things are alleged to have happened or existed;
>
> (c) where—
>
> (i) the evidence is evidence of a person's misconduct, and
>
> (ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,

the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;

(d) where—

(i) the evidence is evidence of a person's misconduct,

(ii) it is suggested that that person is also responsible for the misconduct charged, and

(iii) the identity of the person responsible for the misconduct charged is disputed,

the extent to which the evidence shows or tends to show that the same person was responsible each time."

Summary of the defence submissions

[5] The defence written submissions on the application contend that Mr McCaughley was "directly involved in the murders of Corporal Wood and Corporal Howes", mentioned above. They submit that the credibility of Mr McCaughley is a matter in issue in the proceedings (relying on *Blackstone* (2022) at F15.14 to F15.22). They further rely on *R v Brewster* [2010] EWCA Crim 1194, discussed further below, in support of the contention that Mr McCaughley's previous bad character evidence is reasonably capable of assisting the jury to reach a view on whether his evidence is or is not worthy of belief and, so, ought to be admitted. At paragraph 11 of their submissions, the defence say this:

> "Plainly, creditworthiness is an important matter in issue which is of substantial importance in the context of this case as a whole. On the [CCTV] footage alone, the Crown's case cannot succeed. The Crown's case is heavily reliant on the evidence of those who were in the immediate company of the deceased and the Defendant, before and after the murder. The jury's assessment of these witnesses is therefore a matter of substantial importance in the context of the case as a whole."

[6] Turning more specifically to Mr McCaughley, the defence submissions also refer to Mr McCaughley's evidence (in his police statement of 4 September 2015, around a month after he made his initial statement) to the effect that, from his house at 66 Lagmore Avenue, he saw the defendant arrive back to the home of

David Quinn and Kerrie Robinson (at 71 Lagmore Avenue), wearing his cream jacket, at or around midnight on the night of 1 August 2015. The defence assert:

> "This is naturally an important part of the Crown's case, as a considerable amount of evidence presented by the Crown so far relates to this alleged cream jacket as well as when and where the Defendant was wearing it."

[7] The defence submit that Mr McCaughley's credibility in this trial is undermined by (a) his having previously lied on oath in court; and (b) his convictions for serious offences which render him a person whose word cannot be trusted.

[8] The defence written submissions also state that an important matter in issue in this case is the identity of the murderer. The prosecution case is that the defendant is the murderer and that there are no other reasonable suspects (despite, in the defence submission, the prosecution having been unable to identify a motive on the part of the defendant – a matter the prosecution dispute). The court is aware that evidence will be put before the jury to the effect, *inter alia*, that the deceased may have been "put out" of a previous home; that she and her partner had been threatened by paramilitary organisations including the Continuity IRA and/or Óglaigh Na hÉireann; and that there had been death threats made to her, as well as masked men having come to her home and put a gun to her head. In light of this it is submitted that "the presence of a person [Mr McCaughley] with serious offences perpetrated on behalf of the IRA who was living across the road from where the victim was attending a party cannot be ignored"; and that Mr McCaughley "has a propensity to inflict serious personal violence on behalf of a paramilitary organisation who in this case is known to have had an animus to the victim." They also point to his friendship with Mr Quinn, his "potential animus to the victim" and his proven propensity for untruthfulness and extreme violence.

Summary of the prosecution submissions

[9] The prosecution submit that the majority, if not all, of the defence submissions rest on a premise which is no more than mere assertion, namely that either David Quinn and/or Kevin McCaughley were somehow involved in the murder, either themselves, through others, or in some attempt to implicate the defendant. However, there is no material or evidence to support this assertion and no indication of the basis for it (including when asked in argument to explain this, as the defence did not want to disclose its hand before cross-examination of the relevant witnesses). Mr McDowell QC submitted that, if an allegation against either of these men was to form part of the defence case, this should have been clearly set out in the defendant's defence statement – which it was not – pursuant to section 6A(1)(c) and (ca) of the Criminal Procedure and Investigations Act 1996, requiring *inter alia* a specification of "particulars of the matters of fact on which [the defendant] intends to rely for the purposes of his defence."

