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(subject to editorial corrections)**

ICOS No: 23/051887

Delivered: 03/07/2026

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

THE KING

v

**PAUL McINTYRE
JORDAN DEVINE
PETER GEAROID CAVANAGH
CHRISTOPHER GILLEN
JOSEPH CAMPBELL
PATRICK GALLAGHER
JUDE McCRORY
JOSEPH BARR
KIERAN McCOOL**

**Mark Mulholland KC with Rosemary Walsh KC and Aoife McAuley (instructed by
Hampson & Harvey Solicitors) for McIntyre
Kieran Mallon KC with Sean Doherty (instructed by MacDermott, McGurk & Partners)
for Gillen
Eilis McDermott KC with Dean Mooney (instructed by MacDermott, McGurk & Partners)
for Devine
John Kearney KC with Stephen Mooney (instructed by Hampson & Harvey Solicitors)
for Cavanagh
John Larkin KC with Cameron Faulkner (instructed by Phoenix Law Solicitors) for Barr
Niall Hunt KC with Liam McStay (instructed by Clarendon Legal) for McCrory
Seamus McNeill KC and Eoin Devlin KC (instructed by Quigley, Grant & Kyle Solicitors)
for Campbell
Gary McHugh KC with Mark O'Connor (instructed by McCann & McCann Solicitors)
for Gallagher
Brian McCartney KC with Joe Brolly (instructed by McCartney & Casey Solicitors)
for McCool
David McDowell KC with Mr Steer KC and Lauren Cheshire (instructed by the Public
Prosecution Service) for the Crown**

SMYTH J

Introduction

[1] On Thursday 18 April 2019, a young journalist, Lyra McKee, was shot and fatally injured in the Creggan area of Derry after an outbreak of public disorder. The defendants are all charged with riot and associated offences and three are charged with her murder.

[2] They can be divided into two groups: masked individuals alleged to have been directly involved in the riot: Paul McIntyre, Gearoid Peter Cavanagh, Jordan Devine, Christopher Gillen and Joe Campbell and unmasked individuals, alleged to have intentionally assisted or encouraged them to commit those offences: Patrick Gallagher, Jude McCrory, Joe Barr and Kieran McCool.

[3] Paul McIntyre, Jordan Devine, Christopher Gillen and Joe Campbell are also charged with being directly involved in riotous offences on 16 April 2019.

[4] Paul McIntyre, Gearoid Peter Cavanagh and Jordan Devine are charged with Lyra McKee's murder. None are alleged to have fired the gun that killed Lyra, but they are alleged to have intentionally encouraged or assisted the gunman.

[5] On 27 February 2026, I dismissed defence applications at the end of the prosecution case that none of the defendants had a case to answer ("the no case ruling" *R v McIntyre and others* [2026] NICC 2). This judgment should be read alongside it. In making my ruling, the test that I applied was whether, taking the prosecution case at its height, the evidence was so discredited or so intrinsically weak that it could not properly support a conviction. That means that I asked myself whether this is one of those exceptional cases where there is no possibility of each defendant being convicted to the requisite standard by the evidence given for the prosecution. In considering that question, I was mindful that if a jury not all reasonable juries could, on one possible view of the evidence be entitled to find each defendant guilty of each charge, the trial must proceed.

[6] Following that ruling, I satisfied myself that each defendant had been advised in the terms of the Criminal Evidence (Northern Ireland) Order 1988, that the stage had been reached at which he could give evidence if he wished, and that, if he chose not to do so, the court could draw such inferences as appeared proper from the failure to give evidence. None of the defendants chose to give evidence or call witnesses on their behalf.

[7] Every defendant has an absolute right not to give evidence and the burden of proving the case rests throughout upon the prosecution. The fact that none of the defendants did give evidence means that there is no evidence from any of them to rebut, contradict or explain the evidence of prosecution witnesses. The issue that

arises is whether an adverse inference against any defendant should be drawn from their silence. In order to determine that issue, I must consider the strength of the prosecution case against each of them. An adverse inference may only be drawn if:

- (a) the prosecution case is sufficiently strong to call for an answer and
- (b) there is no sensible reason for the defendant not to have given evidence, other than that he has no answer to the prosecution case or none that would stand up to cross-examination.

[8] If I am sure that both conditions have been met, the fact that the defendant did not give evidence may be considered as lending some support to the prosecution case. But such an inference cannot of itself prove guilt.

[9] The nature of any inference will depend on the way in which the evidence has developed and the strength of the prosecution case. The stronger the case, the more powerful the incentive to provide an answer, if there is one. It is a matter of evaluative judgement to be exercised in a case specific context.

[10] In *Murray v DPP* [1994] 1 WLR 1, Lord Slynn said:

“... if parts of the prosecution case had so little evidential value that they called for no answer, a failure to deal with those specific matters cannot justify an inference of guilt. On the other hand, if aspects of the evidence **taken alone or in combination with other facts clearly call** for an explanation which the accused ought to be in a position to give, if an explanation exists, then a failure to give any explanation may as a matter of common sense allow the drawing of an inference that there is no explanation and that the accused is guilty.”

[11] After each defendant confirmed that he did not wish to give evidence or call witnesses, both prosecution and defence filed closing submissions which were expanded upon orally.

[12] As a judge sitting alone without a jury, I now have to decide if each defendant is guilty of each charge alleged in the indictment. The test that I have to apply is different from the test I applied in my previous ruling. The question now, is whether, having considered all the evidence, I am sure that each of the defendants is guilty. If I am not sure, then the defendants must be found not guilty.

[13] The prosecution must prove that each defendant is guilty. The defendants do not have to prove that they are innocent. They do not have to prove anything to me.

[14] If I am of the view that a defendant is probably guilty of the offence charged, that is not enough to find him guilty. I do not have to be certain of guilt, there are few things in life we know with certainty, but I do have to be firmly convinced before I can reach a guilty verdict.

[15] In *R v Steenson and others* [1986] NIJB 17 at [36] Lowry LCJ stated:

“Justice according to law demands proper evidence. By that we mean not merely evidence which might be true and to a considerable extent probably is true, but, as the learned judge put it “evidence which is so convincing in truth and manifestly reliable that it reaches the proof beyond reasonable doubt.”

[16] Since the 1760s, the focus of the law’s protection is the accused because it is considered “better that ten guilty persons escape than that one innocent suffer” (Blackstone W (1765) Commentaries on the Laws of England).

[17] I am entitled to draw inferences, that is commonsense conclusions based on evidence that I consider to be reliable. It is a process of reasoning from known facts. Inferences must be distinguished from speculation which has been defined as “an opinion about something without having all the firm facts”(Oxford English Dictionary). It is the defence submission that much of the prosecution case is based on speculation, filling in the gaps in evidence with a theory about what actually occurred and who exactly was involved.

The evidence

[18] The prosecution case depends on circumstantial evidence. There are a number of strands to this evidence and the case against each defendant, on each charge, must be considered separately. The nature of circumstantial evidence was explained in *R v Kincaid* [2009] NICA 67, where the Court of Appeal explained at para [22] that “while [circumstantial evidence] is different from direct or expert evidence it can be no less compelling and often more so.”

[19] The classic approach to circumstantial evidence is to be found in the well-known passage from the judgment of Pollock CB in *R v Exall* (1866) 4 F&F:

“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 probable 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 broke, the link would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but 3 stranded together might 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 submission; but the whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of. Consider, therefore, here all the circumstances clearly proved.”

[20] However, in *R v McGreevy* [NI] 125, the court said that:

“Circumstantial evidence must be examined with great care for a number of reasons. First of all, such evidence could 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.”

[21] If there are such circumstances inconsistent with guilt, it is important that the court takes great care when considering the impact on the evidence overall.

[22] In *R v Courtney* [2007] NICA 6, at para [31], Kerr LCJ emphasised the importance of guarding against considering the evidence piecemeal in a circumstantial case:

“[31] ... In a case depending on circumstantial evidence, it is essential that the evidence be dealt with as a whole because it is the overall strength or weakness of the complete case rather than the frailties or potency of individual elements by which it must be judged. A globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate

insight into the interdependence of the various elements of the prosecution case.”

[23] At the core of the prosecution case is commercial footage from MTV. The journalist Reggie Yates and his team were making a documentary about Saoradh and recorded events throughout 18 April 2019 including the rioting in the evening although the team left before the shooting of Lyra McKee. The issue of authenticity and admissibility of this footage was challenged by the defence. In the no case ruling, I ruled that it was prima facie authentic and therefore admissible. The question of proof beyond a reasonable doubt is a matter for this stage of the trial.

[24] On 1 April 2026, the prosecution set out a history of the examinations that had taken place to confirm that the footage relied on is authentic and represents a bit for bit copy of the original footage recorded. All parties have had the opportunity to examine the various footage for any defect which might have given rise to doubt about its authenticity or reliability. None has been identified and having considered the unchallenged evidence, I accept that it is authentic and reliable.

[25] In the no case ruling, I excluded the evidence of police officers at controlled viewings who purported to identify Mr McIntyre, Mr Cavanagh and Mr Campbell as masked individuals, on the grounds that the evidence was unreliable and it would be unfair to admit it. The significance of the ruling is that there is no eyewitness evidence identifying any of them as the masked individuals.

[26] The identification evidence of defendants when they were unmasked is not challenged and was therefore admitted.

[27] I also excluded the expert imagery analysis evidence of Mr Matthew Stephens of Diligence on the grounds that the independence of his opinion had been undermined by repeated communications with the PSNI Major Investigation Team and apparent amendments to his reports in consequence.

[28] However, I did admit the imagery analysis evidence of Mr Andy Wooller of Acuity Forensics which remains an important strand of prosecution evidence against those alleged to be masked rioters and in particular, those charged with murder.

[29] Imagery analysis involves the identification of relevant persons by a comparison of features on clothing, personal items and general physical descriptors. As I explained at paras [268] and [269] of the no case ruling, the opinion of an expert is only part of the evidence and ultimately it is for me as the tribunal of fact to decide on the basis of all of the evidence whether I am sure that those defendants who are alleged to have been masked have been correctly identified.

[30] The main strand of prosecution evidence against four of the five masked defendants (Paul McIntyre, Jordan Devine, Christopher Gillen and Joe Campbell) is

the expert imagery analysis evidence of Mr Wooller. In respect of Gearoid Peter Cavanagh, it is an important strand to the case against him.

[31] Other strands of circumstantial evidence are:

- (i) In respect of Cavanagh, DNA and cell site evidence.
- (ii) In respect of Campbell, gait analysis.
- (iii) In respect of McIntyre, cell site evidence and in respect of both McIntyre and Gillen, telephone communications between them, other defendants and non-defendants associated with Saoradh and/or with relevant convictions.
- (iv) In respect of some masked defendants, missing items of relevant clothing, known to have been worn by them on other occasions and alleged to have been disposed of subsequent to 18 April 2019.
- (v) In respect of all the defendants, association evidence with each other and relevant persons of interest.
- (vi) In respect of some defendants and some relevant persons of interest, bad character evidence.

[32] The prosecution also invites an inference of guilt from the defendants' failure to give evidence.

[33] Since this case concerns identification evidence, I remind myself of the principles in *R v Turnbull* [1977] QB 224 that there is a special need for caution before convicting a defendant in reliance on identification evidence. That is because it is possible for an honest witness to make a mistaken identification and there have been wrongful convictions in the past as a result of such mistakes.

[34] I remind myself in particular that an apparently convincing witness can be mistaken as can a number of apparently convincing witnesses. The circumstances in which the identification by each witness was made must be carefully examined and any specific weaknesses must be considered.

[35] This warning applies both to Mr Wooller's expert opinion evidence and to my overall conclusions. I also keep the issue of cognitive bias at the forefront of my mind. As a general statement, the Court of Appeal of England and Wales has held "bias is an attitude of mind which prevents the judge from making an objective determination of the issues that he has to resolve."

[36] In an F A Mann Lecture in 2015 regarding judicial decision making, Lord Neuberger cited from a study which observed:

“Judges it seems are human. They appear to fall prey to the same cognitive allusions that psychologists have identified among lay persons and other professionals. Even if judges are free from prejudice against either litigant, fully understand the relevant law, know all of the relevant facts and can put their personal politics aside they might still make systematically erroneous decisions because of the way they – like all humans – think.”

[37] In the no case ruling, although I admitted some evidence of association and bad character evidence, excluding other evidence for legal reasons that are set out at paras [325]-[353], I also explained the considerations that will have to be taken into account in determining whether it assists the prosecution case in proving guilt, at paras [354]-[356].

[38] All of the defendants are charged on a joint enterprise basis. Those alleged to be directly involved in riotous offences are also charged with the riotous offences of others. Those charged with murder and the unmasked defendants are all alleged to be guilty as secondary offenders on the basis that they intentionally encouraged or assisted the gunman or the rioters.

[39] The civil disorder which occurred on 19 April 2019 and culminated in Lyra McKee’s death may be considered as a number of events:

- (i) The first round of petrol bombs.
- (ii) The second round of petrol bombs.
- (iii) The arrival of a hijacked tipper truck at the junction of Fanad Drive and Central Drive which was then set on fire.
- (iv) The hoax bomb.
- (v) The hijacking of an Audi A6 which was then set on fire.
- (vi) The third round of petrol bombs.
- (vii) The shooting of Lyra McKee.

The unmasked defendants

[40] Since the case against the unmasked defendants, and those charged with murder is based on secondary liability I re-state the applicable legal principles set out at paras [408]-[414] of the no case judgment.

[408] The prosecution case is based on joint enterprise. *Blackstone (2025)* at A 4.1 explains that responsibility for a criminal offence may be incurred either as a principal offender or as an accessory. A principal offender is the actual perpetrator of the offence, the person whose individual conduct satisfies the definition of the particular offence in question, whilst an accessory is one who aids, abets, counsels or procures the commission of the offence.

[409] *R v Jogee* [2017] AC 387, the Supreme Court clarified the acts and the mental element necessary to prove liability as a secondary offender. A person who does any act (or in some circumstances, omits to do an act) which is capable of encouraging or assisting the commission of an offence, and who intends to encourage or assist that offence, is guilty of an offence as an accessory or secondary offender. If the crime requires a particular intent, the secondary offender must intend (it may be conditionally) to assist the perpetrator to act with such intent.

[410] Encouragement and assistance may take many forms. Although mere presence at the scene of a crime is generally not enough to establish criminal liability for encouraging or assisting, it may do so depending on the circumstances. It may include providing support by contributing to the force of numbers in a hostile confrontation:

‘With regard to the conduct element, the act of assistance or encouragement may be infinitely varied. Two recurrent situations need mention. Firstly, association between [the alleged secondary offender] and [the perpetrator] may or may not involve assistance or encouragement. Secondly, the same is true of the presence of [the alleged secondary offender] at the scene when... the crime [is perpetrated]. Both association and presence are likely to be very relevant evidence on the question whether assistance or encouragement was provided. Numbers often matter. Most people are bolder when supported or fortified by others than they are when alone. And something done by a group is often a good deal more effective than

the same thing done by an individual alone. A great many crimes, especially of actual or threatened violence, are, whether planned or spontaneous, in fact encouraged or assisted by supporters present with the principal lending force to what he does. Nevertheless, neither association nor presence is necessarily proof of assistance or encouragement; it depends on the facts.' (*Jogee*, para [11])

[411] What matters is whether the secondary offender encouraged or assisted the crime, whether it be murder or some other offence. He need not encourage or assist a *particular way* of committing it though he may sometimes do.

[412] Mere foresight of a potential crime is not enough to convict someone of that crime; instead, foresight can only be used as evidence from which a jury can infer intent to encourage or assist the crime.

[413] The prosecution does not have to prove that the encouragement or assistance had a positive effect on the perpetrator's conduct or on the outcome. For example, if a number of persons encourage him, the encouragement of a single one of them could not be shown to have made a difference; or he may ignore the encouragement.

[414] Questions of intent often have to be decided by a process of inference from the facts and circumstances proved:

'... In cases where there is a more or less spontaneous outbreak of multi-handed violence, the evidence may be too nebulous for the jury to find that there was some form of agreement, express or tacit. But, as we have said, liability as an aider or abettor does not necessarily depend on there being some form of agreement between the defendants; it depends on proof of intentional assistance or encouragement, conditional or otherwise. If a person joins with a group which he realises is out to cause serious injury, the jury may well infer that he intended to encourage or assist the

deliberate infliction of serious bodily injury and/or intended that that should happen if necessary. In that case, if the perpetrator acts with intent to cause serious bodily injury and death results, both he and the other person will be guilty of murder.'" (*Jogee*, para [95])

Analysis of the evidence

[41] Patrick Gallagher and Jude McCrory were the points of contact for the MTV team on 18 April 2019 and spent the day showing them historic sites of interest in Derry, meeting associates of Saoradh in the office in Junior McDaid House, Chamberlain Street and observing those putting up flags on the Inniscarn Road.

[42] Reggie Yates noted posters of masked men in colour parties and IRA slogans on the walls inside and outside the office which were said to be "historic references."

[43] Gallagher and McCrory are recorded openly discussing their political views including hostility to the police whom they describe as "Crown forces" and later justifying the rioting that broke out after a police and army convoy arrived in the Creggan as "acts of resistance."

[44] It is the prosecution case that the rioting was staged by dissident Republican terrorists for the MTV cameras. This is disputed by most of the unmasked defendants. They rely on the evidence of Emmet Doyle, a community activist who said that trouble was inevitable after news of the convoy spread over social media, particularly because of the military presence. However, on behalf of Cavanagh, it is conceded that the prosecution contention is a reasonable inference.

