

Neutral Citation No: [2025] NICC 42

Ref: FOW13049

ICOS No:

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 28/04/2025

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT BELFAST CROWN COURT

THE KING

v

NOEL LOGAN

FOWLER J

Introduction

[1] This case arises out of three separate incidents involving the deployment of four improvised explosive devices ('IEDs'), specifically, pipe bombs. These devices were planted at the following address in the Londonderry area: 5 Montgomery Close on 14 November 2017, 19 Montgomery Close on 30 November 2019 and 5 Bonds Place on 3 September 2019.

[2] The defendant, Noel Logan, was arrested on 9 December 2020 at his home, under section 41 of the Terrorism Act. The prosecution say that the defendant who was born on 9 December 1987 can be connected to each of the three incidents on the basis of a combination of circumstantial and forensic DNA evidence. At the time of these offences the defendant was residing at 67 Nelson Drive, Londonderry which is only a short distance, of approximately one to one and a half miles, from Montgomery Close and Bonds Place. After his arrest, the defendant was interviewed by police on 9 and 10 December 2020 and exercised his right to remain silent throughout all interviews.

Charges

[3] Noel Logan was returned for trial to Belfast Crown Court on 4 April 2022 and arraigned on the present Bill of Indictment on 3 May 2022 pleading not guilty to all six counts. The indictment was framed as follows:

Count 1 Possessing explosives with intent to endanger life or cause serious injury to property between 31 July and 14 November 2017.

- Count 2 Possessing explosives under suspicious circumstances between 31 July and 14 November 2017.
- Count 3 Possessing explosives with intent to endanger life or cause serious injury to property between 31 December 2018 and 1 April 2019.
- Count 4 Possessing explosives under suspicious circumstances between 31 December 2018 and 1 April 2019.
- Count 5 Possessing explosives with intent to endanger life or cause serious injury to property between 30 June 2019 and 4 September 2019.
- Count 6 Possessing explosives under suspicious circumstances between 31 December 2018 and 1 April 2019.

[4] The Director of Public Prosecutions has certified pursuant to section 1 of the Justice and Security (Northern Ireland) Act 2007 that the trial should be conducted without a jury. I have heard the evidence and read all the agreed statements and agreed facts as a judge sitting alone and I am required to give the verdict of the court together with my reasons.

[5] The foundation of the prosecution case against the defendant depends primarily on the inferences to be drawn from DNA found on the pipe bombs and/or remnants of them recovered from the three addresses and the surrounding circumstances of the case. The circumstantial evidence upon which the prosecution rely includes: the finding of the defendant's DNA on multiple devices deployed on disparate dates and at differing locations; the proximity of his home address to all three addresses at which the pipe bombs were located; the defendant had never visited these streets and had no contact with any of the occupants of the houses. The prosecution also rely on the defendant's failure without good cause to mention facts which he could reasonably have been expected to mention in interview with police.

[6] The defendant rejects the case made on behalf of the prosecution and asserts that he was not involved in any way with the pipe bombs or the incidents at the three addresses. That he has never seen a pipe bomb let alone touch or have possession of one. That he has provided in evidence an explanation for his DNA being on the devices by way of secondary transfer. This arising from his use of tape to attach flags to lamp posts and other street furniture and then returning the remainder of the roll of tape to others who have presumably used it to make pipe bombs. That this account, concerning the use of tape in the circumstances claimed, has been supported by other witnesses under oath.

Legal issues

[7] Before considering the evidence in this case, it is important when sitting as a judge alone and at the outset of this judgment to remind myself of the relevant law and the legal principles that I must apply when deciding whether the prosecution has proved its case against the defendant in respect of each of the counts he faces. These can be articulated as follows:

- (i) The burden of proof lies on the Crown to establish the defendant's guilt.
- (ii) Before the court can convict the defendant of any count on the bill of indictment the prosecution must prove the defendant is guilty beyond reasonable doubt. I remind myself that proof beyond reasonable doubt is proof that leaves the court firmly convinced of the defendant's guilt. Where I refer to being satisfied of any given fact or matter this is to be regarded as satisfied to the criminal standard of beyond all reasonable doubt.
- (iii) The court must decide the case only on the evidence established before the court and must give separate consideration to each of the six counts on the bill of indictment and return a separate verdict in respect of those counts.
- (iv) I remind myself of the standard direction to juries in relation to circumstantial evidence. That it is not necessary for the evidence to provide an answer to all of the questions raised in a case. It would be an unusual case in which a court could say that it knew everything there was to know about the case. It is not necessary that each fact upon which the prosecution relies taken individually proves the defendant is guilty. The court must decide whether all of the evidence has proved the case against him. In *R v Exall* [1866] 4 F & F 922 at 929 Pollock CB observed:

“What the jury has to consider in each case is, what is the fair inference to be drawn from all the circumstances before them, and whether they believe the account given by the prisoner is, under the circumstances, reasonable and probably or otherwise ... Thus it is that all the circumstances must be considered together. It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link breaks, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence - there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere

suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

- (v) I further remind myself that it is essential that circumstantial evidence is examined narrowly and with great care for a number of reasons. First of all, such evidence can be fabricated. Secondly, to see whether or not there exists one or more circumstances which are not merely neutral in character but are inconsistent with any other conclusion than that the defendant is guilty. This is particularly important because of the tendency of the human mind to look for (and often to slightly distort) facts in order to establish a proposition, whereas a single circumstance which is inconsistent with the defendant's guilt is more important than all the others because it destroys the conclusion of guilt on the part of the defendant. As Lowry LCJ stated in *R v McGreevy* [1972] NI 125 at 134:

"... a judge ought to point out the circumstances which tend to establish innocence and more especially circumstances which are inconsistent with guilt ...