[10] Mr McDowell further contended that Mr McCaughley's evidence was not of particular importance. He had contemplated not calling him at all but was aware that the defence wanted him to be called. He did not intend to lead evidence of the alleged sighting of the defendant around midnight in his cream coat. Although the defence assume that this aspect of Mr McCaughley's statement was intentionally false, there was no evidence to suggest that it was anything other than a mistake or simply unreliable. The defence assumption was another example of mere speculation or assertion. For Mr McCaughley's credibility, or his alleged involvement in the murder, to actually be a matter in issue or an important matter in issue, this would require some form of positive case to be made against him by the defence either on instruction or on the basis of some evidential material. In the absence of this, his creditworthiness was not an issue, nor was the suggestion that he might have some kind of involvement in wrongdoing related to Ms Dornan's death. As to the defence reliance on threats made to Ms Dornan, the latest of these was in May 2013 and there was no evidence that Mr McCaughley had any present involvement with a paramilitary group.

The *Brewster* case

[11] Both parties relied upon the *Brewster* case (*supra*) in the course of their submissions and, in particular, the guidance given by the English Court of Appeal in paras [22] and [23] of the judgment of Pitchford LJ on behalf of the court, as follows:

> "It seems to us that the trial judge's task will be to evaluate the evidence of bad character which it is proposed to admit for the purpose of deciding whether it is reasonably capable of assisting a fair minded jury to reach a view whether the witness's evidence is, or is not, worthy of belief. Only then can it properly be said that the evidence is of substantial probative value on the issue of creditworthiness. In reaching this view, with respect to the court in *S (Andrew)*, we agree with the observations of Hughes LJ in *Stephenson*. It does not seem to us that the words "substantial probative value", in their section 100(1)(b) context require the applicant to establish that the bad character relied on amounts to proof of a lack of credibility of the witness when credibility is an issue of substantial importance, or that the convictions demonstrate a tendency towards untruthfulness. The question is whether the evidence of previous convictions, or bad behaviour, is sufficiently persuasive to be worthy of consideration by a fair minded tribunal upon the issue of the witness's creditworthiness. When the evidence is reasonably capable of giving assistance to the jury in the way we have described, it should not be assumed that the

> jury is not capable of forming an intelligent judgement whether it in fact bears on the present credibility of the witness and, therefore, upon the decision whether the witness is telling the truth. Jurors can, with suitable assistance from the judge, safely be left to make a proper evaluation of such evidence just as they are when considering issues of credibility and propensity arising from a defendant's bad character.
>
> The first question for the trial judge under section 100(1)(b) is whether creditworthiness is a matter in issue which is of substantial importance in the context of the case as a whole. This is a significant hurdle. Just because a witness has convictions does not mean that the opposing party is entitled to attack the witness' credibility. If it is shown that creditworthiness is an issue of substantial importance, the second question is whether the bad character relied upon is of substantial probative value in relation to that issue. Whether convictions have persuasive value on the issue of creditworthiness will, it seems to us, depend principally on the nature, number and age of the convictions. However, we do not consider that the conviction must, in order to qualify for admission in evidence, demonstrate any tendency towards dishonesty or untruthfulness. The question is whether a fair-minded tribunal would regard them as affecting the worth of the witness' evidence."

The findings of McDermott LJ in relation to Mr McCaughley

[12] Before turning to the merits of the arguments, it is important to set out some further detail of the bad character evidence which forms the basis of the application.

[13] Mr McCaughley was charged with the murder of each corporal; false imprisonment of each corporal; causing grievous bodily harm (GBH) with intent in respect of each corporal (or assault occasioning actual bodily harm as an alternative); and possessing a firearm and ammunition. He was acquitted of both charges of murder; acquitted of the firearms offence; but convicted of the false imprisonment and GBH charges, with the actual bodily harm charges left on the books. He was convicted of these offences on 5 July 1991, after a trial by judge alone, and sentenced to seven years' imprisonment concurrently on each count. The Diplock judgment is reported at [1991] Lexis Citation 4043.

[14] The judge, McDermott LJ, was satisfied that the two corporals were conveyed in Mr McCaughley's taxi from Casement Park (his taxi having stopped in a lay-by for 80 seconds whilst a variety of people got in) to the nearby waste-ground at

Penny Lane where they were killed, in a journey lasting 2 minutes and 24 seconds. There, McCaughley got out of his car and turned back and joined in a struggle, which "lasted but a few seconds", with Cpl Wood, who was bleeding and nearly naked, punching and kicking him. He then moved away from the struggle and, when Cpl Wood was shot, ran off. The judge recorded that these events occurred speedily, with only some 19 seconds elapsing between an assailant (not the gunman) getting out of the back of the taxi and he and McCaughley running off.