[45] Mr Doyle described a group of 50 or 60, mostly young people, gathered at the junction of Central Drive and Fanad Drive when he arrived. Petrol bombs and fireworks were thrown at police vehicles which were set alight along with a hijacked tipper truck.

[46] He then saw two or three people moving, one of whom was taller and one smaller than him, tight to the wall towards the corner of Fanad Drive and Central Drive. He saw a masked man who was shouting IRA chants and heard cheers from others present. One of the men at the corner extended a firearm towards the closest Landrover and fired a shot. He thought there was a gap in time between that and the next shots - as if the gun had jammed. He then heard a scream. Lyra had been shot dead.

[47] It is accepted that a police search operation, supported by the military, could not have been anticipated. However, it is contended that a plan to orchestrate a riot for the cameras was quickly hatched in a flurry of telephone calls while the MTV team

was at McCrory's home at Ballymagowan Gardens just after the news arrived. Barr and McCool who lived nearby were also present.

[48] Initial fears that it was coming to search the McCrory home were dispelled as further information was received. Reggie Yates was told that "there was a bit of activity at the shops." Gallagher told him that there "could be a number of people gathered over there" including "those that are more than capable of carrying out acts of resistance." McCrory said that if someone has been "targeted by the Crown Forces people often go and show support for their families and stuff." Gallagher added: "and assist them." At their suggestion, the camera crew made its way to the shops.

[49] As they arrived at Central Drive, Gallagher can be heard on his phone telling Kieran Gallagher, a person of interest, "Aye, we're walking over now." In total, there were nine telephone communications between them within six minutes.

[50] The prosecution relies on the fact that contrary to the assertion that there was "a bit of activity" at the shops, the rioting only began after the arrival of the MTV team. They were met by masked men carrying petrol bombs (alleged to be Christopher Gillen and Jordan Devine). It was indicated by a nod of the head that they had also been involved in the rioting on 16 April, two days earlier. That riot was filmed by Pangaia, a French company also making a documentary about Saoradh.

[51] Yates was allowed to inspect a petrol bomb and McCrory later confirmed that the masked men were "comfortable being filmed." They appeared to know both McCrory and Gallagher, although this was denied.

[52] The bottles used for the petrol bombs on both 16 and 18 April were the same type as those seen being carried by Jordan Devine from the 720 bar on Chamberlain Street, on 15 April.

[53] One of the masked men, alleged to be Gillen, appeared to whisper in McCrory's ear, who then told MTV that the rioters intended to move towards the police. The masked man alleged to be McIntyre, then approached Gallagher, McCrory and Elliott and McCrory then related that they were going to attack a police Landrover.

[54] The prosecution observes that the camera crew got remarkably close to events during the first round of petrol bombing while Gallagher provided commentary.

[55] Gallagher and McCrory clearly approved of the rioting which they attempted to justify to Reggie Yates, criticising Sinn Fein for supporting the police and dismissing anyone who expressed opposition with disparaging remarks. A community worker, Stephen Mallett, was described by McCrory as a "collaborator." McCrory, Barr and McCool were all involved in an altercation with him, although on McCrory's behalf, he is said to have been protecting him and McCool alone is charged with his assault (along with McIntyre who is alleged to be masked).

The alleged acts of intentional encouragement or assistance

Patrick Gallagher and Jude McCrory

[56] The prosecution case is that Gallagher and McCrory intentionally encouraged or assisted the masked rioters by:

- (i) taking the camera crew to the area under the guise that there was “a bit of activity”;
- (ii) facilitating a “show for the cameras” by co-ordinating the masked rioters and the film crew; and
- (iii) relaying the rioters’ intentions to the crew, thus enabling the best coverage of the violence.

The context is their convictions for wearing clothing or having an article related to terrorism. Gallagher’s convictions are dated September 2021 and May 2022, although the offences were committed in March 2016 and March 2018. McCrory has four such convictions for offences dating from March 2016, 2017 and 2018.

[57] Furthermore, McCrory along with Barr is alleged to have been seen at the shops where the petrol bombs were stored after a telephone call between Ashe Mellon (a person of interest with terrorist convictions) and Barr, just before the second round of petrol bombs. While the content of the conversation is unknown, these events are said to be linked.

[58] The altercation with Mr Mallett, which involved McCrory, Barr and McCool, is alleged to have been intended to intimidate him and prevent further attempts to stop the rioting. Contrasting Mr Mallett’s standing as a community worker, Gallagher held himself out as a leader within the community, along with McCrory and Barr and others like them. Their perceived sense of importance within the community is relied on as evidence that their mere presence was intended to encourage the rioting.

[59] After a hoax bomb was left beside one of the Landrovers under attack, McCrory is seen moving people away from the area. The prosecution relies on this evidence also to show his influence and also alleges that his actions were completely disingenuous because the hoax had been left by an associate.

[60] The prosecution relies on the explanation given to Yates that the purpose of going to the shops was to “show support” for those “targeted by Crown Forces” and to “assist them”; it is submitted their intention to encourage and assist those involved in disorder was expressly stated.

[61] When the MTV crew decided to leave, before the shooting had occurred McCrory said, "I hope you don't miss anymore camera opportunities." The prosecution contends this could be interpreted as an attempt to persuade them to remain in the knowledge that an escalation of violence was about to occur.

[62] Finally, the prosecution alleges that as they were leaving the area, in contrast to what had occurred earlier, the cameraman was prevented from filming persons and activities within an alleyway alleged to be connected to the subsequent shooting.

The defence case in respect of Mr Gallagher

[63] In respect of Mr Gallagher, it is submitted that there is no evidence whatsoever that he was complicit in the rioting, that he had any prior knowledge of it or that he intentionally encouraged or assisted it. There is no evidence that the rioting was a show for the cameras and as Mr Doyle said, anyone could have foreseen that the arrival of a search party into the Creggan would have sparked public disorder.

[64] Two contemporaneous newspaper reports in which the Senior Investigating Officer, Jason Murphy is said to have refuted a show of strength by dissident Republicans is relied on. However, the prosecution submits that no official communications to that effect have been found and, in any event, the police were not in possession of all the evidence at that time.

[65] It is submitted that Mr Gallagher was simply acting as a tour guide for MTV, and his openness in expressing his views to Reggie Yates on camera, cannot reasonably be construed as demonstrating an intention to encourage or assist the rioting.

[66] He is not alleged to have used any encouraging words or gestures to any of the rioters, let alone assisted them. Like many others present who were not directly involved in rioting, he supported it and considered it justified in the circumstances.

[67] Others, known to support violent Republicanism, including Ashe Mellon, were also present and yet they face no charges.

[68] It is submitted that in reality "the usual suspects" were rounded up after Lyra McKee's death and a false, theoretical case constructed against them.

[69] The defence submit that evidence of his convictions and association with other members of Saoradh is not probative of guilt and the prosecution case against him is so weak, that no adverse inference should properly be drawn from his failure to give evidence.

The defence case in respect of Mr McCrory

[70] On behalf of Mr McCrory it is also submitted that whilst he has frankly expressed his views on camera, he has done nothing that could be construed as intentionally encouraging or assisting the rioters.

[71] He has maintained his innocence from the outset, providing a pre-prepared statement to police during interview in which he refuted any involvement in wrongdoing.

[72] Unlike other defendants, Mr McCrory was not party to any phone calls at Ballymagowan Gardens. He had no telephone communications of any kind on 18 April 2019, either with other defendants or any persons of interest. His sole involvement was accompanying the MTV team.

[73] The riot was a spontaneous response to the arrival of police and military, the presence of MTV had no bearing on the riotous activities of others, and even if it did, there is no evidence from which the requisite intentional acts can be inferred.

[74] Mr Doyle's evidence that trouble was inevitable, was clearly a view shared by police, who placed their vehicles in a protective box formation in Fanad Drive.

[75] As far as the altercation with Mr Mallett is concerned, it is submitted that a fair observer would conclude that far from engaging in threatening or intimidatory behaviour towards him, Mr McCrory was attempting to protect him.

[76] It is submitted that there was nothing unusual about McCrory and Gallagher or indeed Barr's interactions with the masked men and nothing should be read into it.

[77] The allegation that McCrory "marshalled" the crowd away from the hoax bomb, and that his conduct has sinister connotations is challenged. There is nothing to suggest his actions were other than they appeared; an effort to protect others from harm.

[78] Nor is it accepted that Mr McCrory induced the camera crew to stay in the knowledge that a shooting attack was imminent with his remark to Reggie Yates, "I hope you don't miss any more camera opportunities." This is mere speculation; the words used are equally consistent with an acknowledgement that the camera crew wanted to capture images of violent disorder.

[79] The defence submit that neither the bad character evidence admitted, nor evidence of association assists the prosecution in proving guilt to the criminal standard.

[80] In relation to his failure to give evidence, the defence say that nothing could be added to the evidence already before the court since a full denial of guilt was made to police at the earliest stage, and everything he said and did is clear from the MTV footage. The weakness in the case is such that it would not be proper to draw any adverse inference.

Kieran McCool

[81] The prosecution case against Mr McCool relies heavily on his involvement in the flurry of telephone calls in which the plan to orchestrate a riot for the cameras is alleged to have been hatched. It is summarised as follows:

“After Barr is observed running over to speak to him, McCool calls the number ending ‘4270’ while Barr was on the phone to Melaugh (a person of interest). Ashe Mellon (a person of interest with terrorist convictions) then provided a connection between ‘4270’ and Melaugh before calling McCool himself. ‘4270’ followed Ashe Mellon in calling McCool and there was further contact between Ashe Mellon, ‘4270’, Canning (another person of interest) and Melaugh.”

[82] At Ballymagowan Gardens, McCool remained talking to Barr and McCrory after Gillen arrived and spoke to Barr and Elliott. At that stage, Gillen had already spoken to McIntyre and he did so again after his arrival. McCool, Barr and McCrory were joined by Gallagher before the latter two walked over to Reggie Yates and the MTV crew and McCrory suggesting that they go down to the shops where he said he thought there was “a bit of activity.”

[83] The prosecution submits that it is a natural inference that that information came from his discussions with McCool and Barr and the extent of McCool’s involvement in the communications is such that:

“The court could conclude bearing in mind McCool’s later presence at the disorder, that his telephone conversations concerned a reaction to the arrival of the Land Rovers and that the plan to conduct the disorder was hatched.”

[84] The content of these conversations is not known.

[85] After the telephone communications, the prosecution describes McCool’s next involvement as - his arrival at the junction of Central Drive and Fanad Drive at 21:48hrs to remove what is described as “the disruptive influence of Mallett.” That action is alleged to have assisted the continuation of the disorder, particularly

Mr McCool's aggression towards him, assaulting him by pushing whilst telling him to "get down the fucking street."

[86] Save for a sighting a few minutes later on the opposite footpath, McCool did not feature again until 22:38hrs when he was seen:

"somewhat isolated from the remainder of the crowd (who had moved back because of the suspected bomb), standing in the road talking with Kevin Brady [a person of interest] as they looked up the hill towards the Landrovers."

[87] McCool was next seen, as the camera crew left the area at 22:53hrs, at the southern end of the shops, standing on the footpath of Central Drive with Millar (a person of interest) next to Gillen and close to another group which included Melaugh and Barr. The prosecution relies on the fact that the film crew was directed away from filming persons and activities close to where those persons were gathered.

[88] The final sighting of McCool was as the gunman made his escape. After the gunman passed, the prosecution describes McCool briefly walking in the same direction as him (as Millar did before him). However, he then:

"turned to look behind him, towards the junction, while continuing to move slowly, and without any apparent urgency, backwards, in the same direction as the gunman."

[89] That concludes the observations of McCool on 18 April 2019.

[90] The prosecution also relies on Mr McCool's communications with relevant others in the early hours of 19 April, after Lyra McKee's shooting and later that day. A person using the number '4270' called McCool at 02:55hrs on 19 April, and again at 15:20hrs. McCool called him back at 15:25 hrs. '4270' called again at 18:40hrs, on that day. Barr called McCool at 15:28 hrs before sending a text (apparently as one of a group) at 21:41hrs.

[91] It is the prosecution case that McCool intentionally encouraged or assisted the rioters by:

- (i) playing a "key role" in communications in which the plan to orchestrate the riot is alleged to have been hatched;
- (ii) his treatment of Mallett, ensuring the removal of someone considered to be a disruptive influence on the disorder (extending his involvement to "assisting"); and

- (iii) together with his continued non-coincidental presence in the area, and association with known persons of interest Eamon Barry Millar, Fergal Melaugh, Thomas Ashe Mellon and Mark Canning as part of a group in the area shortly after the shooting of Lyra McKee.

The defence case in respect of Mr McCool

[92] On behalf of Mr McCool, it is submitted that the evidence against him is entirely speculative. All that can be proved is that:

- (i) He was filmed by MTV chatting with his neighbour Joe Barr, sometime after 21:00hrs on 18 April outside the McCrory home in Ballymagowan Gardens.
- (ii) He was observed on his phone, in a call with a person called Gary Hayden. He then received a call from a Thomas Ashe Mellon (neither of whom are co-accused). The contents of the calls are unknown.
- (iii) Various comments are made by the prosecution regarding his demeanour “looking up the street outside his home”, later “walking briskly from the direction of the shops” at the scene of the disorder.
- (iv) He engaged in an altercation with the community worker Mr Mallett involving swearing and a push, telling him to “get down the fucking street now.” Mr Mallett had voiced his objection to the ongoing riot but had then given up trying to intervene.
- (v) He is seen talking to a person (Kevin Brady) who, although not a defendant, is alleged to have communicated with Joe Barr and another person in advance of the second round of petrol bombs, and the events are said to be linked.
- (vi) At the time the Audi was set alight at the crossroads, unknown figures were seen in the area where Mr McCool had been standing at earlier.
- (vii) Later Mr McCool was seen walking in the direction of his home “with no apparent urgency.”

[93] It is submitted that his association with those named is not probative of guilt and the case against him is so weak that it would not be proper to draw any adverse inference from his failure to give evidence.

Joe Barr

[94] The prosecution submits that Mr Barr brought the news of the Landrovers to Ballymagowan Gardens. He then actively liaised with McCool, making and receiving a number of communications, including from persons of interest such as Melaugh and

Ashe Mellon. He later spoke to Christopher Gillen before taking a call from Eamon Barry Millar (a person of interest) and communicating something to McCrory "as if telling him something." He was then seen with Gallagher, McCrory, McCool and Elliott, which allegedly led to McCrory and Gallagher suggesting to Reggie Yates that they go down to the shops where there was "a bit of activity."

[95] The prosecution submits that Mr Barr was busy from his arrival at 21:47hrs immediately remonstrating with Mr Mallett and telling him to "fuck off" before indicating to McCrory that he wanted to tell him something in private. McCool arrived less than a minute after Barr and he and Barr then aggressively approached Mr Mallett again. The prosecution then points to a masked man (alleged to be McIntyre) threatening to punch Mallett before McCrory intervened. Barr then sought to justify the disorder and "perhaps also the removal of Mallett from the area."

[96] It is alleged that Barr and McCool, by intimidating Mr Mallett were preventing any further disruption to the rioting. They are described as "policing" it and enabling it to continue. Barr's position in the hierarchy was shown by him declining Gallagher's request to reveal whose home was being searched to Yates.

[97] Barr was phoned by Ashe Mellon at 21:49hrs and moved off to take the call. Ashe Mellon called him again at 21:59hrs. In between those calls, Barr was in the company of Patrick McDaid and Kevin Brady (persons of interest) standing in the mouth of Fanad Drive. At 22:04hrs, Barr and McCrory walked off in the direction of the shops, from where the petrol bomb attacks were mounted. The prosecution alleges that Barr told someone to "stand in" as he passed, acting as if he had authority.

[98] The prosecution draws a link between these events and the fact that although there had been no significant disorder for the previous 15 minutes, the second round of petrol bombing followed almost within two minutes.

[99] The prosecution describes Barr "striding" into view as the second attack occurred. McCrory is also seen on camera with Yates at that point.

[100] During the sustained attack on the Landrovers, the prosecution alleges that someone close to the microphone - described as "possibly Barr" - was heard to shout "Get into them" twice. Barr and McCrory are seen on camera standing watching beside Yates, slightly off the footpath on the other side of the road.

[101] Yates pointed out that one of the Land Rovers was struck and that afterwards, a police officer got out to spray the flame (at 22:08 hrs). It is alleged that something appears to have been thrown at him and Barr is described as making an "excited movement" whilst saying "hit him", followed by "fuck sake", when it missed. The prosecution contends that a smash can be heard on the MTV recording.

[102] When a lady accused the camera crew as being the cause of the riot, Barr dismissed Yates' concerns, encouraging them to remain. When they did leave, it was Barr who led them back up towards the shops and is said to have "controlled" their exit from the area. He spoke to Gillen on the opposite footpath, directing him to cross over the road out of the path of the film crew. Barr then crossed back over himself and spoke with Melaugh and another, with Gillen, McCool and Millar close by. He then escorted the film crew out of the Creggan.

[103] It is the prosecution case that Mr Barr intentionally encouraged or assisted the rioters by:

- (i) removing the community worker Mr Mallett who was trying to stop the rioting;
- (ii) reacting in the manner alleged to the petrol bomb being thrown at the police officer who had got out of the land rover and expressing his frustration that the missile missed its target; and
- (iii) demonstrating a position of authority "on the ground."

The defence case in respect of Mr Barr

[104] The defence submits that contrary to the prosecution contention that Mr Barr was responsible for bringing the news of the police and military to Ballymagowan Gardens, it came in a message from a community worker, not anyone connected to Saoradh. In fact, Yates was shown a Facebook page dedicated to spreading news of this kind.