- (vi) The questions a court should have at the forefront of its mind in a circumstantial case are set out by Higgins LJ in *R v Jones* [2007] NICA 28 para [33]. First, I must consider all the evidence; secondly, I must guard against distorting the facts or the significance of the facts to fit a certain proposition; thirdly, I must be satisfied that no explanation other than guilt is reasonably compatible with the circumstances, and fourthly, I must remember that any fact proved that is inconsistent with the conclusion is more important than all the other facts put together. That if there is evidence proved which undermines the prosecution case that the perpetrator was the accused then that is more potent than all the other circumstances.
- (vii) The risk in a circumstantial case is that speculation might become a substitute for the drawing of sure inferences of guilt and the danger of failing to take account of evidence that, if accepted may diminish or even exclude the inference of guilt.
- (viii) I remind myself of the importance of ensuring that circumstantial evidence is examined as a whole rather than piecemeal. This was highlighted in *R v Hillier* [2007] 233 ALR 63 and cited with approval in *R v Wotton and McConville* [2014] NICA 41. Hillier at para 48 observes that:

"Often enough, in a circumstantial case, there will be evidence of matters which, looked at in isolation of other evidence, would yield an inference compatible with the innocence of the accused. But neither at trial, nor on appeal, is a circumstantial case to be considered

piecemeal. As Gibbs CJ and Mason J said in *Chamberlain* [No: 2]:

'At the end of the trial the jury must consider all the evidence, and in doing so they may find that one piece of evidence resolves their doubts as to another. For example, the jury, considering the evidence of one witness by itself, may doubt whether it is truthful, but other evidence may provide corroboration, and when the jury considers the evidence as a whole they may decide that the witness should be believed. Again, the quality of evidence of identification may be poor, but other evidence may support its correctness; in such a case the jury should not be told to look at the evidence of each witness "separately in, so to speak, a hermetically sealed compartment"; they should consider the accumulation of evidence; cf *Weeder v The Queen*.'

Expert evidence

[8] As well as circumstantial evidence, this case also involves expert DNA evidence. A witness called as an expert witness is entitled to express an opinion in respect of their findings and the matters put to them. The court is entitled to and will have regard to such evidence and to the opinions expressed by the experts when coming to its conclusions about those aspects of the case. However, having given the matter careful consideration the court does not have to accept the evidence of the expert and does not have to act upon it. It must remember that the expert evidence relates only to part of the case and while it may be of assistance the court must reach its verdict only after the totality of the evidence is considered.

Background circumstances

Incident One - 5 Montgomery Close

[9] On Monday 13 November 2017 one of the occupants of 5 Montgomery Close returned home at approximately 13:30 hrs and became aware of two copper-coloured pipes lying in her back garden. The previous night she had heard a loud bang at around 22:00 hrs in the back garden. One of the pipes had nails taped to the middle of the pipe. She was concerned and phoned her son, who also lived in the property, asking him to return home and on his return, he telephoned the police to report the objects.

[10] Police attended the scene together with Higher Crime Scene Investigator Steven McKendry. He swabbed IED 1 and packaged and labelled it SRMCK3. Similarly, he swabbed IED 2 and packaged and labelled it SRMCK 6. Both IED's were examined by Mr Julian John Halligan a senior scientific officer at Forensic Science Northern Ireland.

[11] Mr Halligan's agreed evidence, which was read to the court, was that IED 1 consisted of a copper pipe approx. 452mm in length and 35mm in diameter. Both ends of the pipe had been flattened and 49mm wide grey reinforced adhesive tape attached to both flattened ends and to the middle of the pipe. The tape around the middle of the pipe had a hole in it which extended through the pipe with a diameter of approximately 3mm with charring to the surface of the tape.

[12] IED 2 consisted of a length of copper pipe approximately 504mm and 35mm in diameter. Again, both ends of the pipe had been flattened and grey reinforced 48mm adhesive tape around both ends and around the centre. A further section of tape around the pipe attached eight nails approximately 98mm in length to the exterior of the pipe. Similar to IED 1 there was a hole punched in the pipe approximately 3mm in diameter which was also charred.

[13] Mr Halligan concluded that the two items described above represented the remains of two pipe bomb type improvised explosive devices. In his experience such pipe bombs are usually small and hand thrown or placed devices intended primarily as antipersonnel weapons. No form of initiation for the devices was submitted however the charred remains on the central tape of the copper pipes in his view probably indicated the use of igniferous fuses in both devices. Samples of propellant were recovered, and these consisted of small arms propellant and lead ball bearings. These lead ball bearings and nails taped around the outside of one of the pipes in his view would function as additional shrapnel over and above the pipe itself.

[14] Claire Samantha Carroll, a senior scientific officer at Forensic Science Northern Ireland with 25 years' experience in the application of DNA techniques to samples, was called and gave evidence. Swabs from IED 1 and IED 2 were tested using the DNA 17 system which simultaneously carries out 17 tests.

[15] Swabs from IED 2 taken at the scene of the incident were tested however no DNA was detected in the samples taken.

[16] Swabs taken from IED 1 were combined and submitted for DNA analysis. A low-level mixed DNA profile was obtained which consisted of DNA from more than one contributor. The profile obtained was very partial (incomplete) and was not possible to resolve into individual DNA profiles. However, Noel Logan could not be excluded as a possible contributor to the mixture.