[15] The judge accepted that, at his first police interview, McCaughley appeared to be very remorseful and distressed; and that he remained appalled by what he had done. The judge specifically recorded that he was satisfied that McCaughley was "not a member of the IRA", which was also the view of the police interviewers at the time, and that "his involvement arose through his being 'in the wrong place at the wrong time.'" He also accepted that, when McCaughley arrived at the scene, he thought that he was there to collect someone to be taken to hospital; and that, initially, when the two blood-stained men were in the back of his taxi, he believed for a time that he was on a hospital run.

[16] Thereafter, it appears that McCaughley sought to minimise his involvement, which he had also done at interview. McDermott LJ considered, in particular, that McCaughley told "a flagrant lie" when he suggested that he grabbed Cpl Wood because he was afraid of the group around him. He did not accept that McCaughley was under duress or that he had made that claim to the police. In addition, there are other aspects of the judgment which indicate that the judge had concerns about the truthfulness of some aspects of McCaughley's evidence. For instance, on what McCaughley saw at Casement Park and what he understood of what was happening when the various men got into his taxi, the judge said "I cannot accept that this was all McCaughley saw …"; and "I felt that he was deliberatively minimising his knowledge at that time", although, as noted above, the judge ultimately accepted that McCaughley was under a misapprehension at the time, at least for a while, about the purpose for which his taxi was being used. The judge put his "unimpressive" evidence down to his "trying to explain or justify the awfulness of what he did."

[17] McCaughley was found guilty of false imprisonment on the basis that, once he realised that the two men in the back of his taxi were captive, he actively aided and abetted their detention by continuing to drive the taxi, responding to directions from the back and failing to stop and seek assistance. In addition, he assisted another in stopping Cpl Wood from trying to escape. He was also found guilty of the GBH offences on the basis that he had realised that the men in the back of his taxi were "in real trouble" and he aided that attack both by keeping his taxi in motion and later kicking and punching Cpl Wood. McDermott LJ was not satisfied that McCaughley lent himself to the plan to kill the corporals or had the necessary *mens rea* in that regard to sustain a charge of murder; nor that he was party to a joint enterprise to kill or an accessory to the possession of the weapon. He was accordingly acquitted of murder.

[18] In his oral submissions, Mr O'Rourke QC emphasised both the heinous and notorious nature of this event; and the concern that the jury may consider a witness unlikely to lie in a trial for as serious an offence as that of murder, whereas Mr McCaughley had been found to have lied in a previous double murder trial (albeit one where he was the defendant).

What is the matter in issue?

[19] There are really two potential 'matters in issue' identified by the defence for the purpose of the present application: (1) credibility; and (2) the identity of the murderer.

Credibility

[20] As to the first of these, credibility of the prosecution witnesses in general – particularly the civilian witnesses involved in events shortly before or after Ms Dornan's death – is obviously an issue in the case. However, notwithstanding the broad observations made about this in the defence submissions (see para [5] above), in the context of the present application it must be the credibility of Mr McCaughley which is the relevant matter in issue. His previous bad character does not speak to the credibility of other prosecution witnesses.

[21] In his oral submissions, Mr O'Rourke expanded upon why it is said that Mr McCaughley's credibility is in issue. This is because:

(a) Mr McCaughley has given a statement about what he saw from his living room of the defendant arriving at 71 Lagmore Avenue in a taxi at around midnight on the night in question wearing his cream coat. The defence accept this evidence is "wrong" but say "the more important question is *why* is he saying that", *i.e.* they impute some nefarious purpose to Mr McCaughley.

(b) It is said there is a substantial issue as to whether Mr McCaughley's home had CCTV cameras installed at the time of the murder. It appeared to be suggested by Mr Quinn in police interview that a neighbour had CCTV which may have recorded his leaving Mr McCaughley's house on 4 August 2015, an occasion after the murder but relevant to the prosecution case – although it is unclear whether this reference was to Mr McCaughley's home at No 66 or that of his neighbour at No 68. In a further statement, Mr McCaughley has said that he did have CCTV at his home but that it was removed some time before the murder. This is a matter about which the defence has expressed some suspicion, raising the prospect that either there was CCTV footage which was not provided to police or that the CCTV cameras were conveniently removed before the murder occurred.