[105] Far from planning a riot, the initial thoughts of those present was that a search of the McCrory home or another Saoradh member was imminent with efforts made to conceal laptops and phones.

[106] The prosecution case that the riot was planned during telephone communications between Barr and relevant others is purely speculative, as is the contention that the suggestion to go to the shops to see "a bit of activity", arose out of a conversation between him, Gallagher and McCrory.

[107] The defence submit that it is no coincidence that the prosecution has been driven to use descriptive words such as "striding purposively" in relation to the manner in which Barr walked away from the McCrory home: these words have been deliberately chosen to add weight to a case that lacks any evidential credibility.

[108] It is clear from the MTV footage that the riot had most definitely started by the time Mr Barr arrived at the scene at 21:47hrs. It is contended that this contradicts the assertion that he intentionally encouraged or assisted it.

[109] In relation to Barr's involvement in the altercation with Mr Mallett, the defence relies on the prosecution concession that Mr Mallett had already stopped trying to intervene at that point, because of the intimidatory behaviour of other defendants.

[110] In particular, the defence disputes that comments made to Mr Mallett - "are you slabbering?" or about him - "he's fucking slabbering again" can be attributed to Mr Barr. It is also disputed that the words - "get into them!" as petrol bombs were being thrown are attributable to him or that he was responsible for "an exasperated" shout of "hit him, fuck sake" when a missile appears to have missed a police officer.

[111] Furthermore, it is disputed that intentional encouragement or assistance can be inferred from Mr Barr's mere presence because of his acknowledged position as chairman of Saoradh. Although authority is said to be demonstrated by his indication to Gallagher that he should not reveal the identity of the person whose home was being searched, in itself, that is consistent merely with a desire to protect the privacy of that individual.

[112] The defence dismiss as pure speculation, the prosecution contention that a telephone call between Mr Barr and Ashe Mellon, was in any way connected to the second round of petrol bombing.

[113] The defence submit that Barr's association with relevant others is not probative of guilt and the case against him is so weak that it would not be proper to draw any adverse inference from his failure to give evidence.

Conclusion in respect of the unmasked defendants

[114] Since this is a circumstantial case, the question I have to consider is what is the fair inference to be drawn from all the evidence.

[115] I accept Emmet Doyle's evidence that violent disorder was likely to be triggered by the arrival of a search party into the Creggan but that does not mean that the scale of the violence was not orchestrated. There is nothing inconsistent between Mr Doyle's evidence and the prosecution case that a plan was hatched to ratchet up violent disorder by dissident Republicans.

[116] Evidently, Gallagher and McCrory were keen to paint a picture of strong public support for violent opposition to the police, and the MTV documentary was seen as an opportunity to spread propaganda to a potential UK audience. The more intense the violence, the greater the show of strength.

[117] There is no doubt from the ease with which the masked men engaged with MTV, allowing a petrol bomb to be inspected and communicating their violent intentions in advance, that the camera crew was both expected and welcome. Clearly,

arrangements had to be communicated and the most obvious means of doing so was by telephone.

[118] I am satisfied that it is no coincidence that a sudden burst of telephone calls between persons known to support violent Republicanism followed news of the arrival of the police and military convoy. I also accept that the presence of a camera crew was likely to be viewed as an opportunity to showcase violent opposition to the police and that the riot was orchestrated for that reason.

[119] However, there is no evidence at all of what was said or by whom. Whilst it is easy to make broad brush statements about who orchestrated the violence, care must be taken to ensure that any adverse inference drawn against any particular defendant is based on reliable evidence. Evidence that might be true or even evidence which to a considerable extent probably is true is not a sufficient basis for a criminal conviction.

[120] It appears, from the almost carnival-style atmosphere remarked upon by Reggie Yates that most people present supported the violent attacks on police, even if they were not directly involved and would not have become involved. No doubt, some, particularly the young people present, found the violence exciting or found themselves caught up in the moment. Parents brought young children to watch, teenagers mingled while eating chips; all of this was viewed with bemusement by the journalist.

[121] But, other persons were also present whose names were repeatedly mentioned in the course of this trial, although they are not defendants. Thomas Ashe Mellon, with terrorist convictions and other significant persons of interest were observed close to the scene of the riot after Lyra McKee's death and yet no charge of intentional encouragement or assistance of the rioters is alleged against them.

[122] Therefore, the question that arises is whether the evidence against these defendants sets them apart and is sufficient to prove their guilt as secondary offenders beyond a reasonable doubt.

[123] I turn now to the case against and for each of the unmasked defendants:

Patrick Gallagher and Jude McCrory

[124] Since these prosecution cases are interlinked, I deal with them together, although I have considered each separately. The prosecution places emphasis on the fact that the stated reason for going to the shops was that there was "a bit of activity" when in fact, no actual rioting occurred until the camera crew arrived.

[125] Of course, that depends on what was meant by "a bit of activity." We know from Mr Doyle's evidence that when he arrived, a crowd of mainly young people had already begun to gather. In that sense, there was a "a bit of activity", provoked by the

military convoy's arrival before any actual rioting occurred and civil disorder was inevitable whether or not an MTV crew was there to film it.

[126] The explanation given to Yates why people would gather at the scene of a house search – McCrory: when people are “targeted by the Crown Forces people often go and show support for their families and stuff” with Gallagher adding, “and assist them” - is said to be an admission of an intention to support and assist.

[127] In my view, if this is evidence of guilt as a secondary offender then it is evidence against most of the people who came out of their homes to show support for the violent opposition. Whilst association and presence are both relevant to the question whether assistance or encouragement was provided, it is not necessarily proof of either.

[128] I accept that from the interactions of Gallagher and McCrory with the masked men, an obvious inference can be drawn that they were known to each other. The evidence has to be seen in context; this is a small community and it would be unrealistic to think that the identities of those involved in militant Republicanism are not well known. I do not attach much, if any weight to this evidence.

[129] The prosecution places weight on Mr McCrory helping to remove people from the vicinity of a hoax bomb on the basis that his behaviour was clearly disingenuous since an associate had placed it there. There is no doubt that he was conveying the impression that he (along with other members of Saoradh) are viewed as leaders of their community. But how this is evidence of intentional encouragement or assistance to the rioters is unclear.

[130] The treatment of Mr Mallett deserves separate consideration. He was one of the few people prepared to object to the wanton destruction of homes and property. The assault by McCool and the manhandling to which he was subjected was shameful and clearly intended to silence him and deter further dissent. In all likelihood, this is the kind of treatment meted out to anyone prepared to speak out within this community.

[131] Whilst McCrory is also alleged to have been involved in the altercation it is submitted on his behalf that in fact, his intervention was intended to protect Mr Mallett. Having studied the relevant footage during closing submissions, I have concluded that there is a reasonable possibility that this is the case. At two points it does appear that his purpose in becoming involved may have been to defuse the situation. I also note that unlike McCool (and McIntyre) Mr McCrory has not been charged with assault.

[132] The prosecution relies on Mr McCrory's parting comment to Reggie Yates when the team decided to leave - “I hope you don't miss any more camera opportunities”- alleged to be an attempt to persuade the camera crew to stay to

witness the shooting. Whilst it may of course be correct that McCrory knew what was about to happen, in my view that is purely speculative.

[133] Whilst I am satisfied that both Gallagher and McCrory were aware from the communications at Ballymagowan Gardens that masked individuals intended to carry out violent acts for the camera crew (although McCrory was not party to any telephone communications) the question is whether that knowledge along with:

- (i) their assertions of leadership within the community;
- (ii) expression of strong views supporting attacks on police or other “Crown Forces”;
- (iii) bringing the camera crew to the scene;
- (iv) facilitating information from the rioters to the camera crew about their violent intentions;
- (v) bad character and evidence of association; and
- (vi) failure to give evidence;

is sufficient to prove the charges.

[134] It is important to emphasise that neither Gallagher nor McCrory are alleged to have said or done anything explicitly to encourage or assist the rioters. There are no gestures or words of support and there is no evidence that their presence or the presence of the camera crew had any impact on the behaviour of others.

[135] The prosecution does not of course have to prove that any act or omission had a positive impact on anyone, and numbers often matter in cases of mob violence. However, in the absence of any specific acts of support, in essence the case against them is that they hold leadership positions within Saoradh, expressed justification for the violence, brought the camera crew to the scene where masked men were waiting to throw petrol bombs and stood with the camera crew as they filmed the violence, providing relevant commentary.

[136] McCrory, has a terrorist conviction and has been seen walking as part of a colour party in paramilitary dress. That is relevant to his motive in being present, but similar evidence is available in relation to others present, but not charged with any offence, such as Ashe Mellon.

[137] I turn now to the question of each defendant’s failure to give evidence. Whilst sufficient evidence has been proved to allow the case to proceed to this stage, taking the prosecution case at its height, that does not mean that an adverse inference from

silence is inevitable. Whilst the prosecution has asserted that a combination of all the circumstances requires an answer, I have found that much of the evidence relied on by the prosecution is either speculative or equally consistent with an innocent interpretation.

[138] In those circumstances, I do not consider that the strength of the case is such that it is proper to draw an adverse inference and I do not do so.

[139] In my view, having considered all of the evidence as a whole, I am not sure that either of these defendants intentionally encouraged or assisted the rioters. They may have intended to do so and in light of their hostile views towards the police they probably did intend to do so. But the evidence is insufficient to prove guilt of a criminal charge.

[140] I therefore find both defendants not guilty of all charges.

Joseph Barr

[141] Joseph Barr was introduced to the MTV team as chairman of Saoradh. In the Saoradh office, he lurks in the background, appearing to ensure that Gallagher and McCrory “stay on message.” Later, he is the person Gallagher turns to for permission to reveal the identity of the person whose house is being searched. He indicates with a shake of the head that the information should not be divulged. He is therefore in a more senior position.

[142] Barr arrives at the scene whilst the riot is already in full swing so it cannot be said that he played a role in instigating the violence. He is however, alleged to have played some role in the second round of petrol bombings. The evidence relied on is that he had a telephone call with Ashe Mellon, after which he moved off in the direction of the shops, where it is believed that the petrol bombs were stored and from where the attacks are alleged to have been launched. The second round of petrol bombs then commenced shortly afterwards.

[143] The core of the prosecution case is that Barr encouraged or assisted the rioters by:

- (i) his threatening and abusive behaviour towards Mr Mallett;
- (ii) comments attributed to him which supported the violent attacks on police; and
- (iii) his senior position within Saoradh.

[144] I accept that Barr was involved in a bullying show of intimidation designed to silence Mr Mallett. Whether or not he had already given up trying to intervene by the time Barr became involved is immaterial; the incident lasted seconds and Barr played a part in it. It is likely that, he and other like-minded persons tolerate no dissent,

deliberately misconstruing an absence of opposition within the community as evidence of support.

[145] That does not mean that the prosecution has proved guilt of riotous offences as a secondary offender in this case. All of the circumstances have to be considered.

[146] The prosecution case is that the hostile and threatening words directed at Mr Mallett and recorded by MTV audio, are attributable to Barr and that his behaviour sets him apart from others present, including other persons of interest. The footage of the incident shows a scuffle lasting seconds and in my view, due to the noise and the circumstances it is simply not possible to be sure which individual uttered the words.

[147] In relation to the behaviour seen on the footage, I am not convinced that it can be inferred that Barr was “assisting” the rioters by intimidating Mr Mallett. That may have been his intention, but it is likely that Barr would have behaved in the same way towards anyone who remonstrated with him about dissident activity in public.

[148] The prosecution also alleges that Barr can be heard saying “get into them!” and “hit him” followed by “fuck sake” when a petrol bomb appears to miss a police officer who briefly got out of the police vehicle. Those words are important because if they can be heard and reliably attributed, they amount to expressions of encouragement to the rioters.

[149] The prosecution accepts that those words are not easy to decipher and prefaces the submission with the caveat that they can “possibly” be attributed to Barr. Having indicated that the clarity of the recording was so poor that I could not make out the words, an attempt to enhance the quality was made with specialist headphones. Even using this audio equipment, I cannot be sure that these words can be heard and I am mindful of the dangers of cognitive bias since the words have been suggested by a party to the proceedings.

[150] Even if these words were said by Barr, the difficulty in making them out suggests they were said *sotto voce*, ie under his breath, rather than as an exhortation to the rioters.

[151] Whilst such language in such circumstances would clearly demonstrate an intense hostility towards police officers, it is less clear that they would evidence an intention to encourage others to act in a violent way.

[152] As in the case of Gallagher and McCrory, the evidence of bad character against Barr does not take the prosecution any further than the evidence already adduced through the MTV footage. Having considered all of the evidence as a whole, whilst there was a case to answer, I do not consider that it would be appropriate to draw an adverse inference from his failure to give evidence. The court has watched the footage

which is the core of the prosecution case and in my assessment the evidence falls short of that required to convict Barr of the offences

[153] I find him not guilty of the offences charged.

Kieran McCool

[154] In the no case ruling I ruled that whilst Mr McCool had a case to answer, the prosecution case against him was weaker than the cases against the other unmasked defendants because as well as an absence of any explicit words or gestures of encouragement, there is no evidence that he played any leadership role on the day. He is however clearly guilty of common assault on Mr Mallett.

[155] The extent of the telephone communications in which he was involved at Ballymagowan Gardens does indicate that he was closely associated with militant Republicans and that he played some role in the planning of the disorder. But, since there is no way of knowing what was discussed or by whom, the inferences that can be drawn against him specifically are limited.

[156] Much of the prosecution case is based simply on his presence during the riot with other defendants and persons of interest and that he remained present at the time of the shooting. Thereafter, in the early hours and later the following day he was in telephone contact with others, but again, there is no way of knowing what was discussed.

[157] There is no evidence whatsoever that he said or did anything to show encouragement or to provide assistance to the rioters. There is nothing to suggest that his presence had any impact on what occurred. Although, as already stated that is not a necessary proof, the absence of any such evidence poses evidential difficulties when I am considering issues of intent. In relation to the assault on Mr Mallett, as I have already stated in relation to Barr, in all likelihood this is the kind of behaviour meted out to anyone in this community who opposes dissident activity.

[158] I do not consider evidence of the direction in which he was looking or the persons who were standing close to him of any assistance in determining whether or not he had the requisite intent.

[159] The bad character evidence, whilst relevant to his motive in being present adds little to the evidence already adduced by the prosecution of shared hostility towards the police.

[160] In my view, whilst there was a case to answer, the strength of the prosecution case is such that I do not consider it would be appropriate to draw an adverse inference from silence, and I do not do so.

[161] Whilst it may well be the case that Mr McCool intended to offer support, simply by being present as a member of Saoradh, the evidence is insufficient to prove guilt to the criminal standard.

[162] I find him not guilty of the charges.

The masked group

[163] The masked group can be divided into three subgroups:

- (i) Those charged with murder (and possession of a firearm and ammunition) on 18 April 2019 (McIntyre, Cavanagh and Devine).
- (ii) Those charged with riotous offences on 18 April 2019 (McIntyre, Cavanagh, Devine, Gillen and Campbell).
- (iii) Those charged with riotous offences on 16 April 2019 (McIntyre, Campbell, Devine and Gillen).

Count 1 and Count 2 (Murder and possession of a firearm) on 18 April 2019 (McIntyre, Cavanagh and Devine)

[164] The prosecution must prove three matters so that I am sure that McIntyre, Cavanagh and Devine are guilty of murder as secondary offenders:

- (a) the requisite intent;
- (b) act(s) of encouragement or assistance; and
- (c) identification.

The requisite intent

[165] To establish the offence of murder as a perpetrator, the prosecution must prove that a defendant killed a person, without lawful excuse, with the intent to kill or cause grievous bodily harm. Since an intent to cause serious bodily injury and a resulting death is sufficient, the prosecution must therefore prove, so that I am sure, that each of these defendants intended to encourage or assist the deliberate infliction of serious bodily injury and/or intended that that should happen if necessary. If that is proved they will be guilty of murder as secondary offenders.

[166] The prosecution submit that it is an obvious inference that the gunman who fired the shots was aiming at police officers, in order to kill or seriously injure them.

[167] The defence submit that I could not be sure of that intent and cannot rule out the reasonable possibility that the shots were merely fired as an act of bravado and part of “putting on a show” for the MTV camera crew. The gun used was a low velocity 0.22 revolver which the defence contend was unlikely to be capable of penetrating an armoured vehicle.

[168] They also rely on evidence from the police officers who occupied the Landrovers that they did not fear for their safety because the vehicles are armoured and designed to withstand attack by petrol bomb and bullet.

[169] In response, the prosecution contends that the camera crew had left the scene by the time of Lyra’s death and there is no evidence upon which I could reject the obvious inference that the shots were fired with murderous intent.

[170] The prosecution relies on the fact that at least one police officer got out of a Landrover because someone (alleged to be Barr) shouted encouragement to the petrol bombers to hit him and expressed frustration that he missed. So, whatever his prospects of success, I am entitled to conclude that the gunman’s intention in firing aimed shots from a lethal weapon was to kill or to cause grievous bodily harm by:

- (a) either penetrating the body work or windows of the Landrovers, which may have already been damaged by petrol bombs; or
- (b) striking a police officer getting out of a Landrover or who was otherwise exposed.

[171] If I am not sure that the gunman had the requisite intent for murder, then McIntyre, Cavanagh and Devine cannot be guilty of murder either, as secondary offenders. Likewise, if I am not sure that the defendants intended to encourage or assist him to act with such intent then they cannot be guilty of murder.