[17] Interpretation and statistical analysis of all this mixed DNA profile obtained from IED 1 was performed using STRmix software. Ms Carroll in order to help the court evaluate the findings in respect of IED1 mixed profile considered two propositions:

- (i) that the DNA in the mixture came from Noel Logan and one unrelated individual,
- (ii) that the DNA in the mixture came from two unknown individuals unrelated to Noel Logan. A calculation made with reference to Northern Ireland population survey data showed that this finding was at least 1,700,000 times more likely to arise under the first proposition.

Incident Two - 19 Montgomery Close

[18] On Sunday 31 March 2019 just before 01:00 hrs two of the occupants of 19 Montgomery Close returned home. One of the occupants who was in the living room noticed a dim light which started to get brighter coming through the blinds. He went to the front door and saw a male running away from the house. While he was standing in the hallway there was an explosion which pushed him back knocking him off balance. He subsequently observed a copper pipe which had the middle part blown outwards lying just below the living room window. Police were contacted and attended the scene.

[19] Crime Scene Investigator Jane Irvine attended the incident and recovered the partial remains of a device JI6 and remains of fill from the device JI5. She also recovered item JI2 a swab from 'End Cap A', JI3 a swab from 'End Cap B', and JI8 tape from the device.

[20] Dr Naomi Kelly, Senior Scientific Officer at Forensic Science Northern Ireland examined the remains of the device and the remains of the fill from device. The fill consisted of 1.3 grams of small arms propellant and a small amount of non-explosive material. The remains of the device consisted of an approximately 350mm length of copper pipe, 28mm internal diameter. Attached to each end of the pipe was a brass compression fitting (olive, nut and pipe plug). The middle of the pipe had been ruptured resulting in a hole approximately 80mm x 80mm consistent with the pipe being explosively damaged.

[21] Dr Kelly concluded that these items represented the partially functioned remains of a pipe bomb type improvised explosive device.

[22] Ms Fiona Purdue and Mr Ian Craig, Senior Forensic Scientists with Forensic Science Northern Ireland examined the swabs from End Cap A, End Cap B and tape from the device.

[23] The swabs from End Cap A were combined and tested using DNA 17 system. The interpretation and statistical analysis of the mixed profile was performed using STRmix software. A partial mixed DNA profile from two people was obtained. Noel Logan is not excluded as being a contributor to this.

[24] The forensic scientists in order to help the court evaluate this finding considered two propositions:

(i) That the DNA in the mixed profile came from Noel Logan and an unknown person.

(ii) That the DNA in the mixed profile came from two unknown persons unrelated to Noel Logan. That a calculation made with reference to Northern Ireland population survey data showed that this finding is at least one billion times more likely to arise under the first proposition.

[25] On testing no DNA profiles were obtained from End Cap B or the tape removed from the device.

Incident three - 5 Bonds Place

[26] On Thursday 3 September 2019 at approximately 22:45 hrs, a pipe bomb had been thrown at and exploded outside the front door of number 5 Bonds Place. On arrival the police found what they suspected to be the remains of a pipe bomb. Some copper from the pipe bomb had lodged itself in the door. The residents of Bonds Place were evacuated and ATO attended the scene. ATO noted only one end of the pipe was flattened and taped but believed the other end would have been similarly adapted. Crime Scene Investigator Ian Gibson attended the scene and took swabs from the partial remains of the device and thereafter seized remnants.

[27] Mr Ian Baird, Senior Scientific Officer at Forensic Science Northern Ireland examined a sample of suspected shotgun powder, nails and portions of what he suspected was a pipe bomb. Sample IG2 consisted of approximately 4.3g of grey disc small arms propellant. IG3 consisted of six nails approximately 98mm in length with pieces of grey reinforced adhesive tape present on some of the nails. IG13 consisted of a length of disrupted copper pipe approximately 278mm x 28mm diameter. One end of the pipe had been flattened and wrapped with grey reinforced adhesive tape. A quantity of similar grey adhesive tape had been wrapped around the middle of the pipe. There are signs of charring present on this piece of tape. A quantity of small arms propellant was present inside the closed-end of the pipe. IG15 consisted of approximately 98mm x 28mm diameter disrupted piece of copper. Flattened at one end and wrapped with grey reinforced adhesive tape. Mr Baird concluded that these items represented the partially functioned remains of a pipe bomb type improvised explosive device containing a quantity of small arms propellant. Nails had been added the outside of this device to provide additional shrapnel.

[28] Dr Hayley Douglas, senior scientific officer at Forensic Science Northern Ireland examined IG11 two swabs from tape at the middle of the pipe bomb, IG12 the end of the pipe bomb and IG14 the end piece of the pipe bomb for DNA.

[29] In relation to IG11 the swabs from the middle of the pipe bomb were analysed and a mixed DNA profile was obtained from more than one contributor. Noel Logan was not excluded as a significant contributor. The minor contribution was insufficient for meaningful interpretation.

[30] Item IG12 swabs from tape at the end of the pipe bomb produced a mixed DNA profile obtained from more than one contributor. Logan was not excluded as a significant contributor. The minor contribution was insufficient for meaningful interpretation.

[31] Item IG14 swabs attributed to tape at the end piece of the pipe bomb were analysed. A mixed DNA profile was obtained from more than one contributor. Logan was not excluded as a significant contributor. The minor contribution was insufficient for meaningful interpretation.