(c) The defence also point to Mr McCaughley's friendship with David Quinn and suggest that Mr Quinn had at least as good an opportunity to commit the murder as did the defendant. They also point to the fact that Mr Quinn went to see Mr McCaughley shortly after attending the fire at Jennifer Dornan's home (although a reason has been provided in evidence for this); and that he spoke to Mr McCaughley shortly after receiving a phone call from the defendant on Tuesday 4 August.

[22] The prosecution suggest that Mr McCaughley's credibility is not in issue at all, for essentially two reasons:

(a) First, they contend that the observations recorded from Mr McCaughley in his statement of 4 September 2015 – in relation to seeing the defendant wearing his cream coat at around midnight a few hours before Ms Dornan's murder – are not in fact "important" aspects of the prosecution case, contrary to what the defence suggest. Rather, they accept that this evidence must be mistaken (because, at that time, the defendant would have been returning from the Moneen Filling Station where he had been captured on CCTV wearing Mr Quinn's black fleece, rather than his cream coat). They do not intend to rely on this evidence; and do not intend to lead it when Mr McCaughley is called. He is a minor witness in the prosecution case, Mr McDowell submits, who could even have been dispensed with but is to be called (having provided a deposition in the initial committal papers) essentially at the defendant's request.

(b) Second, it is contended that a key issue about which the defence wish to cross-examine Mr McCaughley – namely whether his house at 66 Lagmore Avenue had CCTV installed at the time of the murder – is in fact not an issue as to which there is any serious dispute at all. That is because, in additional evidence recently served, Mr McCaughley has confirmed that he did not have CCTV cameras installed at the relevant time, which is a matter confirmed by his stepson Derry O'Keefe (who has already given evidence); and by police enquiries which were made at the time, which identified CCTV at No 68 but not at No 66. In addition, Mr McCaughley has provided an explanation as to why the cameras previously installed at the house had been removed. All of this therefore goes nowhere; and is in any event only relevant on the basis of the defence's unsupported premise.

[23] For his part, Mr O'Rourke submits that the defendant does not accept that Mr McCaughley's second statement to the police implicating him was made in good faith; nor does he accept that the explanation in relation to the removal of CCTV stacks up. These are issues which, he submits, he is properly entitled to probe.

[24] In light of the matters set out above, I accept that Mr McCaughley's credibility is a matter in issue in the trial. He is being called as a witness for the prosecution and has relevant evidence to give on some aspects of the case, albeit these may be

limited. The line of questioning the defence wish to pursue renders his credibility a matter in issue. Whether this is a matter in issue of substantial importance in the context of the case as a whole for the purposes of Article 5(1)(b)(ii) is a separate issue to which I turn below.

The identity of the murderer

[25] The defence also submit that "the identity of the murderer" is a matter in issue in the trial. I do not accept this to be so in the terms in which it has been framed. A criminal trial is not a fact-finding exercise designed to identify a culprit from among many suspects. It is the prosecution of the defendant on a charge that he or she committed the relevant crime. Thus, the key question in this trial is whether the defendant committed the murder in respect of which he has been charged. Whether he committed the murder is a matter in issue (on which the prosecution bear the burden of proof to the criminal standard). That the prosecution must prove its case beyond reasonable doubt does not mean that the defence can assert that whether Mr McCaughley (or some other person, such as Mr Quinn, or indeed any other) committed the murder is a matter in issue in the trial. It might be if the defence had made some positive case in this regard; and/or if there was some evidential basis supporting guilt on the part of another identified individual, other than mere speculation or assertion. Generally, an evidential basis is required for a suggestion of wrongdoing on the part of a witness, other than mere assertion or accusation (see *Archbold* (2022), at para 13-24, albeit in a slightly different context). See also, again in a different context, the observations of Lord Bridge in *R v Blastland* [1986] AC 41, at 54, to the effect that the issue at trial is whether it is proved that the defendant has committed the relevant crime; and that evidence should not be put before the jury as supporting the conclusion that some other person than the defendant may have been guilty on the basis of mere speculation. I do not consider, at present, that Mr McCaughley's possible culpability in respect of the murder, either alone or in assisting someone else, has been put in issue to the extent required to qualify as a matter in issue for the purposes of Article 5(1)(b)(i).