[172] However, in either of those circumstances, it may be open to the court to convict of unlawful act manslaughter.

Conclusion on intent

[173] In my view, the obvious inference to draw from a gunman firing live rounds of ammunition at police officers is that he intended to kill or seriously injure them. There is no evidence to justify any other inference. Whether or not police officers felt safe within their vehicles has no bearing on the question of the gunman’s intent. There is no evidence as to the capacity of a 0.22 revolver and even if shots were unlikely to penetrate a Landrover in itself, that sheds no light on the gunman’s intention either.

[174] The fact that I have found as a fact that the scale of the riot is likely to have been orchestrated for the cameras does not weaken that inference. There could be no

greater show of strength than a lethal attack. Even if the cameras had left the scene by the time the shooting occurred, a fatal finale to the violent disorder would guarantee the oxygen of publicity.

[175] I am sure that the gunman had the requisite intent for murder. Under the legal principles of transferred malice, the fact that the intended target was police and not Lyra McKee has no effect on criminal liability. Lyra McKee was murdered.

[176] In those circumstances, it is not necessary to deal with the legal elements of manslaughter.

The alleged acts of intentional encouragement or assistance for murder (McIntyre, Cavanagh and Devine)

[177] All three defendants deny that they are the masked persons alleged to have accompanied the gunman to the position where he fired the shots. Furthermore, they challenge the sufficiency of the evidence to prove that those persons provided intentional encouragement or assistance to him.

[178] The prosecution sets out the alleged criminal acts from para [19] onwards of the addendum closing submissions dated 17 March 2026:

“[19] As to the intention of those accompanying the gunman, it is apparent from the footage that the shooting party walked with purpose towards the corner with the gunman openly holding a gun in his left hand. None of the others who accompanied him were armed, with petrol bombs (as before) or otherwise. Their purpose was, the prosecution submit, obvious; there is no sensible alternative. It was that the gunman fired the weapon at the police to kill or cause serious injury. Those accompanying him intentionally encouraged him and were there to assist, which they did by looking for cartridges on the ground and succeeding in picking up the misfired rounds.

[20] Although the defendants charged with murder suggest [that the purpose] cannot have been a clean-up operation as the misfired rounds could not have been anticipated, they would have anticipated spent cases automatically being ejected from the gun. There is, we submit, no sensible doubt, that they were there with the gunman intentionally encouraging him and to assist him as required.

[21] While McIntyre suggests that it cannot be proven that [the person alleged to be him] was picking up misfired rounds, the prosecution ask rhetorically, what else was he picking up from the ground? Four spent cases (from the four successful shots) were recovered by police, two of which were located off the footpath, on the road. They were small, at 0.22 calibre and appear to have been missed by [the three individuals] who it is plain were looking to remove the evidence.

[22] Although [the person alleged to be Cavanagh] did not succeed in picking up the cartridges the court can properly infer that he was part of the shooting party. He arrived with the others, including the gunman and left immediately going to where the gunman had stood to assist in the retrieval of the cartridges. No reasonable case could be made that he attended at the corner coincidentally, at the time of the shooting.

[23] He has not now provided any explanation for his conduct, for instance in turning to face the crowd on two occasions, which the prosecution contends “as if stewarding” them in an “official capacity.”

Conclusion on intentional acts of encouragement or assistance

[179] Whilst it is not possible to see with any degree of clarity what the two figures, alleged to be McIntyre and Devine, were doing when they both stooped down after the shots were fired, I accept that the only reasonable inference to be drawn from the absence of misfired rounds on subsequent examination, is that they were removing them from the scene.

[180] It therefore follows that the reason they made their way to the corner, close to the gunman was to offer any assistance needed. There is certainly no evidence to suggest any other purpose. The gunman clearly had the gun visible in his hand so there can be no mistaking his intention.

[181] The evidence against the person alleged to be Cavanagh is less clear. The allegations are three-fold: firstly, that he accompanied the gunman to the scene of the shooting, secondly, that he acted in a way that could be construed as “stewarding”, or “policing” the crowd and, thirdly, that he is observed about to stoop down to pick up anything left behind, but the job had already been done by the others.

[182] The evidence that the person alleged to be Cavanagh “accompanied” the gunman to the junction is based on poor quality footage which is of very short

duration and there are people milling about the area. Whilst he may have “accompanied” the gunman, what can be inferred from the footage is limited.

[183] There is no suggestion that this person communicated or gestured to anyone in the crowd. The most that can be said is that he turned to face those watching the disorder. The prosecution asks rhetorically – what else was this person doing or intending to do? It is for the prosecution to prove each element of the offence as a secondary party. The defence is under no obligation to disprove a prosecution theory or allegation. Whilst the prosecution submits that I should draw an adverse inference from the failure to provide an explanation, I do not accept, in the absence of any physical or verbal action at all, that it would be proper to do so.

[184] Thirdly, it is submitted that this person was “*about to*” stoop down, allegedly for the purpose of removing any incriminating evidence, but it wasn’t necessary, because the others had already done so. This submission is based on a very short segment of poor quality footage. It is accepted that the person does not *actually* bend down, unlike the others. Whilst the prosecution contention may be correct indeed, probably is correct, in my view the evidence is not sufficient to enable me to be sure that it is correct.

[185] Since I am not satisfied beyond a reasonable doubt that intentional acts of encouragement or assistance to the gunman have been proved, it is not necessary for me to determine whether the person has been correctly identified as Cavanagh.

[186] I find him not guilty of murder.

[187] Cavanagh does, however, face other charges of riotous behaviour which I will consider in due course.

[188] Since I am satisfied that the other persons did pick up the misfired rounds and thereby intentionally assisted the gunman, as well as accompanying him to the scene, I must now consider whether they have been correctly identified as Paul McIntyre and Jordan Devine.

The identification evidence against Paul McIntyre

[189] The prosecution concedes that no positive identification of Paul McIntyre is possible from the poor quality of the mobile phone footage of the shooting. MTV had left the scene by this stage. The defence submit that this concession is inevitable because the primary identification evidence is based on Mr Wooller’s imagery analysis and having viewed the shooting footage for two hours on 19 July 2024, two hours on 25 July and eight hours on 26 July, his working notes reveal the following observations in respect of Person D, alleged to be McIntyre:

“- dark trousers with no obvious markings.

- dark hooded jacket. Hood may be up initially but is lowered after person D passes behind others and camera stabilises.
- Head remains covered poss by a cap and/or a balaclava.

There is a small highlight (badge?) on the rear of the right shoulder.

- dark shoes with light sole wedge.”

[190] However, the prosecution submits that identification is proved by the process of imagery analysis undertaken by Mr Wooller: tracing features as they emerge with greater clarity from increasingly better quality images. They are then compared with features seen on reference footage where Mr McIntyre is unmasked and personal characteristics and items habitually worn by him can clearly be seen. This evidence is said to be supported by other evidential strands.

[191] Mr Wooller’s evidence also forms the basis of the riotous offences charged against McIntyre on both 16 and 18 April 2019 and so an evaluation of his evidence overall is required. However, it is important to consider the murder charge separately. Indeed, the evidence in respect of each charge must be considered separately; it is not a job lot.

[192] His expertise, based on years of experience analysing images, involves the ability to differentiate a genuine feature from an artefact, the effect of different types of light on the appearance of colour, what may produce the appearance of a flare and how to bring clarity to an image by adjusting levels of light and darkness (see para [281] of the no case ruling). This is optimisation, not enhancement which in itself can cause distortion.

[193] Mr Wooller identified 19 persons from his initial viewing of the poorest quality footage (in line with best practice) who were either masked or seen to be rioting. He was able to distinguish them from each other by height build and clothing. He identified 17 persons from the Pangaia footage of the rioting on 16 April and distinguished them in the same way.

[194] In relation to Paul McIntyre, the prosecution sets out its case in respect of all of the counts he faces, and it is convenient to set it out, although I shall consider each count separately:

- In his first report, although 19 persons were identified, there is no other candidate for Person D other than Paul McIntyre.

- On 18 April 2019, the masked man, identified by Mr Wooller as Person D, was present at all of the significant events. He wore a bracelet and four items of clothing matching that owned or previously worn by McIntyre, including his adidas trainers, his O'Neill's tracksuit bottoms, his Nike cap and a faded red Superdry T-shirt. Images Z1, Z2, Z3 and Z4 taken from the MTV footage in the Saoradh Office (Appendix 4 p28-31), and similar images from footage of McIntyre putting up flags on Inniscarn Road on 18 April - Image Z12 (Appendix 4 p32) and a CCTV image showing McIntyre wearing the red T-shirt after the meeting at Junior McDaid House on 18 April, before the civil disorder.
- The prosecution relies on the red T-shirt worn by McIntyre at the meeting earlier on 18 April at the Saoradh office, around 7-7:30 pm. In one image, a portion of a red garment can be seen poking out from under the jacket of Person D. The Superdry T-shirt was recovered during a search of his home. The prosecution contends that the T-shirt was not disposed of because it was not thought likely to have been seen under the coat during the riot on 18 April.
- His bracelet is worn habitually, as is apparent from the unmasked images and was recovered from his home. Person D is said to have a feature on his right wrist consistent with a metal bracelet. The prosecution relies on images X2 (appendix 4 p3); Person D8 (Appendix 4 p5); Person D9; Person D10 (Appendix 4, p7-8); Person D12 (Appendix 4, p10).
- On both 16 and 18 April, the masked man alleged to be McIntyre, wore a dark Nike cap and the adidas trainers with a "distinctive" lace adornment. Similar footwear is seen worn by McIntyre on 14 April at band rehearsal. It is also seen on 16 April, in the Banner Easter footage and in the Saoradh Canvas Easter footage on 16 April (see Pangaia footage).
- The prosecution place great store on the trainers McIntyre wore on each occasion he was filmed in those days leading up to 18 April. These are said to be "visually identical" (later amended to "consistent") with those worn by the masked man during the riots on 16 and 18 April. They were not recovered when police searched his house. His Nike cap, habitually worn, and his O'Neill tracksuit bottoms were not recovered either. Missing items are an important strand in the prosecution case, alleged to show forensic awareness.
- McIntyre has a visible tattoo on his arm and back of his left hand clearly seen in unmasked images (image Z2 - appendix 4 p29). This was observed by Mr Wooller *after* his comparison between the questioned footage and the reference footage had been conducted and was first noted by Mr Cass, his peer reviewer. He then said:

“a dark area wholly consistent with the shape and extent of Paul McIntyre’s tattoo can be seen on the back of PP1 (17)’s left hand in a number of the PP1 clips. I have created two further images, X10 and X11 (Appendix 4, p27) included below which show this feature.”

- He added that the footage associated with images X10 and X11 shows that when this person’s hand moves slightly “the same pattern of dark area on the back of the hand existed in different viewings and different angles”, meaning that “this was not a shadow.”

[195] The prosecution also relies on image PP/1(17) of the tattoo (Appendix 4 p26):

- On 16 April 2019, the masked man, designated PP/1(17) by Mr Wooller, had a tattoo and wore three items of clothing matching that owned or previously worn by Intyre, including a padded jacket with an emblem on the sleeve and stitching closer on the shoulders, his Nike cap and his adidas trainers with the lace adornment. A similar blue jacket was seized from his home from the stair rail as was his red Superdry T-shirt and bracelet. The prosecution points out similarities in the stitching on the jacket with the images from 16 April.
- McIntyre was seen wearing the same /similar blue jacket earlier on 16 April when he and Jordan Devine were erecting a banner at the bottom of Chamberlain Street: (image Z 47 - Appendix 4 p35). The letters PAUL were seen tattooed on his fingers. The timing of these images is approximately two hours before the disorder.
- McIntyre wore the Nike cap on multiple occasions. He habitually wore his bracelet. His tattoo is permanent.
- When Mr Wooller viewed the Pangaia footage (16 April), he instantly referred to PP1(17) as Person D (from 18 April). He bore an obvious similarity in general shape, in addition to the shoes and cap. He was similarly shorter than the majority of other people in the same clips (though taller than Person C - alleged to be James Devine, brother of Jordan and not a defendant).
- The difference in height between Person D and Person L is similar to that between McIntyre and Gillen.
- Because of the connection between the rioting on both 16 and 18 April 2019 the prosecution submits that the evidence implicating the defendants should be considered as a whole. Two of the masked men on 18 April confirmed involvement on 16 April. The connection between McIntyre and 16 April; that between 16 and 18 April; and that between McIntyre and 18 April significantly strengthens the proposition that the person on both occasions was McIntyre.

- If it was the same masked person on both occasions, in total he had a tattoo, a bracelet and five items of clothing in common with McIntyre.
- Mr Wooller attributed the highest level of support available, ie that it was “much more probable” that both persons in footage from 16 April and 18 April were McIntyre. Part of that evaluation was based on an assumption that it was likely that largely, the same persons were involved on both occasions. I rejected that assumption in the no case ruling where I explained my reasons from para [287] onwards:

“[287] In explaining his conclusions [Mr Wooller] was candid that he had partly based his identification of Mr Devine, Mr Gillen, Mr McIntyre and Mr Campbell as masked individuals on both the 16 and 18 April on an assumption that the same broad group of individuals is likely to have been involved. There is no scientific basis for this, but Mr Wooller considered that it might be a commonsense inference that the court might draw.

[288] I accept that on 18 April, when Reggie Yates first met the masked men at the end of Creggan shops, he asked whether they were responsible for throwing the petrol bombs two nights before, two of them (alleged to be Jordan Devine and Christopher Gillen) nodded their agreement. So, clearly there is evidence of a connection. However, there are dangers in relying on an assumption to support the identification of wholly disguised persons, and I do not do so. That does not mean that the court cannot consider the identification evidence of persons present on both 16 and 18 April and where appropriate, treat identifying features as providing increased support that they are one and the same.

[289] I note however that insofar as Mr Wooller did purport to express a view on the likelihood of the same masked individual being present on both 16 and 18 April, his opinion was no higher than:

- (i) The individual involved in the disorder on both dates *could be* the same - it was *possible* that they were one and the same (taking account of clothing and footwear in addition to personal characteristics including height and build).

- (ii) Assuming that the court is prepared to draw a likely link between both groups (which it is not), his opinion increased to “*likely to be one and the same person.*”

[196] In view of my ruling, the prosecution submission at this stage of the trial is incorrect. However, I accept that evidence which may identify McIntyre on 16 April and evidence which may support his identification on 18 April is mutually supportive. The prosecution contends that even without the assumption of a link, the possibility of another owning the very same items and wearing them in combination is so remote as can be safely discounted. The evidence is said to be overwhelming. The prosecution case continues:

- (i) The masked man on 16 and 18 April had very short or shaven hair underneath his cap. He was, in each instance, of a similar height and build to McIntyre who was a relatively distinctive shape, particularly amongst the others involved.
- (ii) Person L (alleged to be Gillen) put his hand up to hide Person D’s face from the camera while McCrory stepped across in front of the camera (at 9:35pm) suggesting, according to the prosecution that he might be recognised on camera as the person filmed earlier that day.

The connection between the disorder and the shooting

[197] The prosecution relies on four images of the shooting relating to McIntyre, referred to as D1-D4. Mr Wooller’s analysis and the images themselves are said to reveal the following features in common between Person D1-D4 at the time of the shooting and Person D during the disorder:

- (a) general similarity in the overall appearance;
- (b) the person in the image D2 had a lowered hood with a bulge between the head and shoulders (similar in appearance to Person D15);
- (c) a light tone highlight on the right shoulder: also seen in image D2;
- (d) dark shoes with light soles also seen in image of D2;
- (e) the peak of a cap: also seen in image D3 and D4;
- (f) a highlight in the same location and approximate size as the O’Neill’s logo: also seen in image Y21; and
- (g) a highlight from the area of the cap consistent with a reflection from the front left side of the cap seen in Y21.

[198] The highlight on the right shoulder, the highlight in the same place as the O'Neill's logo on the tracksuit bottoms and that on the cap were all real features; not artefacts. Other images in the minutes leading up to the shooting showed highlights in common with McIntyre's clothing, including down the left thigh and on the left breast, as well as similarity in all the other features. Mr Wooller said:

"This is quite apparently not good quality footage. Features will be distorted but I would suggest the appearance of the shoes is consistent with what we saw before. There is a highlight in the same location, same approximate size as the O'Neill's logo and there is a highlight from the area of the cap which, allowing for the poor quality of the imagery and the image compression which is present, the way this presents especially in the moving footage I am suggesting is consistent with a reflection from the front left side of the cap."

[199] Mr Wooller was asked about the highlight on the cap looking larger than the Nike logo. He said:

"There will be a certain amount of flair [sic] coming from a reflection of that nature and the manner in which these recordings are saved uses a significant amount of digital image compression which has a tendency to distort features like that but the way that that feature moves with that individual, stays in the same place relative to that individual suggests there must be something there that is creating that intensity of reflection and with that distance from the camera and a notable degree of digital image compression, I am certainly not surprised to see it looking larger than it actually is."

[200] In cross-examination, he said:

"... I've suggested that yes, in that image there is a highlight consistent with something we have seen later [in the analysis]."

[201] He continued:

"The size of it may be considered to be an artefact, the fact that there is a highlight there it must emanate from something."

[202] In re-examination, Mr Wooller said:

“So, starting from there [EM/7, at 14secs], as that individual is - is standing up from the crouch, there is a highlight appears in the area of his head. And just if we follow that through. So the movement of that highlight with that person’s head suggests to me that that is a feature, there is something there which is causing that highlight. The fact that it is large is partly a product of the fact that we - we - we have quite - quite low resolution here, and the way in which the digital image deals with a bright source creates a degree of flare within the electronic creation of that image, and so the fact that there is something there that is large could emanate in a small - smaller but very reflective object, and those two features, or those two observations together are why I’ve therefore, said that this is consistent with the later observations.”