[32] The DNA profile obtained from item IG11 was found to be a mixture of DNA from three people. All of Noel Logan's DNA characteristics were present and as such he could be a significant contributor. In order to assist the court to evaluate its finding, Dr Douglas considered the following two propositions:

- (i) That the DNA in the mixed profile came from Noel Logan and two unknown people.
- (ii) That the DNA in the mixed profile came from two people unrelated to Noel Logan. A calculation made with reference to Northern Ireland population survey data showed that this finding is at least one billion times more likely to arise under the first proposition.

[33] In relation to IG12 and IG14 both these samples were found to be a mixture of DNA from two people and a number of Logan's DNA characteristics were present and as such he could be a significant contributor in relation to IG12. In relation to IG14 this was found to be a mixture of DNA from two people. All of Noel Logan's DNA characteristics were present and as such he could be a significant contributor. The following two propositions in respect of IG12 and 14 were considered by Dr Douglas:

- (i) That the DNA in the next profile came from Noel Logan and one unknown person.

- (ii) That the DNA in the next profile came from two people unrelated to the Logan. The calculation made with reference to Northern Ireland population survey data show that this finding was at least one billion times more likely to arise in the first proposition in respect of IG12 and IG14.

[34] The defendant was interviewed on 9 and 10 December and the defence solicitor indicated that the defendant would exercise his right to silence and refuse to answer any questions. While he answered some limited questions and gave a prepared statement through his solicitor, he failed to account for the presence or give any explanation for his DNA being found on the pipe bombs. The prosecution say in addition to the DNA evidence this case must also be considered in the context of the defendant's 'no comment' interviews with police and all other surrounding circumstance.

Defence challenge to the DNA evidence

[35] The defence challenged the DNA evidence presented by the Crown in respect of each of the three incidents.

[36] The defence make the point that all of the devices were examined and made safe by an ATO before any swabs were taken at the scenes. That there is no evidence as to what forensic precautions if any were taken by the ATOs. That there is no evidence from any source about the circumstances and extent of any handling by ATO. That it cannot be stated with any certainty whether or not as a result there was a redistribution of cellular material on the IEDs.

[37] In relation to 5 Montgomery Close, HCSI McKendry when cross-examined by Mr O'Rourke KC confirmed that the IED photographed by him at this location had been placed on a plastic sheet by ATO before he had arrived at the scene. He was unable to comment about this in any further detail and no evidence was available as to the extent of movement or handling of the device at this location.

[38] When cross examined Ms Carroll, who examined the swabs taken at 5 Montgomery Close, agreed that she could not identify the nature of the cellular material recovered nor date when it had been deposited.

[39] In relation to 19 Montgomery Close, Ms Jayne Irvine, while she did not initially know when ATO left the scene, later confirmed that the scene log recorded the ATO having left the scene before she had arrived. She was unaware of what they had done prior to her arrival but accepted that they must have either put the device in or under the bag as shown in the scene photographs. There was no evidence or record in respect of the extent or nature of the moving of the device.

[40] Ian Craig forensic scientist confirmed that items recovered from 19 Montgomery Close would require careful handling before being swabbed for DNA to avoid displacement of cellular material. That he is particularly cognisant of

the importance of this fact and was unaware that the item he was dealing with, End Cap A had been handled by ATO. He also confirmed that he did not know the nature of the cellular material recovered on the swabs from the pipe bomb nor when or how it came to be deposited on the various areas of the device. He further agreed in questioning that if a suspect item was shaken or dropped there could be displacement of the cellular material from one area of the device to another area on the device. He confirmed in cross-examination he would always wear PPE when handling items to prevent cross-contamination.

[41] In relation to Bonds Place, CSI Gibson confirmed that ATO had attended the scene to make safe the device at this location. He was unaware of what actions ATO took in respect of the device before he retrieved his swabs and remnants of the pipe bomb. He confirmed that the swabbing he carried out was to the tape in the middle and ends of the device, as he wished to exploit areas where there was the best forensic potential, and he was of the view that what looked like reinforced gaffer tape would lend itself to acquiring and retaining cellular or DNA material.

[42] Dr Douglas who examined the material confirmed to Mr O'Rourke KC that it was not possible to say what type of cellular material this was nor how or when it was deposited.

[43] The defence say the above evidence compromises the court's ability to come to any firm conclusions or make reasonable inference in respect of where the DNA on the devices was located ie on the tape only or the metal body and/or ends of the pipe bomb or both. All of which they say is relevant when it comes to assess whether the DNA on the devices may have come from the tape innocently handled.

[44] The defence say generally that it is not possible to identify the nature or quantity of the cellular material. That the inability to determine this information impacts the court's ability to come to any firm conclusions where any of the DNA was originally deposited no matter where it was recovered from on the device itself. This issue is magnified in the specific incidents where the devices have exploded, for example at 19 Montgomery Close and 2 Bonds Place. The defence say this has two significant consequences. First, the location where the DNA was originally deposited, in the prevailing circumstance, it would be impossible to determine, and the court could not exclude the reasonable possibility that it was the tape which held all of the original cellular material. Second, recovery of cellular material from only a component part of an IED, for example, the tape, is an important consideration in determining whether the defendant had possession of a fully constructed IED. The defence say at most it is indicative of possession of a component part and not a functioning device.

[45] A further line of attack mounted against the prosecution DNA evidence is that it is impossible to date when cellular material was deposited on an item and whether or not it got there by primary or secondary transfer. The defence say that this is relevant particularly if the devices were made as a batch or were stored

together at any given point in time before deployment. If that were the case the court could not exclude the reasonable possibility of secondary transfer from cellular material from the tape on one device to other devices stored touching or very close to each other.