Is the matter in issue of substantial importance in the context of the case as a whole?

[26] Is either of the matters in issue identified above an issue of substantial importance in the context of the case as a whole?

Credibility

[27] I accept the prosecution's submission that, for the reasons summarised at para [22] above Mr McCaughley's credibility is not a matter of substantial importance in the context of the case as a whole. He was not in the immediate company of the deceased at any material time, nor of the defendant either before or after the murder. The evidence he provides to support the prosecution case is of limited significance, largely because the prosecution agree that his evidence in relation to Mr O'Neill wearing his cream coat at around midnight on the night of the murder is in error

and is not to be relied upon. There is also other evidence from a variety of witnesses about the defendant wearing his cream coat that day or that evening and, in the case of Mr Quinn, at the time the defendant left 71 Lagmore Avenue in the early hours of 2 August 2015. The evidence from Mr McCaughley relating to the cream coat about which the defence is principally concerned is, in fact, not evidence the prosecution either intend to rely upon or consider they need to rely upon. The further evidence Mr McCaughley gives in support of the prosecution case is limited both in quantity, nature and significance. His credibility can plainly be contrasted with the credibility of the relevant witness in *Brewster*, who was in fact the complainant and whose credibility therefore was central.

[28] As Pitchford LJ stated in para [23] of *Brewster*, the first question is whether creditworthiness is a matter in issue which is of substantial importance in the context of the case as a whole; and "this is a significant hurdle." If credibility of a prosecution witness was automatically considered to be a matter of substantial importance, the hurdle would not be significant at all. The statutory scheme would then be deprived of (at least part of) its intended effect, namely to limit the occasions on which bad character or previous convictions could be put to witnesses. Properly viewed, I do not consider Mr McCaughley's credibility to meet this aspect of the statutory test.

Mr McCaughley's potential involvement in the murder

[29] Mr McCaughley's credibility assumes greater significance in the trial only if one proceeds on the assumption, which presently lacks any evidential support, that he was involved in the murder in some way or in covering it up for some other person. As to that, I do not consider that any suggestion that Mr McCaughley was involved in the murder in some way (either as perpetrator or accessory before or after the event) is a matter of substantial importance in the context of the case as a whole – it if is indeed a matter in issue at all – because it amounts to no more than a speculative suggestion on the part of the defence, insofar as it is advanced at all. Again, the "significant hurdle" which the statutory scheme has been held to erect before previous convictions can be introduced on the issue of creditworthiness could be entirely circumvented if a witness's credibility could be put in issue as a matter of substantial importance merely by a suggestion that they might have or could have committed the offence in a circumstantial case.

[30] I consider this approach draws some support from *Spencer on Evidence of Bad Character* (3rd edition, 2016, Hart), at paras 3.6 and 3.7. Professor Spencer considers that the English analogue provision to Article 5 of the 2004 Order applies where the defendant denies the offence but runs a defence that "the person who really did it was X" and "the defence not only alleges that X did it but seeks to support its theory by calling evidence of what X has done before." In the present case, the defence have not alleged that Mr McCaughley committed the murder or was involved in it, either in the defence statement or otherwise. This is not to impose a burden on the defendant to in any way prove his innocence, it is merely to recognise that the

statutory scheme erects a significant hurdle, including one of enhanced relevance, which the party seeking to adduce the evidence (in this case, the defendant) must surmount before a non-defendant's bad character can be deployed through gateway (b).

[31] For these reasons, I do not consider that the bad character evidence which the defendant wishes to adduce in respect of Mr McCaughley relates to a matter which is of substantial importance in the context of the case as a whole (at least as it stands at present).

Is the bad character evidence of substantial probative value?

[32] For completeness, I nonetheless address the question of whether Mr McCaughley's previous bad character – in the two respects mentioned at para [1] above – is of substantial probative value to either matter in issue.

Credibility

[33] Mr McCaughley's previous offending pre-dated the murder in the present case by over 27 years. His previous trial pre-dated the murder in the present case by some 22 years; and pre-dates this trial by over 30 years.