[203] He then further explained what he meant by ‘flare’:

“That is then sometimes exacerbated within digital imagery because if a very, very small amount of the light strays into an adjacent pixel and is very bright, it can sometimes cause the entire pixel to be rendered as white and therefore make the appearance larger.” Transcript 18 June 2025, p14-15 Transcript 25 June 2025, p33-34.

[204] Of his conclusion that the highlight must emanate from something, he explained that he meant:

“Something must be creating the light source... Something must be there for that highlight to be present ... On the garment that we’re looking at. Because of the way with which it moves as the person moves, but its size could be considered to be an artefact.”

[205] Still within the footage EM7 (Image Y_21, Appendix p23), he considered the highlight in the same area and of the approximate size of the O’Neill’s logo. He was directed, in cross-examination, to a light-toned area down Person B’s leg which was reflection from light from the burning vehicle

[206] He said:

“I believe in that image at Y21, the area that I’ve ringed has more intensity and is slightly more distinct than a lot of the

other reflections that we see from the light of the burning Audi and is more consistent with there being something there than not, and therefore I believe that is a highlight consistent with there being something on that leg, so that's the image that I've - that I've used. As we've discussed before, there are many instances within all of this footage where features are not visible because they are not at the correct angle and not suitably illuminated. At that point, it's my opinion that that is a highlight over and above just being reflection from the light of the burning vehicle."

[207] He later continued:

"I've looked at the way the light from the burning vehicle has fallen on both of those individuals and how the relative intensities change as they move, and there are some features there which are illumination from the burning vehicle and some which I believe are not."

[208] In re-examination, he said:

"Well, each of these people in this area, the side of them that is facing the burning vehicle is - is brighter, there is one could call it a highlight, it's not - it's not right up in the - in the peak highlights from within this image but it's - it's certainly creating a lighter impression. But if we move it through to the point that, Y21 is taken from ..."

[209] He continued:

"...starting there you can see an area at the top of Person D's left thigh, which is lighter again than other areas that are being illuminated by the fire ... On other people's legs ... In general, at that point there, you can see that the right hand side of Person B, closest to the fire is brighter than the legs behind, or the legs that are further away from the fire ... Person B, with his back to us on the right, closest to the fire, Person D on the left, furthest away from the fire. The majority of - of his legs at that point darker than those of Person B, except for this area on the thigh, which also moves with the thigh through the few frames that we have available to us here ... And then we get motion blur and we lose it. But just for that - at that point, further away from the fire than Person B and yet there's an area which is brighter than that on Person B's legs, and only in the upper

half of the thigh, my opinion is that's consistent with the logo seen later."

[210] There was no alternative candidate for Persons D1 to D4. Only Persons B, I and N had a large logo on their left thigh. Each of them was otherwise obviously different to Person D.

[211] There were no new actors at the time of the shooting, save for the gunman.

[212] All involved at the outset (Persons B, C, D, F and L) remained involved at the time of the shooting, save when Person L, without his coat remained at the shops. Person G who joined later remained involved at the shooting. *(I pause to observe that the significance of the fact that Person L did not wear his coat at this stage is that the gunman was wearing a coat which appeared too big for him and is alleged to have been the same coat worn by Person L earlier).*

[213] If Person D1 to D4 was new on the scene, the prosecution submits that it was a remarkable coincidence that he shared a number of clothing and physical features with Person D from earlier in the disorder. If it was not Person D, he was unaccounted for elsewhere.

[214] The third round of petrol bombs began at 22:58:40 hrs just before the shooting. The prosecution relies on Mr Wooller's identification of Person B picking up the hoax bomb at 22:59:34 hrs (count 11 perpetrating a bomb hoax). The first shot was fired at 23:02:52. That identification is also based on other imagery from the Press Association photographs (Y24 and Y25). Mr Wooller described what can be seen from Y24:

"Primarily the longitudinal highlight down the left thigh and the overall location and, at this distance, with a slightly soft focus, not inconsistent. He said Y25 shows a highlight on the left breast and a highlight down the outside of the left thigh."

[215] In relation to the Audi being set on fire (count 13 arson), Person B is said to be identified from Y23, which he acknowledges is of lesser quality. He relies on:

"Primarily, the highlight down the outside of the left thigh and similarity in all the other features, the overall appearance."

[216] It is submitted that Person D was present at all the key events, was evidently the most senior of the masked men and it is "inconceivable" that he would have left before the shooting.

Other supporting evidence

[217] The prosecution relies on cell site evidence and telephone evidence from Mr McIntyre's phone to support the imagery analysis evidence. Christopher Gillen phoned McIntyre four times (getting through on three occasions) in the minutes before and after his arrival in his car at Ballymagowan Gardens, at the time of the phone activity when the plan to orchestrate the riot was hatched.

[218] It is submitted that the cell site evidence places McIntyre's phone between 20:05hrs and 21:43hrs in an area which included the crossroads and other areas of the Creggan. His phone was then "abruptly removed from the network at 21:43hrs most likely by being put on airplane mode." This was just before the first round of petrol bombing.

[219] The phone only rejoined the network, "ie. was switched back from airplane mode" at 23:19hrs, approximately 15 minutes after the shooting. He called Gillen at 23:19hrs who had not been with the others at that time.

[220] The masked and unmasked men also clearly knew each other and were comfortable with each other's presence. They are alleged to be associates of each other and of the unmasked defendants. In both the Pangaia and MTV footage, McIntyre is said to be the senior person organising events - including the band practice. It is submitted that Person D is present at all the other key events and it is inconceivable that he would have left the scene before it finished - with the murder of Lyra McKee. It is the prosecution case that four of the five masked defendants were in the Saoradh officer together earlier on 18 April, along with James Devine (brother of Jordan) who was likely one of the masked men, although not a defendant.

[221] McIntyre is said to be particularly closely associated with Gillen, the other older member of the group of masked men. They interacted closely during the disorder. Gillen was the first person to be called by McIntyre "after he switched his phone back on." He was with him the next day in the car.

[222] The prosecution relies on the bad character evidence admitted, specifically, two convictions for rioting showing propensity and also McIntyre's support for violent Irish republicanism and hostility towards the police.

[223] The prosecution also relies on McIntyre's failure to give evidence and submits that an adverse inference should be drawn in light of the overwhelming identification evidence that he was involved in the offences on both 16 and 18 April.

The defence case on behalf of Mr McIntyre

[224] The defence submit that the significant limitation of the identification evidence is that it is based on imagery analysis of clothing, footwear, headwear, a metal bracelet

and tattoo, which is inherently weak. There is no witness who can identify Mr McIntyre as a masked man, despite around 600 officers being shown the images, including those from District Support Unit (DSU) who specialised in intelligence gathering of dissident Republicans. Only one officer, Officer A, purported to do so and I excluded his evidence on the grounds that it was unreliable (see paras [82]-[115] and [149]-[254] of the no case ruling).

[225] In earlier images of the rioting, the person alleged to be McIntyre is described as wearing a dark toned hooded coat with a small highlight in the rear of the right shoulder and on the left breast in which some of the clips show this to include the word CAT. Mr Wooller accepted that dark toned included black, dark grey, navy blue, dark green or a mixture of black and blue in combination.

[226] At the time of his original analysis of the shooting footage, these highlights on the coat could not be seen by Mr Wooller but after looking at the high quality commercial reference footage and then back at the shooting footage, he purported to be able to see traces of them, along with additional detail on the face covering, the trousers and the footwear.

[227] In particular, Mr Wooller did not see any highlight indicating metal jewellery in the shooting footage, consistent with the bracelet McIntyre was alleged to be wearing during the riot, which he habitually wore and which was seized from his home.

[228] Nor did he see any fragment of a red garment, underneath Person D's coat, alleged to be the red Superdry T-shirt worn earlier in the day and which is said to be poking out of the jacket in one image of the rioting.

[229] Since these features, or the details of same were only noted after seeing the better quality MTV footage, and then returning to the shooting footage, Mr Wooller candidly accepted the possibility of confirmation bias.

[230] The limitations of the shooting footage are clear. No detailed features can be seen either of the clothing or the face of the masked man. There is no suggestion that hair or hairline can be seen which could be used as the basis of a comparison. It is only by tracing back through the better footage and then looking back at the shooting images that any assessment of features that may have been present, can be made.

[231] The defence submit that the court could not be sure that the footwear of the person in the shooting footage is in fact a pair of blue Adidas trainers or that he is wearing a pair of black O'Neill's tracksuit bottoms, a Nike cap or a black CAT coat in combination. None of these details are actually visible, even to Mr Wooller, from this footage alone.

[232] In particular, there is no evidence that Mr McIntyre has ever worn a coat with a CAT logo, despite a trawl through police body worn footage of stop and searches and the footage recorded by Pangaia and MTV when McIntyre is unmasked.

[233] Mr Wooller has always accepted that he is not an expert in clothing and that means that the examples of similar clothing are just that - it cannot be said that they are a match or the same items. In relation to footwear the defence provided a bundle of possible items of footwear demonstrating the array of options and colourways of trainers which to a lay person, appear to be similar or the same but have, in fact distinctive features.

[234] Mr Wooller also accepted that he is not an expert in height analysis. He referred to differences between individuals, only when they were obvious and, indeed, would have been obvious to any lay person. In relation to Mr McIntyre, he recorded nothing of note in relation to height from his original analysis of the shooting footage.

[235] In relation to the suggestion that since the person alleged to be Mr McIntyre was present at all of the other main events i.e. three rounds of petrol bombing the burning of the tipper truck et cetera, it is highly unlikely that he would have left before the last event, which was the shooting event, the defence submit this is pure speculation. In the absence of continuous footage, I accept that this is not a proper inference to draw.

[236] In relation to the rioting on 16 April 2019, two days earlier the person alleged to be Mr McIntyre is said to be wearing a dark toned puffa jacket. No definitive colour was identified, and it is again noted that dark toned can include black, dark grey, navy blue, dark green or a mixture of black and blue in combination.

[237] A blue puffa jacket was seized from Mr McIntyre's home and is alleged to be that worn on 16 April. It was produced in court and although there were clear similarities in colour, shape and stitching, I accept there are white paint stains on the left arm and left torso area of the jacket and a rip on the right elbow. These are not features noted by Mr Wooller in his analysis of the images.

[238] The defence point out that there are two possible conclusions, neither of which is more likely than the other, either:

- (i) the paint and tear were present on the image of the coat but not seen by Mr Wooller (which indicates the weakness of the evidence); or
- (ii) it is a different coat in the image, and the masked person is not Mr McIntyre.

[239] In relation to the footwear, the extent of Mr Wooller's evidence was that the shoes worn on 16 and 18 April could be the same. He accepted that he could not say they were the same.

[240] There is evidence that Mr McIntyre wears glasses and a hearing aid although it is apparent from the reference footage that he does not always wear them. Nevertheless, the defence rely on Mr Wooller's failure to note the presence or absence of these features in images as an important omission. He said that at some point, which he could not recall, he had noted the hearing aid in the reference footage but had not re-checked the questioned imagery from either the 16 or 18 April.

[241] In relation to glasses, Mr Wooller said that he had observed that in one image the man, alleged to be McIntyre on 16 April may have been wearing glasses, but, having looked at other images, it was unclear and so, he had not noted it. He accepted that he had not noted that the person standing directly in front of the camera in a particular image on 18 April, was not wearing glasses. He agreed that this could be the result of expectation bias – where a hypothesis is tested by looking for confirming evidence rather than for potentially conflicting evidence.

[242] In the reference footage Mr Wooller agreed that he had observed Mr McIntyre with the letters forming the name "PAUL" tattooed on his fingers, but this is not noted in any of the working notes or the reports. He accepted that the question of the PAUL tattoo was important, because it was not a feature that he was able to observe on the imagery of 16 April. It was suggested to Mr Wooller that this could be exculpatory evidence, but he said the nighttime footage from 16 April was simply not of sufficient quality to allow that level of detail to be seen. He did concede that a note ought to have been made in his report.

[243] In relation to the tattoo on Mr McIntyre's hand, Mr Wooller said that he had observed a dark area, but he had not made a note of it. When it was peer reviewed by Mr Cass, he had described the mark as "something" showing on the hand, "consistent with tattoo or similar." In any event, Mr Wooller accepted that all that could be said was that there was "a dark area consistent with the shape and extent of the tattoo seen in the reference footage."

The alleged supporting evidence

[244] The defence refute the prosecution submission, based on the evidence of Mr Paul Hope, a digital forensics expert, that:

"Mr McIntyre's phone "was abruptly removed from the network at 21:43hrs which was most likely done by being put on aeroplane mode. This was just before the first round of petrol bombing.

The phone only rejoined the network, "ie. was switched back from airplane mode" at 23:19hrs, approximately 15 minutes

after the shooting. He called Gillen at 2319hrs who had not been with the others at that time.”

[245] A careful reading of Mr Hope’s evidence was that this was *one possible explanation* but it was equally possible that the phone went out of the area of network coverage during that period. In particular, if the phone was being purposely switched off, Mr Hope expected there would have been a detached notification and there was none. His evidence was:

“The fact that there isn’t a detached notification would indicate that it has potentially been abruptly removed from the network which would be, for example, going out of network coverage, removing the sim card, placing the phone into aeroplane mode.”

[246] He added that there were “countless scenarios which would result in the phone being removed from the network” and that “he couldn’t list all of them.”

[247] In short, the defence submit that the evidence does not justify the prosecution submission that Mr Hope’s evidence points to only one likely conclusion, that the phone was abruptly removed from the network by deliberately being placed on aeroplane mode.

[248] The defence also note the limitations of the cell site evidence. It places McIntyre’s phone between 2005hrs and 2143hrs in an area which *included* the crossroads and other areas of the Creggan. The phone could be located anywhere within the coverage area of the cell ID. Cell site analysis simply enables a decision to be taken whether a phone could have been at a significant location or not.

[249] During that period the phone connected to one of four cell IDs:

- (i) Cell ID 129382264, ‘2264 Londonderry Creggan 190’;
- (ii) SAC 21497, ‘21497 Londonderry Creggan 190’;
- (iii) Cell ID 129382254, ‘2254 Londonderry Creggan 70’; and
- (iv) Cell ID 26366, ‘26366 Londonderry Rosemount 210.’

[250] Not all of these cell IDs covered the junction of Central Drive, Fanad Drive or the Creggan shops, and in fact cell ID (i), Londonderry Creggan 190, is consistent with coverage within Ballymagowan Gardens, which is his home address. His phone connects regularly to this cell between 20:17:50 – 21:33:58.

[251] The defence rely on the limitations of the cell site evidence and the possibility of other explanations for the phone disconnecting from the network, particularly as there is evidence of the phone providing a detached notification (ie had disconnected from the network) on other occasions later that night and the next day.

[252] While the crown has submitted that it is highly unlikely that a phone in a city would be out of coverage for a period of one and a half hours, the court has heard no evidence to that effect.

[253] The defence also challenge the prosecution submission that a phone call between Mr McIntyre and Mr Gillen at 23:19hrs, after the shooting, is significant. The content of the conversation is unknown and since it is equally possible that the call was the result of the tragic news having spread, there is no basis for drawing an adverse inference against either McIntyre or Gillen.

[254] The defence point out that descriptions of the height of the masked man who hijacked the tipper truck from the home of Patrick Knightly and Catherine McEleney and set it on fire at the junction, are inconsistent with that person being Paul McIntyre.

[255] Mr McIntyre's known height is 5ft 3inches. Catherine McEleney, described the person, alleged to be McIntyre as approximately 5ft 10, "average height and smaller than Patrick who is around 6ft." Her partner, Patrick Knightly described the same individual who said, "IRA give us the keys" as "older and stockier" and that he "was the shorter of them all" - they were all between 5ft 8 and 5ft 10."

[256] Another ciphered witness - S40 whose statement was read to the court, referred to the person alleged to be McIntyre as being approximately 5ft 10inches. S40 described being "focused" on this one individual when the tipper truck arrived at the junction stating, "at this time I would have been standing at the wall of number six of Central Drive at the edge of the crowd that had gathered" and during the disorder was about "four car lengths away from the burning vehicles."

Factors inconsistent with guilt

[257] The defence submit that not only do the aforementioned factors weaken the prosecution case, but some of them point away from guilt, which requires very careful consideration in a circumstantial case:

- (i) the CAT coat said to be worn by the individual at the time of the shooting has never been seen at any time on Paul McIntyre despite innumerable police sitings stop and searches;
- (ii) despite the circulation of the imagery to over 600 police officers in the North West area, including those in the District Support Unit who had a specialist intelligence gathering role relating to dissident Republicans, only one police

officer, officer A, purported to identify Mr McIntyre as the masked man on the night of 18 April 2019 and his evidence was excluded on the grounds of unreliability; and

- (iii) The clear discrepancy between Mr McIntyre's height and the descriptions of the male described by the three civilian witnesses re the hijacking of the tipper truck.

Conclusion

[258] At para [427] of the no case ruling, I summarised the issues in relation to the imagery analysis evidence in this way:

“In detailed submissions, the defence have highlighted the specific weaknesses in the identification evidence, Mr Wooller's acceptance that cognitive bias cannot be excluded from the analysis, areas of dissimilarity that were not highlighted and errors corrected by his peer reviewer Mr Cass. In particular, when asked by the prosecution to provide further clarification, Mr Wooller accepted that his second report in which he was able to identify additional features could have been influenced by his full knowledge of the images at that stage.”