[46] All of these points, the defence say, take on an increased significance when considered in conjunction with the explanation given by the defendant in evidence that he had regular contact with tape whilst engaged in erecting flags on lampposts in the Waterside area of Londonderry during the marching season. Further, that this has been supported by a number of witnesses who gave evidence on behalf of the defendant.

[47] Mr Logan the defendant gave evidence at trial that he was arrested and interviewed over the course of 9 and 10 December 2020 during the Covid-19 period. His solicitor was not in the interview room with him and those who were present in the interview were in PPE.

[48] He was shown photographs of the devices from the three incident locations on an iPad. He told the court that he had never seen any of these devices or anything like that and had never been in contact with them. He denied ever touching copper piping or copper end caps. He told the court that when he was arrested and interviewed he was being investigated for 20 different pipe bomb attacks.

[49] When asked about adhesive tape in his evidence in chief he said that he had used "masking tape" to put flags up on lamp posts and other street furniture. He stated that he carried this out every year since he was a child and that there was a group of about 10-15 who put up around a hundred flags on poles in the Waterside area of the city each year. That they usually worked in smaller groups of three or four when putting the flags up. He suggested the tape came from the Dupont factory and there were around 40 rolls of various colours. He described how the flags were attached to wooden roofing laths/batons and then the lath and flags were attached to the lamp posts etc with cable ties and then secured with tape. Once secured with the tape he said the roll of tape was then thrown back into the box along with the other rolls.

[50] When he was asked about his DNA on the devices in interview he said in evidence in chief that he did not know what DNA was or where it was on the devices. When asked by his counsel why he did not tell police about how his DNA may have come to be on the devices by using tape in the past he said that on arrest he was advised by his solicitor to give a "no comment interview."

[51] When asked where the box containing the tape went after the flags were put up he suggested that they all would have taken the tape and he would have looked after it a couple of times, but he did not really know. He was asked if he had ever used tape to make pipe bombs and he said he did not know what they looked like.

[52] When asked had he ever been in court before he initially said no. Later he agreed he was prosecuted for taking part in an unnotified public procession in 2017 and fined £250. He was asked by his counsel that it might be suggested that these pipe bomb attacks were sectarian and if he was sectarian. He said he was not at all sectarian and that he has Catholic friends. In conclusion to his evidence in chief he was asked, if the DNA on the devices was his, did he have any idea how it came to be there or who used the tape to which he replied he had no idea.

[53] In cross-examination the defendant confirmed that he had lived in his home address all his life which was approximately 1-1½ miles from the three addresses where the incidents occurred. That he had no knowledge or connection with the occupants of any of the addresses attacked and never visited or been associated with the properties.

[54] He was asked about his conviction on 25 July 2017 of taking part in an unnotified procession and what that conviction was about and he replied that he did not know. When pressed on what it was about and whether it was a protest march he said it was just a walk around the Waterside. On being asked why he had initially told the court he had never been in court before he said he forgot about it. However, it did transpire that he was on remand at the time and the cases appears to have been dealt with in his absence.

[55] He agreed that he was shown photographs of the devices in interview and that the devices were striking and sinister in appearance. He confirmed that he saw the make up of the pipe bombs with the tape, copper pipe and cap ends. He agreed that the account he gave in court was an account that he could have given to police in interview but failed to do so. He was then asked to confirm that when he first described the tape in court in evidence in chief, he referred to it as masking tape and he said no. When pressed on this point he agreed that this was what he had said, and it was put that this was white tape painter's tape easily put up and taken down. He disagreed and said that masking tape and gaffer tape are nearly the same or not far off being the same. When continued to be pressed he said the tape used was heavy duty silver tape and not masking tape. Again, pressed on this point and why he had made this mistake he said he intended to say gaffer tape - reinforced silver tape - but failed to say that due to being under pressure in the witness box. It was put to him that this was an account he was aware of the whole time he was being interviewed by police. At this point the defendant dropped his voice and was difficult to hear and the question was repeated by prosecution counsel. He stated that by this stage he was already charged and on remand for nine months. That he was trying to think back, that it was all new to him and he had never been in bother. It was suggested that this was the very reason why he should give an account and explain his case to police.

[56] He was then questioned about the unnotified procession in July 2017 which was agreed to have been around the time of the putting of the flags up and just

before the first pipe bomb incident and he agreed that it was. He was asked was this his explanation for his DNA being on the three pipe bombs at these locations and he replied, " Well, it's an explanation, yes." It was put to him forcefully that this was an explanation never given to police in interview, which he was aware of and could have provided to police in interview and significantly he agreed with this proposition put to him. It was further put to him he could have given the names of those involved in putting up the flags with him and had access to the tape he claimed was used. He replied there was nothing wrong in putting flags up and that he doesn't have to disclose who was putting them up with him.

[57] He confirmed that he had no connection with the properties in question, the occupants of those properties and in fact has never been in the streets where they are located. He agreed the only possible explanation for his DNA on the pipe bombs is his connection with tape used to put up flags which he did not mention to police. Further, he was asked was it just coincidence that these pipe bombs are deployed between November 2017 and September 2019 a period of almost two years and his DNA turns up on four pipe bombs over that period in three different locations in close proximity to his home. He replied yes. It was then put to him was it not the case his DNA is on the devices because he was involved in touching or handling them to which he said no.