[34] I would not accept that Mr McCaughley's offending is itself of substantial probative value in relation to his credibility. It occurred some 30 years ago and he has had a clear criminal record since. Although the crime in which he was involved was undoubtedly heinous, his part in it was limited; and the trial judge accepted that he was remorseful. In *Brewster*, it was noted that whether convictions have persuasive value on the issue of creditworthiness will "depend principally on the nature, number and age of the convictions." Here, the nature of the convictions are not such as to involve dishonesty. Although that is not required, it is a relevant consideration. More importantly, the convictions arise from one incident and are now extremely old, with a clear record since. I do not consider that they are reasonably to be regarded as affecting the worth of the witness's evidence now in the particular circumstances.

[35] On the other hand, I accept that, self-evidently, a finding by a judge that an individual has flagrantly lied under oath in court is *prima facie* of substantial probative value on the issue of their credibility. I have two concerns in this case about whether Mr McCaughley's previous lying on oath retains such value, arising from (i) the different circumstances of the previous trial, particularly in light of the fact that he was the defendant and was seeking to minimise his part in the affair, albeit he admitted certain aspects of his involvement; and (ii) the length of time between it and now.

[36] I nonetheless conclude that the untruthful evidence he seemingly gave in his own Crown Court does have substantial probative value in relation to his credibility

in these proceedings, applying the tests set out in *Brewster*. In particular, the fact that Mr McCaughley was prepared to lie on oath in court previously is reasonably capable of assisting the jury to reach a view on whether the witness's evidence now is, or is not, worthy of belief. Put shortly, if he was prepared to lie on oath before, it may readily be thought that he might be prepared to lie on oath again, notwithstanding the different circumstances. However, since I do not consider his credibility to be a matter of substantial importance in the context of the case as a whole, this conclusion does not avail the defendant.

Mr McCaughley's potential involvement in the murder

[37] I also do not consider that Mr McCaughley's previous convictions are of substantial probative value in relation to any suggestion – were it an issue of substantial importance in the case – that he may have had some hand in the murder, either as perpetrator or accessory. As noted above, Mr McCaughley's offending occurred some 27 years in advance of Ms Dornan's murder. He has no criminal record whatever since that time. There is nothing to suggest that he has any involvement with any terrorist organisation. In my view, the defence submission in this regard rests on an assertion – which is not borne out by MacDermott LJ's findings – that Mr McCaughley committed his earlier offences "on behalf of the IRA." Rather, the findings in his trial suggest the opposite: see para [15] above. Further, one cannot assume – as the defence submissions appear to – that the Provisional IRA operating well in advance of its ceasefire and the Belfast (Good Friday) Agreement is the same organisation as dissident republican groupings operating in 2015 and that, accordingly, any involvement Mr McCaughley previously had with the former translates into some kind of involvement many years later with an organisation which may have posed any threat to Ms Dornan or her partner.

[38] I must also direct myself to the similarity of the previous offending and the present offence (see Article 5(3)(c)) and do not consider there to be any material similarity between the circumstances of Mr McCaughley's 1988 offending and the murder of Jennifer Dornan, other than that both involve offences of violence. One was a frenzied sectarian event in which Mr McCaughley was caught up and participated to a limited (albeit serious) degree; the other was a stabbing by a lone perpetrator occurring late at night in the victim's home. I do not consider, for the purposes of Article 5(3)(d), that the previous offending shows or tends to show in any material respect that Mr McCaughley was responsible for Jennifer Dornan's murder, even if that had been (or were to become) a matter of substantial importance in the context of this case as a whole.

Conclusion

[39] By reason of the foregoing, I refuse the defence application for leave to give evidence of Mr McCaughley's previous bad character. I do not consider any speculative suggestion that he may have had some involvement in the murder to be

a matter of substantial importance in the context of the case as a whole and, even if I did, do not consider that Mr McCaughley's historic offending has substantial probative value in relation to that issue. I have more of a misgiving about the jury not being told that Mr McCaughley was previously found by a judge of the Crown Court to have lied on oath, notwithstanding the very long time ago that occurred. However, Article 5 of the 2004 Order is clear that such evidence should only be admitted when the stringent statutory test is met. Even considering the matter in issue to be that of Mr McCaughley's credibility, for the reasons given above I do not consider this to be a matter of substantial importance in the context of the case as a whole.

[40] The defence is of course still entitled to cross-examine Mr McCaughley on the matters identified at para [21] above and to seek to undermine his credibility. They simply may not do so by deploying his previous bad character against him.

[41] This ruling can and will be kept under review should the context of the case as a whole alter, rendering it appropriate to revisit the matter.