[259] Having identified the relevant issues, I accepted that the weight to be attached to Mr Wooller's evidence was a matter for this stage of the trial. In view of the weaknesses that have emerged from cross examination, it is necessary to consider and evaluate the identification evidence as a whole, carefully weighing the weaknesses as well as the strength, along with any evidence said to support it.

[260] Since this is a circumstantial case, the question I have to consider is what is the fair inference to be drawn from all the circumstances before me. There may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of.

Count 1 (murder) and Count 2 (possession of a weapon and ammunition)

[261] The evidence relating to each charge must be considered separately. However, the evidence in respect of count 1 and count 2 is the same and so I deal with those counts together.

[262] The question is whether I am sure, from the evidence adduced by the prosecution, that Paul McIntyre has been correctly identified as one of the masked

persons who intentionally encouraged or assisted the gunman. If so, then he is guilty of murder and possession of a weapon and ammunition as a secondary offender.

[263] The identification evidence against those charged with murder is the mobile phone footage. The MTV camera crew had left by this stage. It is acknowledged that it is of poor quality and insufficient on its own to identify any defendant.

[264] The question is whether I can be sure of Mr McIntyre's identification from Mr Wooller's evidence and the process of imagery analysis. That evidence has to be considered in the context of the other strands of circumstantial evidence, and evaluated as a whole, but the strength of the imagery analysis is key to the question of guilt.

[265] Significant weaknesses have been exposed by the defence both in terms of methodology and the limitations of the imagery analysis generally. In relation to the images of the shooting, Mr Wooller's evidence amounts to the following:

- (i) Person D appears to be wearing shoes that are "consistent" with those worn earlier.
- (ii) A highlight on Person D's trousers appears in the same location, and to be of the same size as the O' Neill's logo seen in earlier images.
- (iii) A highlight on the cap "suggests" that it is consistent with a reflection on the front left side of the cap seen earlier.

[266] Mr Wooller's evidence is that although no detailed features from the shooting footage can be seen, it is possible to see the emergence of features in the better quality images. By looking back at the shooting footage again, his analysis of the images is that in fact, certain features are present. This has to be seen in the context that there is an acknowledged risk of confirmation bias inherent in this methodology. It is of course a significantly better approach than looking at the better quality footage first, which is not recommended.

[267] The potential risks of cognitive bias do not prevent a court relying on evidence, because it is the overall strength of the evidence that counts. But it is important to be aware of the dangers when evaluating it. In some cases, where there is other compelling evidence pointing towards guilt, potential risks may not be of much import. In this case, where the prosecution case essentially depends on imagery analysis evidence, I consider that I should exercise particular caution.

[268] The reality is that the quality of the mobile phone footage is extremely poor. The prosecution essentially, asks the court to "take a leap of faith" and accept Mr Wooller's assessment that features that in truth cannot be seen on the shooting footage, are in fact there. Broad shapes or distorted highlights in consistent places is

not reliable identification evidence. Even Mr Wooller's own opinion acknowledges the possibility of error. Insofar as I, as the tribunal of fact, can make any judgment for myself, I cannot make an identification. In reaching that conclusion, I remind myself of the *Turnbull* guidelines and the reasons for clear warnings in identification cases.

[269] It is possible for poor quality identification evidence to be strengthened by supporting evidence. In my view, the cell site evidence relied on can only prove that Mr McIntyre's phone *could have* been in the general area of the disorder. That means that the evidence is not inconsistent with his presence in the general area of the disorder. It cannot pinpoint the phone or Mr McIntyre at the corner from where the shots were fired.

[270] The removal of his phone from the network during the disorder is clearly suspicious and unlikely, given the other circumstances, to be a coincidence but it does not prove that McIntyre is the person D1-D4 in the shooting images.

[271] I do not consider that it would be fair or appropriate to draw an adverse inference that McIntyre is the person who assisted the gunman from his failure to give evidence in light of the quality of the mobile phone footage. In any event, such an inference can only be used to support the prosecution case – in itself, it is not a basis for a conviction.

[272] Nor is the bad character evidence or evidence of association with Saoradh sufficient supporting evidence to prove count 1 and count 2 beyond a reasonable doubt. I have already concluded that most people present shared a hostility towards police and Ashe Mellon, with terrorist convictions and others of interest were certainly present also. Convictions for rioting do not shed light on a murder charge. It is no more than part of the overall picture. The primary evidence against McIntyre for murder is the imagery analysis evidence. If it is not convincing, neither the bad character nor any inference from silence is capable of plugging the gap.

[273] The question is whether all of these circumstances prove, so that I am sure, that McIntyre is the person who encouraged or assisted the gunman.

[274] I am not sure, and therefore, I find Mr McIntyre not guilty of murder or possession of a firearm with ammunition.

The remaining charges against Mr McIntyre

[275] Mr McIntyre is also charged on 18 April with riot (count 3); possession of petrol bombs in suspicious circumstances (count 4); throwing petrol bombs (count 5); common assault on the community worker Mr Mallett (count 6); robbery (count 8) arson (count 9); professing to belong to a proscribed organisation (count 10) in respect of the tipper truck; hijacking (count 12) and arson (count 13), in respect of the Audi A6.

[276] He is charged on 16 April with the possession of petrol bombs in suspicious circumstances (count 15) and throwing petrol bombs (count 16). These charges are alleged on a joint enterprise basis.

[277] The prosecution submits that all the identification evidence is mutually supportive, strengthening the case against him in respect of both dates.

[278] Mr Wooller's overall conclusion, based on his analysis of the imagery is that McIntyre *could be* Person D during all of the events on 18 April and that he *could be* Person PP/1 (17) on 16 April.

[279] It is clear from the authorities that expert imagery analysis evidence may support a conviction depending on the circumstances. In *R v Karl McShane* [2011] EWCA Crim 1944, the court upheld convictions for three robberies where the prosecution relied on the similarities between the robberies, together with incriminating clothing as evidence supporting its case that the appellant was one of the robbers. It was said that the combination of clothing was too unlikely to be explained away by coincidence. An expert imagery analyst with no experience in the manufacture of clothing but, like Mr Wooller, had experience of imagery analysis compared images of clothing and noted similarities with no significant differences.

[280] The defence had argued that all the clothing and footwear taken from the appellant was of a common kind without distinguishing features, such as an unusual size or colour, and *without stains, tears or other damage that might make it readily identifiable*. As a result, it was said that the expert's evidence was neutral and that the jury were not in a position to do more than speculate about the possibility of coincidence. [emphasis added]

[281] The prosecution accepted that although the appellant's argument would have considerable force if the evidence had related to a single item of clothing, it becomes weaker as the number of different items of clothing increases.

[282] The prosecution argued that on one view of the evidence there were two separate outfits being worn, one of which was seized from the appellant after the second of the two robberies and the second after his arrest.

[283] Moore-Bick LJ said at [23]-[26]

"[23] We agree that if there had been nothing more than, say, the footwear evidence, that would not have been enough to leave the case to the jury because it would have shown no more than that the appellant could have been the person who made the marks, not that he was. Given the number of training shoes in circulation, the possibility of

coincidence would clearly be very great. The same would hold true if the only evidence had been, say, the black add a dash jacket, of which again there must be many hundreds if not thousands in circulation. There comes a point, however, at which a particular combination of clothing even of items that individually are very common, acquires more distinctive character.

[24] There were similarities in the way in which these robberies were carried out which suggested that they could all have been committed by the same people. **Moreover, as we have observed, the crown was able to put before the jury some evidence that this appellant was linked to Darren Bickersteth, and there was evidence linking Bickersteth to at least one of the robberies.** The chart to which we referred earlier shows that the appellant was in possession of both a pair of GRIPZ gloves and a pair of trainers of a kind that were similar to, and indeed could have been, those worn by one of the men who took part in the first robbery. The fact that two such articles were found in his possession begins to stretch the coincidence. The chart also shows that the appellant was in possession of five articles of clothing of a kind similar to those that one of the robbers can be seen wearing in the CCTV footage of the second robbery, namely a balaclava, a pair of GRIPZ gloves, a black Addie dust jacket, a pair of black trousers and a pair of trainers. **Individually none of them, apart possibly from the balaclava is at all out of the ordinary, but the possession of five items of clothing similar to those worn by one of the men who took part in the second robbery stretches the coincidence even further. Similar observations can be made about the gacko scarf and grey polyflex gloves worn by one of the robbers on the third occasion. In themselves each of these may not be unusual but the combination tends to make coincidence a less likely explanation.**

[25] Whether the possession by the appellant of a particular combination of clothing corresponding to that worn by one of the robbers on any given occasion is to be explained by coincidence or not depends in part on an understanding of how people behave and to that extent is very much a matter for the jury. In our view, this is essentially a matter of common sense rather than statistical analysis. No jury could say that possession of a pair of trainers of a well-known brand and a relatively common

size is sufficient to link the owner to a crime because footwear of that kind is worn by so many people. Whether a particular combination of gloves, jacket, trousers, trainers and balaclava is so common may be another matter. The same maybe also said of Gecko scarf and polyplex gloves.

[26] In our view, that is a matter which, together with the other evidence in the case the jury was entitled to consider for themselves. In our view, the evidence was capable of supporting these convictions and in those circumstances the appeal must be dismissed.”

[284] As the tribunal of fact, I must make my own judgment of the identification evidence. In so doing, I am entitled to look at the images myself and determine what they show. The value of Mr Wooller’s evidence is enabling me to understand how technical matters may affect my assessment.

[285] I am satisfied that the following items of clothing observed on Person D on 18 April are consistent with those worn by McIntyre earlier that day and on other occasions:

- (i) O’Neill’s tracksuit bottoms, with the brand name embossed in a light tone vertically down the left thigh;
- (ii) footwear with an adornment at the toe; and
- (iii) a baseball style cap with a small highlight on its front left above the peak.

[286] I am also satisfied that images D(6) and D(5), chronologically the first of the images said to be Person D before the first round of petrol bombs, show an unmasked man whose face bears some resemblance to McIntyre, although the quality is not sufficient to make a positive identification. Therefore, little weight can be attached to this evidence.

[287] In images D(8), D(10) and D(12), Person D, masked, is clearly wearing a metallic bracelet on his right wrist. In another image, a highlight consistent with the metallic bracelet can be seen (X 2). In D(8), he is holding a petrol bomb. I am satisfied that the same person is seen in image Y20. He is holding a petrol bomb in that image also. The O’Neill’s tracksuit bottoms and consistent footwear are also visible. The consistent footwear is visible throughout the images.

[288] In image D(11), D(12), D(13), D(14), D(16) the cap with a consistent highlight is visible. Person D is wearing a dark coat. In some images it can be seen to have a CAT logo. In D(11), the person is carrying a crate of petrol bombs.

[289] Clearly, the possession by a person of a particular combination of mass produced clothing corresponding with that worn by an offender, may be a coincidence or it may not. However, personal items such as a bracelet or a tattoo may be considered to be distinguishing marks. Likewise, a particular type of damage observed on clothing.

[290] Whilst this combination of clothing in itself is unlikely to be a coincidence, the additional feature of a metallic bracelet, reduces that possibility further. Mr McIntyre was clearly wearing his bracelet earlier on 18 April when he was unmasked (see images z1; z3; z12). He was also wearing the O'Neill's tracksuit bottoms and similar footwear.

[291] In Image D14, a small piece of red garment can be seen as Person D runs towards the camera. The prosecution contends that it is the red Superdry T-shirt underneath the jacket. Mr McIntyre was seen wearing his red T-shirt earlier in the evening of 18 April when he attended the Saoradh meeting in Junior McDaid House. The question of colour and the effect of lighting upon it featured largely in Mr Wooller's evidence and so particular caution is required. His evidence was that the portion of garment varied in the footage from "red" to a "little more burnt out." (21 May 2025 page 10).

[292] It is important to take account in particular, of any differences in the comparative evidence. The coat Person D was wearing is dark with a CAT logo. Despite numerous recorded stops and searches McIntyre cannot be linked to any such item. Nor is he seen wearing such a coat in the Pangaia or MTV footage and none was seized from his home. That is a significant matter when conviction is based on comparative clothing.

[293] Although McIntyre is observed in some images with glasses and a hearing aid no such items are seen on Person D. However, it is clear from reference images that these are not always worn, so that point is weaker than it might have been. It is nevertheless a matter that has to be considered in an overall analysis of the evidence.

[294] I have admitted bad character evidence of two convictions for rioting. One when McIntyre was a youth and one more recently. I accept that the facts are wholly different and little turns on either conviction. Like his association with like-minded others, it is relevant that he is a person who is hostile to police. Whilst the context in which the rioting occurred has to be taken into account, the crucial evidence is that which is probative of his identity in relation to each offence.

[295] The cell site evidence and the removal of the phone from the network during the relevant period, in itself, is nothing more than suspicious. However, when added to the other circumstances, it takes on an added significance. It is certainly not inconsistent with guilt.

[296] The question is whether the combination of a similar cap (seen in some images), O'Neill's tracksuit bottoms and footwear similar to that worn on other occasions by McIntyre, along with a metal bracelet is sufficient to call for an answer and if so, whether an adverse inference should be drawn from his failure to provide one.

[297] An adverse inference may only be drawn if:

- (a) the prosecution case is sufficiently strong to call for an answer; and
- (b) there is no sensible reason for the defendant not to have given evidence, other than that he has no answer to the prosecution case or none that would stand up to cross-examination.

[298] If I am sure that both conditions have been met, the fact that the defendant did not give evidence may be considered as lending some support to the prosecution case. But such an inference cannot of itself prove guilt.

[299] The metal bracelet similar to that habitually worn by McIntyre, and worn on the same wrist as the rioter, is a matter that requires an explanation, when considered along with consistent clothing and supported by cell site evidence which is not inconsistent with his presence at the scene.

[300] However, I caution myself whilst his failure to give evidence provides some support for the prosecution case, I must not find him guilty of any offence only, or mainly, because he did not give evidence. It is simply some additional support.

[301] The clearest image of the person alleged to be McIntyre holding a petrol bomb and wearing a bracelet is D(8). The person is completely disguised and is wearing a coat which cannot be connected to McIntyre despite the frequent video recorded stop and searches. The bracelet itself, whilst it is a distinguishing feature, is not distinctive. It cannot be seen in all the images of Person D. That means that similar type bracelets may have been worn by others but cannot be seen on the imagery.

[302] I have concluded that in all likelihood, Person D is the person engaged in the riot, possession and throwing of petrol bombs. But the evidence falls short of that required to prove his identity to the high threshold of beyond a reasonable doubt.

[303] I find him not guilty of riot (count 3); possession of petrol bombs in suspicious circumstances (count 4); throwing petrol bombs (count 5) on 18 April 2019. Mr McIntyre is also charged with hijacking and arson of the Audi A6 on 18 April. For the same reasons, I do not consider the evidence reaches the requisite standard of proof and I therefore find him not guilty of (counts 12 and 13).

[304] Image Person D(10) shows Person, D pointing a finger in Mr Mallett's face, with an aggressive stance. I cannot be sure that the person is McIntyre and I therefore find him not guilty of common assault (count 6) on 18 April.

[305] McIntyre also faces counts of robbery (count 8), arson (count 9) professing to belong to a proscribed organisation (count 10) in respect of the tipper truck on 18 April. These counts may all be considered together. The evidence of Patrick Knightly, who owned the tipper truck and his partner Catherine McEleney is key to the alleged identification of McIntyre as one of four persons who entered their home, demanding the keys of the vehicle and professing to be the IRA.

[306] Mr Knightly described what happened:

"I heard the front door opening ... I could see the colour black coming and at that instant a male entered the living room. We didn't initially react, we just sat there, I wasn't sure if it was a wind up.

This male said "IRA, give us the keys to the vans." He repeated this a couple of times.

Another two males came in behind him and they all started shouting to give him the keys.

The first guy seemed to be in charge, he was given the instructions but none of them seemed to have a clue at the time.

The first guy appeared to be older than the others and was stockier; he was the shorter of them all but none were over 5 foot 10 inches in height. They were all between 5 foot 8 inches and five foot 10 inches.

They all were wearing black bomber, puffa style jackets with hoods, black tracksuit type trousers and trainers: I recall seeing the white soles of their trainers. They were all dressed very similar I don't remember seeing any makes or logos on their clothing."

[emphasis added]

[307] The defence notes that this was not a fleeting description.

[308] Catherine McEleney also gave a description of the robbers:

“Male one who became the driver of the tipper truck] was approximately 5ft 10in, average height, and smaller than Patrick who’s around 6 foot.”

[309] A hearsay statement from a witness ciphered as S40 taken by D/Con Simpson on 1 May 2019 and which was read to the court, refers to the person alleged to be Mr McIntyre as being “approximately 5ft 10in in height”:

“... A white pickup van then appeared more or less straight away coming from the direction of the shops. At this point I told my daughter to go back into the house which she did, her boyfriend had already went back in. The van stopped at the left hand side of the junction turning up Fanad Drive onto Central Drive. I saw a person get out of the driver’s seat. I believe it was a male by his build and stature. He was wearing black clothes, black tracksuit bottoms and a black pullover hoodie with the hood up. I couldn’t see any distinctive marks on the clothing. He was approximately 5ft 10 in in height, stocky build with what I would describe as a beer belly ...”

[310] This witness described being “focused” on this one individual. By the time of the arrival of the tipper truck the witness said:

“At this time I would have been standing at the wall of number six Central Drive at the edge of the crowd that had gathered.”

[311] He concluded by saying:

“During all the disorder I would say that I was about four car lengths away from the burning vehicles.”