[58] Finally, in cross-examination he was asked what he thought was intended by the nails and ball bearings being attached to the pipe bombs to which he responded by saying he had no idea. He was reminded of the photographs of the devices he had seen very recently and again asked what he thought was intended by attaching nails to some of the devices and he maintained he did not know. He agreed that devices of this nature were intended to explode and was pressed on what he thought would happen to someone in close proximity to an exploding device with nails attached. He agreed that it would hurt them badly and that it would be the intention to seriously hurt someone in close proximity to the explosion.

[59] Stephen Finlay, who worked with a community project called Resolution North West, gave evidence that he knows the defendant and is well aware of his involvement in putting flags up in the Waterside area. He gave a description of how these flags were attached to laths then cable tied and secured with tape sourced from a number of places. He suggested that different types of tape are used - heavy duty gaffer tape, parcel tape and even masking tape. He was cross-examined regarding his knowledge of the events of the unnotified procession of 20 July 2017. He stated that the police said he was an organiser of the event and was prosecuted and convicted for his role in the march.

[60] Mr Gary Kelly, who runs a small tiling and bathroom business gave evidence of knowing the defendant for approximately 15 years growing up in the Waterside and being involved in putting up flags in the area. He described how the flags were put up in a similar way described by the defendant and Mr Finlay. In cross-examination he said the groups putting up the flags would usually be groups

of three or four and that because the defendant is his friend, he was always in the group that included the defendant, Mr Josh McCorgle and Mr Stephen Finlay. The witness when asked about the importance and relevance of his evidence said it was because of the seriousness of the case. Given the fact he knew this case was serious and he had relevant information to give he was asked if he had told the police about what he knew and he said no. When describing the type of tape used he also made mention of sometimes using masking tape.

[61] The next witness called on behalf of the defendant was Mr Josh McCorgle, a self-employed plumber and friend of the defendant for 10 years. He described in like manner the attaching of flags to lamp posts with cable ties and whatever tape they could get their hands on including masking tape. In cross-examination he said he had relevant evidence to give to the court. When asked had he told the police what he knew he replied he had not.

[62] The final witness called on behalf of the defendant was Mr Crossan who gave evidence of knowing the defendant for 10 years through middle distance running and working together. He explained he was a Catholic and through his interactions with the defendant over the years did not consider he was in any way sectarian.

[63] During police interviews, other than proffering a short prepared statement, the defendant refused to answer questions. Before interview the defendant was cautioned and told (i) that he did not have to say anything – and so he had a right to say nothing; (ii) it might harm his defence if he did not mention when questioned something which he later relied on in court; and so he was aware that an adverse inference might be drawn against him if he failed without good cause to mention facts when he was being interviewed which he later relied on; and (iii) anything he did say might be given in evidence.

[64] Article 3 of the Criminal Evidence (NI) Order 1988 provides that:

“3. – (1) Where, in any proceedings against a person for an offence, evidence is given that the accused –

- (a) at any time before he was charged with the offence, on being questioned under caution by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
- (b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, paragraph (2) applies.

- (2) Where this paragraph applies –
- (a) the court, in determining whether to commit the accused for trial or whether there is a case to answer;
 - (b) a judge, in deciding whether to grant an application made by the accused under
 - (i) Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988F3 (application for dismissal of charge where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order); or
 - (ii) paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order); and
 - (c) the court or jury, in determining whether the accused is guilty of the offence charged,

may –

- (i) draw such inferences from the failure as appear proper;

...

(2A) Where the accused was at an authorised place of detention at the time of the failure, paragraphs (1) and (2) do not apply if he had not been allowed an opportunity to consult a solicitor prior to being questioned, charged or informed as mentioned in paragraph (1).

- (3) Subject to any directions by the court, evidence tending to establish the failure may be given before or

after evidence tending to establish the fact which the accused is alleged to have failed to mention.

(4) This Article applies in relation to questioning by persons (other than constables) charged with the duty of investigating offences or charging offenders as it applies in relation to questioning by constables; and in paragraph (1) "officially informed" means informed by a constable or any such person.

(5) This Article does not –

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from this Article; or

(b) preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from this Article.

(6) This Article does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this Article."

[65] I remind myself that the court may only draw an adverse inference: if the prosecution case as it appeared at the time of the interview was such that it clearly called for an answer; and if there is no sensible explanation for his failure other than that he had no answer at that time or none that would stand up to scrutiny; and it is fair and proper to draw such an inference.

[66] The defendant has given evidence at trial that his reason for not mentioning facts now relied upon was that he had been advised by his solicitors to remain silent. This is an important matter for the court to consider but it does not automatically prevent the court drawing an inference adverse to the defendant from his silence. The defendant can choose whether to follow legal advice or not and was made aware at the time of the interview that his defence might be harmed if he did not mention facts on which he later relied at trial. The circumstances of the defendant, the complexity of the facts being put to him and any reason for the advice being given should be taken into account and if he has a good defence but chose to say nothing on his solicitor's advice the court should not draw an adverse inference against him. If the court is sure that the real reason for his silence was that he had no defence to put forward and merely hid behind the legal advice given, then the court is entitled to draw an adverse inference against him. However, if the court draws

such an inference it must not convict the defendant wholly or mainly on the strength of it.