[312] The descriptions given of the heights of those who robbed the owner of the tipper truck (Mr Knightly) clearly are not consistent with one of them being Mr McIntyre, whose known height, is considerably shorter at 5ft 3 inches.

[313] Therefore, leaving aside the other weaknesses in the identification evidence, I cannot be sure that McIntyre is the person who committed these offences and I find him not guilty.

[314] I now turn to the alleged offences on 16 April. The masked man, alleged to be McIntyre, is wearing a very similar type jacket as that worn by him earlier that day, as captured on the Pangaia footage, and found at his home. He is seen wearing a similar cap and similar footwear (see images PP/1 (17) a, b and c). It is not possible

to be sure of the colour of the jacket other than to say that it is dark. The item found in his home is dark blue. The stitching and emblem are consistent.

[315] In terms of weaknesses, there are some paint marks on Mr McIntyre's blue jacket and a slight tear, neither of which was observed by Mr Wooller from the imagery. It is of course possible that the masked man was wearing a different jacket and that he is not McIntyre. It is equally possible that the quality of the footage is insufficient to allow that level of detail to be seen.

[316] Mr Wooller's evidence is that a dark mark visible on the hand of the masked man on 16 April is broadly consistent with the tattoo seen on Mr McIntyre's hand in reference footage. But the letters PAUL which are tattooed onto McIntyre's fingers are absent. Mr Wooller's evidence is that even if this feature was present, the limitations in the footage are such that this level of detail could not be seen. There is of course a possibility, acknowledged by him, that the feature was not observed because it is not actually Mr McIntyre in the footage.

[317] The defence make the following submission:

"If the quality of the footage is insufficient to discern whether PAUL is there or not, whether there is a rip in the jacket or a white paint stain on the jacket, that he cannot tell the colour of clothing or the colour or style of the trainers this comparative analysis process does not take the prosecution very far in terms of a meaningful comparative analysis." (p 52 Speaking Note)"

[318] In my view, this does illustrate the difficulties in proving identification in these circumstances.

[319] I accept that the general build of the masked person on both 16 (and indeed on 18 April) is broadly consistent with McIntyre, whose height is confirmed as 5ft 3inches and he is seen to be heavily built. There is no scientific basis for this and there are experts in height analysis although a decision was taken by police that no report should be obtained. Therefore, caution is required in evaluating the evidence of height and build.

[320] Taking into account all of the evidence, I have concluded that whilst McIntyre is more than likely to be Person PP/1(17), the evidence falls short of that required to prove identification beyond reasonable doubt.

[321] Even if the prosecution was able to prove beyond a reasonable doubt that Person P/1(17) on 16 April, is McIntyre, the question would remain as to whether he can be proved to have committed an offence.

[322] The prosecution case is set out at paras [285]–[304] of its opening statement. Although McIntyre is not alleged to have manufactured or thrown petrol bombs, the prosecution says at [293]:

“It is apparent that those painting and the other masked men are connected and that their actions are interlinked. It seems likely that the masked men believed that the act of graffitiing the fence would cause the police to come into the area. Alternatively, their purpose may have been to deter any disruption to the graffitiing.”

[323] In order to convict McIntyre of these offences as a secondary offender, the prosecution must prove that he intentionally encouraged or assisted those directly involved in the manufacture and throwing of petrol bombs. It is unclear whether McIntyre’s intention in painting the fence was simply to promote violent Republicanism or whether it was connected to the making and throwing of petrol bombs at any passing police car. The prosecution case, in my view is purely speculative. The most that can be said is that McIntyre was part of a gang, some of whom made petrol bombs and later threw them at a passing patrol. He painted graffiti on a fence. No doubt he was aware of what the others were doing and fully supportive. His actions may have been connected to those of the other masked men. However, I am unpersuaded, even taking into account his failure to give evidence, that either his mere presence or the act of painting Republican slogans constitute acts of encouragement or assistance, beyond a reasonable doubt.

[324] I therefore find him not guilty of the alleged offences on 16 April.

The identification evidence against Jordan Devine

[325] Jordan Devine is charged with murder (count 1), possession of a firearm with intent (count 2); riot (count 3) possession of petrol bombs in suspicious circumstances (count 4); throwing petrol bombs (count 5); arson of the tipper truck (count 9); murder (count 1); and possession of a firearm with intent (count 2).

[326] The evidence against Jordan Devine is the imagery analysis of Mr Wooller. The most significant feature attributed to Person B (alleged to be Jordan Devine) is the pair of tracksuit bottoms with a distinctive “team 9” logo on the leg. Person B is said to have accompanied the gunman to the corner where the shots were fired and who then picked up misfired rounds from the ground.

[327] There is no evidence connecting Jordan Devine with track suit bottoms with a “team 9” logo.

[328] However, the prosecution relies on three items of clothing owned or previously worn by Jordan Devine including grey Nike Air Max trainers, a Nike snood and a US Polo Association cap.

[329] In addition to the alleged acts of encouragement and assistance to the gunman, Person B is also alleged to have thrown a “likely” petrol bomb and is alleged to be seen in the footage in the minutes leading up to the shooting.

[330] Jordan Devine is also alleged to have been involved in the rioting on 16 April 2019. He is alleged to be the person identified as person PP/1 (5) wearing two items of clothing owned or previously worn by Jordan Devine, including grey Nike Air Max trainers and an orange and grey “Long Kesh 81” T-shirt.

[331] The prosecution relies on the same grey Nike Air Max trainers worn by the masked person on both 16 and 18 April and that the person(s) had the same basic body proportions as Devine. Devine was seen wearing the same trainers on previous occasions.

[332] Person B along with Person L, alleged to be Gillen, are alleged to be the masked persons who met the MTV film crew when they arrived at the shops. In response to a question from Yates, both nodded in confirmation that they had also been involved in the rioting on 16 April. The prosecution concludes that the person alleged to be Devine on both occasions wore four items of clothing (including the distinctive T-shirt) in common with Jordan Devine.

[333] The prosecution case is that this cannot be a coincidence and the possibility of another person owning the very same items and wearing them in combination is so remote as can be safely discounted.

[334] The prosecution relies on the fact that the Nike snood and grey Nike Air Max trainers frequently worn by Devine were not recovered, suggesting that they were disposed of.

Supporting evidence

[335] On 15 April 2016, the night before the first rioting took place, Devine is seen removing bottles from the 720 bar which are the same type of bottles used to make the petrol bombs on 16 April and on 18 April. He is later seen with an empty trolley.

[336] The prosecution also relies on the fact that the masked and unmasked men clearly knew each other and were comfortable with each other’s presence. They are alleged to have been associates and four of the five masked defendants are alleged to be the persons in the Saoradh office earlier on 18 April, along with James Devine, Jordan’s brother who is not a defendant.

[337] The prosecution relies on the fact that Person B is regularly in the company Person C during the disorder on 18 April. Person C is alleged to be James Devine. In one image, Person B, appears to be adjusting the mask of Person C. This is said to be the type of action an older brother might perform for a younger sibling (James) and thus is relied on to support Person B's identification as Jordan Devine.

[338] Evidence from Devine's phone indicates that it was at his home during the disorder, but Devine was not. At 0040 hours, he answered a text from his girlfriend sent at 2320 hrs. James Devine's phone was not connected to the home Wi-Fi between 2017 hours and 0018 hours suggesting that he was out that night as well.

[339] The prosecution relies on bad character evidence confirming Devine's support for violent Irish republicanism as a motive for his involvement in the offence.

The defence case on behalf of Mr Devine

[340] On behalf of Mr Devine, it is submitted that he can be distinguished from the other masked defendants in that there is no cell site evidence indicating that he was physically present at the scene of the disorder on 18 April. Nor has any witness purported to identify him as one of the masked defendants. The identification is based solely on Mr Wooller's imagery analysis.

[341] There is no forensic evidence against him, no gait analysis evidence and in both the MTV footage of 18 April and Pangaia footage of 16 April, the person alleged to be Devine is fully masked.

[342] There are no personal items alleged to link him to any offence such as jewellery or tattoos.

[343] In opening the case, the prosecution said at paragraphs [194]-[195]

“[194] He is identified during the disorder [on 18th] by his headwear in the form of his baseball cap and his Nike branded snood which he wore in the morning of the 18th of April in the Saoradh office and then later at the disorder. The baseball cap (a “ US Polo Association” cap) was found in a search of his home on the 10th of May 2019. He has previously been seen wearing the snood (at Saoradh on the 4th of January 2019 and again, in other footage taken by Pangaia productions on the 14th of April).

[195] The trainers worn by the man wearing the “team 9” tracksuit bottoms during the disorder and alleged to be him, are also connected to him. They are the same model

as those worn by him when he was stopped by police on the 24th of March 2019 on the 12th of April 2019.”

[344] The defence note that contrary to the prosecution submissions, dated 16 March 2026, Mr Wooller has never specifically identified a “US Polo Association” cap. In his report dated November 2024, at para 8.3, he described the cap as “a cap with a small red logo on the front above the peak.” He said in evidence that he could not decipher the logo ie the brand of the cap worn by person B.

[345] Therefore, on 18 April 2019, the identification evidence is limited to three items: a cap, a pair of trainers, a face covering bearing a Nike swish.

[346] On 16 April 2019, the identification evidence is limited to two items: a pair of trainers, the tail of a shirt worn under a jacket.

[347] However, the defence places emphasis on the significance placed on the “team 9” tracksuit bottoms to identify Person B. Despite the frequent stop and searches filmed on body worn footage and the MTV and Pangaia footage, Jordan Devine has never been seen wearing similar jogging trousers at any time, nor was such an item found in a search of his home.

[348] Similarly, the masked man making petrol bombs on 16 April was wearing a distinctive Parker coat with a fur trimmed hood. No such item of clothing has ever been linked to Devine nor was any such item seized from his home when it was searched.

[349] The extent of Mr Wooller’s opinion, based on his assumption that the groups involved in rioting on both occasions were likely to be broadly the same, was that it was “much more probable” that both person B and person PP/1 (5) were both Jordan Devine.

[350] However, since I rejected that assumption as an appropriate identification factor, the extent of his opinion is that:

“[Jordan Devine’s] basic body proportions would ... not preclude Person PP/1 (5) and person B being one and the same, but the only clothing match is the shoes.”

[351] Mr Wooller also accepted that he could not definitively say that the trainers worn by Person B, person PP1(5) and Jordan Devine were the same colour. He accepted at the most that could be said of the trainers is that those worn by person B and person PP1(5) (on 16th) were “light toned, possibly grey.” This is the only item in common between these masked suspects.

[352] The defence submit that this opinion could not, justify a conclusion beyond a reasonable doubt that Jordan Devine is guilty of any of the charges.

The supporting evidence

[353] The defence challenge the submission that an adverse inference can be drawn from the police failure to recover light toned trainers when Devine's home was searched. The agreed facts regarding the search, opened to the court on 9 April 2025 state at paras [15] and [16]:

"15 On the 10th of May 2019, police conducted a further lawful search of 7 Synge Court Londonderry. By virtue of the warrant police were looking for a red long sleeve top, denim jeans, dark trainers with light coloured stripes, dark long sleeve top with zip, dark coloured top with light motif on the front, a dark baseball cap and mobile phones.

16 Police seized the following:

- A US Polo Association baseball cap found on the top of the sofa in the kitchen
- Navy Adidas trainer right
- Navy Adidas trainer left
- Blue denim jeans."

[354] The point is made that the search was specifically directed towards "dark trainers with light coloured stripes." Only one pair of footwear was seized and unsurprisingly, this was a pair of dark Navy Addidas trainers bearing light coloured stripes which are not linked to the defendant at all. Similarly, police were not tasked to look for a Nike snood so unsurprisingly, none was seized.

[355] The defence also make the point that in the MTV and Pangaia footage of the 16 and 18 April, when Jordan Devine is unmasked, he is seen to be wearing footwear which bears no similarity to the footwear worn by any suspect during the disorder on either date.

[356] In relation to the evidence that Jordan Devine is seen wheeling magnum bottles from the 720 bar towards the Saoradh office on 15 April, which were then used on 16 and 18 April, the defence submit that the evidence proves nothing other than the fact that the same kind of bottles were used during the disorder on both dates. It is not evidence that identifies Devine as an offender.

[357] In relation to the evidence that Devine's phone was at home during the disorder but that he was not, the defence submit this evidence is of no value whatsoever. It

does however serve to highlight the absence of any cell site evidence indicating his whereabouts at the relevant time.

[358] The defence submit that the suggestion that Person B, adjusting the mask of Person C, is the type of action an older brother might perform for a younger sibling (James) is purely speculative. It is not evidence against either of them.

[359] In relation to the bad character evidence, Jordan Devine was convicted for an offence contrary to section 13(1) of the Terrorism Act 2000. However, it is submitted that the facts are far removed from this case, involving displaying an article, namely a painted mural, on the window of Junior McDaid house in such a way as to arouse reasonable suspicion that he was a member or supporter of a prescribed organisation. It was more than four years prior to April 2019 and the defendant was neither masked nor concealing his identity in anyway.

[360] The defence submits that the identification evidence against Jordan Devine is so weak that it would not be appropriate for the court to draw any adverse inference from his failure to give evidence. The burden of proof rests on the prosecution throughout, and to draw an adverse inference in all of the circumstances would be to transfer the burden of disproving guilt to the defendant.

Conclusion on count 1 (murder) and count 2 (possession of a firearm and ammunition)

[361] The same points are repeated in relation to the very poor quality of the mobile phone footage which is the only evidence of the actual shooting. I could not be sure of any identification based on imagery analysis, where the detailed features of the person simply cannot be made out.

[362] I find Jordan Devine not guilty of murder and possession of a firearm and ammunition.

Conclusion on the remaining charges

[363] The question is whether I can be sure that Jordan Devine is guilty of the remaining riotous offence charges on the basis of similar footwear, a cap and snood to that worn by him on other occasions and by Person B on 18 April. In the absence of any distinguishing feature, I cannot rule out the reasonable possibility that this combination of clothing is simply a coincidence.

[364] Although the prosecution alleges that the failure to find the shoes and the snood when his home was searched, as the defence has pointed out, since it was dark trainers the police were looking for and which were therefore seized, it is not surprising that light toned trainers were not seized.

[365] In my view, little significance attaches to the absence of a snood when his home was searched. This is an easily transferable piece of clothing and there are any number of plausible explanations why it was not found, which I cannot rule out.

[366] I have accepted that the evidence from the 16 and 18 April may be mutually supportive and may potentially strengthen the prosecution case. However, just as the most significant feature relied on by Mr Wooller to identify Person B (the “team 9” tracksuit bottoms) cannot be connected to Jordan Devine, neither can the fur hooded Parka coat seen on Person PP/1(5).

[367] There is one piece of identification evidence from 16 April that does need to be considered. PP/1 (5) d shows the tail of a shirt, the pattern of which is consistent with a “Long Kesh” shirt. A similar portion of a similar garment is seen on Image Z44 - an unmasked image of Jordan Devine taken from Pangaia footage earlier on 16 April. Image Z 39, taken from Pangaia footage also, shows a similar feature.

[368] I accept that this could be considered a distinctive feature linking Jordan Devine to the offences on 16 April. But, it is such a small portion that I cannot be sure that it is the same garment.

[369] Whilst I am of the view that Person PP/1(5) could be and probably is, Jordan Devine, and that Person B also is probably Devine, from the highlight on the cap which is consistent with that found in his home and the habitually worn snood, the evidence falls short of that required to find him guilty of any of these offences beyond a reasonable doubt.

The identification evidence against Gearoid Peter Cavanagh

[370] Mr Cavanagh is also charged with riot (count 3); possession of petrol bombs in suspicious circumstances (count 4); throwing petrol bombs (count 5); and robbery and arson of the tipper truck (counts 8 and 9).

[371] These charges all relate to 18 April 2019. Mr Cavanagh is not alleged to have been involved in the disorder on 16 April.

[372] He is alleged to be the person identified by Mr Wooller as Person G. In the course of these proceedings, Person G he has been referred to as “Camo Man” on account of the camouflage pattern on his face mask.

[373] The primary evidence against him is DNA and cell site evidence supported by Mr Wooller’s imagery analysis.

DNA

[374] The prosecution relies on Cavanagh's DNA found on a zip pull (MOS 3) in the remains of material burning in Cromore Gardens, after the hijacking of a Mokka car left abandoned close by, and after the shooting had taken place. A remnant of clothing which appears ribbed and elasticated was also found in the remains. The fire had been lit in order to burn clothing, clearly as a forensic precaution.

[375] The prosecution alleges that Person G wore a bomber jacket consistent with the remnant of clothing found. It also had a zip toggle which appeared to be circular (like that recovered) which can be seen on MTV footage moving from side to side as he walked.

[376] The DNA profile was a single profile matching that of Cavanagh. A calculation based on the Northern Ireland population survey data shows that this profile obtained from the zip would be at least one billion times more likely to arise if the DNA originated from Mr Cavanagh than from an unrelated man.

[377] The expert evidence from Mr Ian Craig, the forensic scientist, was that he did not know how the DNA had got onto the zip toggle; whether it was by touch or otherwise and there were a number of potential mechanisms by which it could have been deposited.

[378] He also agreed that the presence of DNA on any item does not necessarily mean that its owner was the last person to touch it. He acknowledged the possibility of secondary transfer although in such a case, a mixed profile would be expected, including the owner's profile, with the minor contributor being the third-party. He also accepted the possibility of transfer through associating with others, shaking hands etc, although washing of clothes, hands etc removes such DNA.