[67] The defendant's case is that he now seeks to rely upon facts which he claims demonstrate how he may have innocently handled heavy duty reinforced tape attaching flags to lamp posts in the Waterside area during the marching season. That the rolls of tape used were put into a box and then stored. The implication being they could have been used by anyone to make pipe bombs after the defendant had touched them. That these facts are supported by the evidence of Stephen Findlay, Gary Kelly and Joshua McCorgle of how the flags were attached. The defendant's explanation for not mentioning these matters then was that he acted on his solicitor's advice that he should answer no comment to the questions put to him. I do not need to repeat what I have said earlier about the circumstances in which an adverse inference should be drawn other than to say that while the legal advice the defendant was given at the time is obviously an important consideration, it does not automatically prevent his silence about these matters from being held against him. He has the choice to accept the legal advice or reject it and he had been warned that any failure to mention facts which he relied upon at trial might harm his defence. I reject his explanation as to why he did not raise these matters with police. I am satisfied that he did not mention these facts to police because he has invented this later to try and explain away the presence of his DNA on the devices. He delayed revealing these facts to give himself the opportunity to tailor his account to the prosecution evidence. The evidence now presented in my view is an explanation he was unable to advance at the time absent more information about the state and nature of the evidence against him. I am satisfied that the advice of his solicitors at the time did no more than provide him with a convenient shield to hide behind.

[68] I am persuaded of this for the following reasons; the defendant in evidence claimed he was charged and on remand relating to pipe bombings for a period of approximately nine months before interview in December 2020 and would have had plenty of time to consider how he could possibly be connected to pipe bombings. At interview he was told that his DNA was located on the tape and pipe bombs and this was sufficient information to make it reasonably expected of the defendant to have mentioned these facts now relied upon. He accepted that he could have told police about the tape used to erect the flags in interview but chose not to do so. It is clear from the evidence, particularly of Findlay, Kelly and McCorgle that they together with the defendant were friends and put up flags regularly together. The defendant could have told police who he put the flags up with but chose not to do so. There was a compelling case and a need to tell police these facts at the time of interview. It is to be noted the evidence of the witnesses is very general in nature with the suggesting they only recently considered their evidence relevant. That McCorgle, a plumber, did not know the difference between gaffer/duct tape and masking tape and all three mentioned masking tape - which the defendant had first mentioned in his evidence as the tape they attached the flags with. All three witnesses made sure to include mentioning masking tape and, in my view, because the defendant had erroneously mentioned it when first describing the tape used. I had the opportunity

to seen and hear the witnesses give their evidence and they were less than impressive witnesses. In the circumstances, I am satisfied I should draw an adverse inference against the defendant in relation to his failure to mention these matters. However, I remind myself again I must not find him guilty wholly or mainly, because he failed to mention these facts, but I can take it into account as some additional support for the prosecution case.

[69] In the circumstances I consider that the facts relied upon by the defendant are not true and I am satisfied he has deliberately lied in this regard. In these circumstances I must consider why he lied. I remind myself that that a defendant who tells a lie is not necessarily guilty: sometimes a defendant who is not guilty will tell a lie for some other reason. Unfortunately, I consider the defendant did not have any “innocent” reason for lying, his account in my view was to distance himself from touching or otherwise handling the devices. In these circumstances, I may use this as evidence which supports the prosecution’s case. However, I again remind myself that I must not convict the defendant either wholly or mainly on the basis that he lied. The fact that he lied does not, on its own, prove that his guilt.

Consideration

[70] At this stage the various strands of the circumstantial and forensic evidence in this case must be considered in combination and reviewed in light of any inferences that may properly be drawn from the fact that the defendant essentially declined to answer question in police interview and chose not to disclose facts he has now relied upon in evidence on his defence at trial.

[71] In terms of DNA evidence as set out in paras [9]-[34], I am satisfied that in respect of 5 Montgomery Close, the mixed DNA profile obtained from pipe bomb item IED 1, is at least 1,700,000 times more likely that the DNA in the mixture came from Noel Logan and one unrelated individual, than from two unknown individuals unrelated to Noel Logan. In respect of 19 Montgomery Close, the mixed DNA profile obtained from pipe bomb End Cap A, is at least one billion times more likely that the DNA in the mixture came from Noel Logan and one unrelated individual, than from two unknown individuals unrelated to Noel Logan. In relation to 5 Bonds Place the mixed DNA profile obtained from pipe bomb samples IG11, is at least one billion times more likely that the DNA in the mixture came from Noel Logan and two unrelated individuals, than from two unknown individuals unrelated to Noel Logan. And the mixed DNA profile obtained from pipe bomb samples IG12 and IG14, is at least one billion times more likely that the DNA in the mixture came from Noel Logan and one unrelated individual, than from two unknown individuals unrelated to Noel Logan.

[72] I am satisfied his DNA was not transferred innocently as alleged by the defendant. I am satisfied that this is not a case of a single piece of the defendant’s DNA recovered from an item. There are multiple DNA links (five links) in respect of pipe bombs at each of the three locations attacked over a timeframe of almost two

years between November 2017 and September 2019. That in respect of the pipe bomb deployed at Bond's Place, his DNA is found on three locations on the device, at both ends and in the middle and also on the end cap of the pipe bomb deployed at 19 Montgomery Close. All four of these links having a match probability with the defendant of one billion to one.

[73] However, I direct myself that I must consider matters which have the potential to point away from the defendant's guilt. I have considered the involvement of Army Technical Officers making safe the devices before they were recovered by crime scene investigators. ATOs have an obligation to make such devices safe before evidence gathering can commence and while there is a suggestion that they may have disturbed the location of the DNA on the pipe bombs or contaminated them with their own DNA, this does not detract from the fact the defendant's DNA on the devices and any innocent explanation from him has come late in the day and has been rejected as untruthful. The inability to date when or how the DNA was deposited is of less significance in the present case given that the devices were used over a lengthy period of time and DNA can persist depending on the conditions the item is stored in and again if these bombs were batch made the defendant's DNA is still to be found on all three devices in circumstance where the defendant chose not to make any case in interview yet seeks to rely on fact never disclosed to police. I also remind myself of what Lowry LCJ said in *R v McGreevy*, that doubt as to one circumstance would have to be set against a possibly strong adverse view of the other circumstances in order to assess the ultimate overall effect on the case. In a trial, the tribunal of fact will not be able to resolve exactly what happened in respect of every aspect of the case. The tribunal of fact must be satisfied from the totality of the evidence that the guilt of the accused is established. This is to be done by looking at the case holistically.

[74] In *R v Tsekiri*, the Court of Appeal in England & Wales considered the question whether DNA on a moveable object at the scene of the crime could be sufficient on its own to establish a prima facie case. The case involved a fingerprint left on a door handle of a car that had been interfered with. Overturning a series of authorities, including *Ogden* and *Bryon*, the court noted that techniques of DNA analysis have improved markedly in the last decade and what was insufficient scientific evidence a decade ago will not necessarily be insufficient now: "In our view the fact that DNA was on an article left at the scene of a crime can be sufficient without more to raise a case to answer where the match probability is 1:1 billion or similar. Whether it is will depend on the facts of the particular case."

[75] The court in *Tsekiri* referred to a non-exhaustive list of relevant factors including the following:

- (i) Is there any evidence of some other explanation for the presence of the defendant's DNA on the item other than involvement in the crime, including an apparently plausible account from the defendant in interview or is the evidence unexplained?

- (ii) Was the article apparently associated with the offence itself?
- (iii) How readily movable was the article in question?
- (iv) Is there evidence of some geographical association between the offence and the offender?
- (v) In the case of a mixed profile is the DNA profile which matches the defendant the major contributor to the overall DNA profile?
- (vi) Is it more or less likely that the DNA profile attributable to the defendant was deposited by primary or secondary transfer?

[76] The court concluded:

“This is not an exhaustive list and each case will depend on its own facts. The crucial point is that there is no evidential or legal principle which prevents a case solely dependent on the presence of the defendant’s DNA profile on an article left at the scene of a crime being considered by a jury.”

[77] In the present case there are strong circumstances which in my view outweigh any matter potentially pointing away from the guilt of the defendant. These are as follows. There are four places where DNA has been retrieved with a match probability of 1:1 billion across three locations where pipe bombs have been deployed. The evidence is that the locations of the incidents are all in close geographical proximity to the defendant’s home. It has been established in evidence that the defendant has no connection with the attacked properties, the occupants of those properties or even the streets in which they are located. The defendant has at the eleventh hour proffered a potential explanation for his DNA being on the devices based upon facts he could have but voluntarily chose not to give in police interview after being warned of the inferences that may be drawn from such failure. The account given by the defendant and indeed his witnesses in the witness box was unimpressive for reasons set out above. I am satisfied that he failed to disclose the facts now relied upon at interview because they would not stand up to scrutiny. To this end he was reluctant to give the names of those who put up flags with him and who would have been in possession of the tape he had been using. Indeed, he gave evidence in cross examination that he would have stored the box containing the tape at times. The identity of his witnesses with the exception of Mr Findlay remained unknown until shortly before they gave evidence.

[78] Accordingly, based on the above, the court concludes that the combination of circumstances outlined to the court by the prosecution and the defendant’s failure to mention facts he has later relied on in court and the inferences to be drawn for this

provides compelling evidence of the guilt of the defendant. If there had been innocent explanation for the defendant's DNA on the devices he would have mentioned those facts in interview. Rather, the account given is opportunistic and only given after the prosecution case has been revealed, and he had been able to mend his hand. Accordingly, I am satisfied that the defendant touched or handled these three devices and it is now necessary to determine whether he did so with the requisite intent.

[79] The devices, while crude and charged with low order explosives, are still extremely effective anti-personnel devices capable of inflicting serious injury or death. A pipe bomb alone is capable of projecting shrapnel and in the present case nails and ball bearing were attached. Those were attached for the purpose of inflicting maximum damage to anyone in close proximity to them when they explode. This would be fairly obvious just looking at them and indeed the defendant eventually agreed this in cross-examination.

[80] When asked in cross-examination what he thought was intended by the nails and ball bearings being attached to the pipe he was initially evasive and suggested he did not know. On being reminded of the photographs of the devices he had seen recently he was again asked what he thought was intended by attaching nails to some of the devices and he maintained he did not know. This was the defendant being evasive and disingenuous. He eventually agreed that devices of this nature were designed and intended to explode and accepted that someone in close proximity to an exploding device with nails attached would be badly injured and that it would be the intention of anyone deploying such a device to seriously hurt someone in close proximity to the explosion.

[81] I am satisfied that the defendant handled these devices. I do not find that he deployed any of them. I further infer from the above concessions in cross-examination and his acceptance in evidence that the devices seen by him in the photographic exhibits were striking and sinister. In that handling them it would be obvious to him their nature and construction was designed to seriously injure. In such circumstances I am satisfied he had the intention to cause serious injury or enable another to do so. Accordingly, I find the defendant guilty of counts 1, 3 and 5. I make no finding in respect of the remaining counts on the bill of indictment.