[379] Mr Craig was asked about the absence of Cavanagh's DNA from the hijacked Mokka car, abandoned close to where the burnt fragment of zip pull was found. The garment from which the remnant originated is alleged to have been worn by one of the hijackers.

[380] Although fingerprints from two others (who are not before the court) were found in the car, neither Cavanagh's prints nor DNA were found, despite the fact that Person G is not alleged to have been wearing gloves.

[381] However, Mr Craig's evidence is that it is possible to find only one set of DNA on an object such as a door handle which has been touched by many people, so there may be an explanation for the absence of evidence, even if Cavanagh was in the car.

[382] The prosecution relies on Cavanagh's DNA found on the zip pull and the absence of any other explanation other than his involvement in crime. The defendant

did not provide any alternative explanation; he made a no comment interview and specifically failed to respond to questions as to why his DNA was on a jacket that had been set on fire near to the hijacked Vauxhall Mokka.

[383] Defence counsel has put forward the possibility of innocent transfer based on Cavanagh's acknowledged association with the co-defendants and relevant others. In particular, the meeting of Saoradh members earlier in the evening shows their close association. These suggestions are not supported by any evidence from Cavanagh.

[384] Mr Wooller concluded that he could not rule out the zip pull having originated from the bomber jacket worn by "Camo Man" and the prosecution submits that the conclusion should be drawn that Mr Cavanagh's DNA could only have been deposited on the zip pull when he recently zipped it up.

[385] The prosecution submits that in accordance with the principles in *Tsekiri* [2017] EWCA Crim 40 the nature of the DNA evidence, when taken together with the other supporting evidence plainly calls for an answer and that I should draw an adverse inference from Cavanagh's failure to give evidence.

[386] In *Tsekiri*, the court emphasised that no evidential or legal principle prevents the case being left to the jury solely on the basis that the defendant's DNA profile was found on a movable article left at the scene of the crime. The cogency of such evidence in any given case will, however, depend on the facts of that case, and in particular on whether there is a plausible "innocent explanation" for the presence of the defendant's DNA on the item in question (Blackstone F19.32).

[387] In *R v FNC* [2016] 1 WLR 980, at [20]-[26], Lord Thomas CJ reviewed the authorities relating to the deposition of DNA directly in the course of the commission of the crime as well as where the DNA was obtained from an article left at the scene of the crime.

[388] He referred, at [20], to the "well known" judgment by Phillips LJ in *R v Doheny* [1997] 1 Cr. App. R 369, at 373 where he took as an example, a DNA match probability of one in a million. Phillips LJ said:

"If no fact is known about the defendant, other than that he was in the UK at the time of the crime the DNA evidence tells us no more than that there is a statistical probability that he was the criminal of 1 in 26.

The significance of the DNA evidence will depend critically upon what else is known about the suspect. If he has a convincing alibi at the other end of England at the time of the crime, it will appear highly improbable that he can have been responsible for the crime, despite his

matching DNA profile. If, however, he was near the scene of the crime when it was committed or has been identified as a suspect because of other evidence which suggests that he may have been responsible for the crime, the DNA evidence becomes very significant.

The possibility that two of the only 26 men in the UK with the matching DNA should have been in the vicinity of the crime will seem almost incredible and a comparatively slight nexus between the defendant and the crime, independent of the DNA, is likely to suffice to present an overall picture to the jury that satisfies them of the defendant's guilt.

“The reality is that, provided there is no reason to doubt either the matching data or the statistical conclusion based upon it, the random occurrence ratio deduced from the DNA evidence, when combined with sufficient additional evidence to give it significance, is highly probative. As the art of analysis progresses, it is likely to become more so, and the stage may be reached when a match will be so comprehensive that it will be possible to construct a DNA profile that is unique and which proves the guilt of the defendant without any other evidence. So far as we are aware that stage has not yet been reached.”

[389] Where the DNA was obtained from an article deposited at the scene of the crime, he questioned at [30] whether earlier cases where such evidence was deemed insufficient had been correctly decided and whether the observations in *R v Byron*, to the effect that a mixed DNA profile including a defendant's found on a movable item would not be sufficient on its own to support a conviction, were correct. He said, at [30]:

“As Lloyd Jones LJ made clear in giving the judgment of the court in *R v Sampson*, it is important to bear in mind that the analysis and techniques of analysis of DNA have improved markedly in the past decade, certainly since the decision in *R v Lashley*. Thus, the fact that the DNA was on an article left at the scene of the crime (as distinct from DNA being directly deposited in the course of the commission of the offence by the offender) may be sufficient to raise a case to answer where the match is in the order of one in a billion.”

[390] Lord Thomas then drew the analogy with the approach in *R v Hookway*, as regards facial mapping, at [31]:

“We would simply add a footnote should this court have to consider that issue. The approach in those cases should be contrasted with the approach taken in the facial mapping case, *R v Hookway* (unreported) 1 February 1999. Five masked men had robbed a bank in Salford, Manchester. The evidence against the defendant consisted solely of expert evidence of “facial mapping.”

[391] The expert explained the process and accepted that he could not say for definite that the robber and the defendant were the same person; as he made clear, facial mapping was not the same as a fingerprint. He conceded that if a trawl was made through Manchester, it might be possible to find one or two people of similar appearance.

[392] His opinion remained that what he had seen was very powerful evidence that the defendant was the offender, although he could not prove scientifically that there was not someone else of similar appearance. The court (Rose LJ, Hughes J and Judge Stephens QC) concluded:

“In our judgment, there is no sustainable criticism to be made of the judge’s conclusion that there was a case for this jury to consider. The evidence from the experts did afford such evidence and, having regard to that which transpired thereafter, there could not be any ground, if there was a prima facie case for the jury, for regarding the conviction as being in any way unsafe.”

[393] In *R v Tsekiri* [2017] 2017 1 WLR 2879, Lord Thomas returned to the matter once more. In that case, a mixed profile to which the appellant was the major contributor was obtained from swabs from the exterior door handle of a car following a robbery of its occupant. The appellant argued that there were plausible explanations to account for the presence of the defendant’s DNA which did not involve him being party to the robbery.

[394] Lord Thomas concluded, at [14]:

“[14] ... In our view the fact that DNA was left 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 bn or similar. Whether it is, will depend on the facts of the particular case. Relevant factors will include the following matters:

1. 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?
2. Was the article apparently associated with the offence itself?
3. How readily movable was the article in question?
4. Is there evidence of some geographical association between the offence and the offender?
5. In the case of a mixed profile is the DNA profile which matches the defendant the major contributor to the overall DNA profile?
6. Is it more or less likely that the DNA profile attributable to the defendant was deposited by primary or secondary transfer?"

[395] The court noted that this was not an exhaustive list and each case will depend on its own facts.

The prosecution submissions on the applicability of the Tsekiri principles to the present case:

[396] There is no evidence of any other explanation for the presence of the defendant's DNA on the item other than involvement in the crime.

[397] The defendant did not provide any alternative explanation, he made a no comment interview: see the agreed facts document in respect of his interview, at para [8] and (xi):

"[8] Mr Cavanagh did not respond to questions on the following topics:

...

(xi) why his DNA was discovered on a jacket that had been set on fire and left in proximity to the hijacked Vauxhall Mokka."

[398] There is a strong inference capable of being drawn that the article was associated with the offence itself:

- (i) It was recovered from the remains of a fire burning close to where the hijacked Vauxhall Mokka was recovered shortly after the shooting.
- (ii) The fire had been lit in order to burn the item of clothing along with gloves. The masked men on 16 April had burnt their gloves as a forensic precaution.
- (iii) Person G wore a bomber jacket consistent with the remnant of clothing. It had a zip toggle which appeared to be circular (like that recovered) which could be seen moving from side to side as he walked.
- (iv) The clothing would have been relatively moveable although likely to be owned and otherwise retained by someone.
- (v) There is an obvious geographical association between the offence and the offender, which is not merely that he is a resident of Derry. The cell site evidence shows that, at 21:41hrs on the night of the incident, his phone moved from using cell sites, including Londonderry Foyle West 50°, indicating that his phone was in the Brandywell area, to cell sites indicating that he was in the Creggan from 21:44hrs until 23:47hrs.
- (vi) The DNA profile was not a mixed profile; it was a single profile matching that of Cavanagh. A calculation based on the Northern Ireland population survey data shows that this profile obtained from the zip would be at least one billion times more likely to arise if the DNA originated from Mr Cavanagh than from an unrelated man.
- (vii) While Mr Craig acknowledged the possibility of secondary transfer he indicated that in such a transfer, he would expect to find a mixed profile including the owner's profile with the minor contributor being the third-party (see transcript of Mr Craig's evidence 20 June 2024 p16 onwards; see also *R v Jones*, [2020] EWCA Crim 2021).

[399] The prosecution relies on other supporting evidence:

- (a) his telephone contact to and from his partner at 2344hrs, suggesting that he was 'checking in';
- (b) his thin build, particularly his legs, at the relevant time, consistent with the person alleged to be him in the disorder;
- (c) his association with other persons involved, masked and unmasked; and
- (d) his support of violent Irish republican ideology and an animus towards the police as seen in his Instagram account and images for the period

17 April-27 April 2019 and conviction under Article 13 of the Terrorism Act (wearing clothing or having an article etc).

[400] It is submitted that, in the circumstances, the evidence against Cavanagh plainly calls for an answer and that an inference that he is Person G “Camo Man” should be drawn from his silence.

The defence submissions on DNA

[401] In the submissions for the no case ruling, the defence challenged the prosecution case that the remnant of clothing found at Cromore Gardens was consistent with the bomber jacket worn by “Camo Man.”

[402] Although it was not accepted that the remnant originated from the bomber jacket, it was conceded that the remnant was brought to Cromore Gardens by one of the three Mokka hijackers.

[403] The prosecution case is said to be undermined by the fact that “Camo Man” is not alleged to have been wearing gloves on 18 April, yet neither his fingerprints nor his DNA was found on the Mokka. Prints from two others (who are not before the court) were found.

[404] The defence does not challenge the evidence of Mr Craig that:

“The DNA profile was not a mixed profile; it was a single profile matching that of Cavanagh. A calculation based on the Northern Ireland population survey data shows that this profile obtained from the zip would be at least one billion times more likely to arise if the DNA originated from Mr Cavanagh than from an unrelated man.”

[405] The core challenge to the DNA evidence against Cavanagh is whether the prosecution can prove beyond a reasonable doubt that his DNA was deposited by direct touch primary transfer, when he recently zipped the zipper up. If it was, then the evidence strongly supports the prosecution case that Cavanagh is “Camo Man.” If not, then there is a reasonable doubt.

Conclusion

[406] The starting point is the unchallenged forensic evidence that a single DNA profile matching that of Cavanagh, was found on a zip pull (MOS 3) in the remains of material burning in Cromore Gardens, after the shooting. A calculation based on the Northern Ireland population survey data shows that this profile obtained from the zip would be at least one billion times more likely to arise if the DNA originated from Mr Cavanagh than from an unrelated man.

[407] I concluded in the no case ruling that having looked at Mr Wooller's optimised images, "Camo Man" was wearing a bomber jacket consistent with the remnant of ribbed fabric found in the remains of the fire. I also concluded that the zip pull (MOS 3) matched that seen on the images of the jacket. It also had a zip toggle which appeared to be circular (like that recovered) which can be seen on MTV footage moving from side to side as he walked.

[408] No explanation was given to police, nor has Cavanagh given any explanation to the court for the presence of a single DNA profile, matching his, on the zip pull.

[409] Although it is possible that his DNA was deposited by secondary transfer or otherwise, rather than by direct touching by Cavanagh when zipping up the jacket, a mixed profile would have been expected, had that been the case. But that depends upon a number of variables, including the fact that only a small portion of the jacket was recovered.

[410] I am satisfied from the cell site evidence that the movement of the phone from the Brandywell where Cavanagh lived up to the area of the Creggan, and then back down after the disorder, is consistent with Cavanagh being in the general area of the disorder at the relevant time. At 21:41hrs his phone moved from using cell sites, including his "home" mast of Londonderry Foyle West 50° indicating that his phone was in the Brandywell area, to cell sites indicating that he was at the top of the hill, in the Creggan from 21:44hrs until 23:47 hrs. The disorder occurred during that time. Cavanagh texted his partner Mr McClelland at 23:44hrs and was called back by him immediately after. The prosecution suggests that he was "checking in" with home. Thereafter, at 00:28 hrs, his phone connects with a mast halfway down the hill.

[411] The fact that no explanation has been given for Cavanagh's single profile DNA with a match probability of one in a billion, on the zip pull (MOS 3), coupled with objective evidence that he was in the general area at the relevant time is of some significance. Whilst in *Jones*, the trial judge accepted that it might be unrealistic to expect an explanation given the minute nature of DNA material, the Court of Appeal indicated that depends on the circumstances.

[412] Whilst counsel on Cavanagh's behalf has suggested possible explanations for secondary or other transfer of the DNA, that is not a substitute for an explanation from Cavanagh himself. As Lord Taylor CJ stated in *R v Cowan* [1996] 1 Cr App R 1:

"It cannot be proper for a defence advocate to give the jury reasons for his client's silence in the absence of evidence to support such reasons."

[413] It is clear from the authorities that what can properly be inferred from DNA evidence depends on the facts and circumstances of each case. Whilst it is a moveable

object, a bomber jacket is an item that would be expected to be owned or worn by an individual. There is no evidence that it was owned or ever worn by Cavanagh. There is strong evidence that it relates to the offending, due to the similarities with the clothing worn by "Camo Man" and the circumstances in which the zip pull (MOS 3) was found.

[414] In terms of supporting evidence, as well as the cell site evidence, I accept that images of Cavanagh whilst unmasked do show that he is of thin build with thin legs. "Camo man" also appears to have thin legs. However, I concluded in the no case ruling that the two short clips from Costcutters earlier on 18 April, when Cavanagh is unmasked, were insufficient to enable me to judge his stance, gait and manner of walking and how it compared with "Camo man." Not a lot turns on the fact that they both have thin legs.

[415] Cavanagh's association with other relevant persons involved along with his support of violent Irish republican ideology as evidenced by his social media is relevant, although bad character evidence needs to be considered with care. I cannot convict wholly or mainly because of it. Association is also relevant but cannot be a substitute for proper evidence against any defendant.

[416] Since Mr Craig's evidence that secondary or other innocent transfer of Cavanagh's DNA would be likely to leave a mixed profile rather than a single profile and since no explanation has been given, I am satisfied that it is fair to draw an adverse inference against Cavanagh from his failure to give evidence. That is because I am satisfied that the only sensible explanation for his silence is that he has no answer, or no answer that would stand up to examination, when questioned about the presence of his DNA on the zip toggle.

[417] However, whilst his failure to give evidence provides some additional support for the prosecution case, I must not find Cavanagh guilty only, or mainly, because he did not give evidence. The drawing of an adverse inference does not reverse the burden of proof in a criminal case.

[418] Having considered all the evidence against Cavanagh, it amounts to this:

- (i) His presence in the general area of the disorder, at the relevant time.
- (ii) His DNA is on a zip pull of a burnt garment which matches features seen on "Camo Man."
- (iii) There is no evidence that Cavanagh owned or ever wore such a jacket.
- (iv) He has thin legs, like "Camo Man."

- (v) The DNA is more likely to be the result of primary transfer, since it is a single profile on a zip pull.
- (vi) He has demonstrated support for violent Republicanism by social media and his association with other members of Saoradh.

[419] The question is whether I can be sure that Cavanagh is the wholly masked person alleged to be “Camo Man.” In considering that question, I remind myself that particular care is needed when considering identification evidence. The similarity of thin legs carries little weight in itself.

[420] The issue with the DNA is how it came to be on the Zip pull. The evidence suggests the likelihood that it is the result of primary transfer. The evidence of association with others who share support for militant Republicanism on the evening in question is double- edged. As well as suggestive of guilt, it is also relevant to the possibility of secondary or other innocent mechanism of transfer.

[421] The absence of any evidence that Cavanagh has ever been seen wearing such a jacket, despite the intense surveillance by the District Support Team, cannot be ignored.

[422] There is, of course, strong suspicion that Cavanagh is in fact, “Camo Man.” However, as Sir Anthony Hart explained in *R v Duffy and Shivers* [2012] NICC 1 and followed by Fowler J in *R v Granaghan* [2022] NICC 32:

“[58] However, suspicion, no matter how strong, is not sufficient by itself to establish guilt beyond reasonable doubt and is not an acceptable substitute for facts from which guilt can be proved.”

[423] Whilst I consider that Cavanagh may well be “Camo Man”, I cannot rule out the reasonable possibility that his DNA was transferred by means other than by being zipped up by the wearer. There is evidence that he was present at the Saoradh meeting around 7pm that evening with other defendants and persons of interest.

[424] In the absence of further supporting evidence, I therefore find him not guilty of all charges.

The identification evidence against Christopher Gillen

[425] In respect of 18 April 2019, Christopher Gillen is charged with riot (count 3); possession of petrol bombs in suspicious circumstances (count 4); throwing petrol bombs (count 5); and in respect of the tipper truck, robbery (count 8); and arson (count 9).

[426] In respect of 16 April 2019, he is charged with making petrol bombs (count 14); possession of petrol bombs in suspicious circumstances (count 15); and throwing petrol bombs (count 16).

[427] The prosecution case is that on 18 April 2019, the masked man, identified by Mr Wooller as Person L, was present at most of the significant events, save for the shooting when he was seen in the area of the shops as MTV left the area. He is said to play a prominent role in the disorder.

[428] Person L wore four items of clothing owned or previously worn by Christopher Gillen, including a black "Trespass Qikpac" jacket with yellow or light green zips, navy Adidas tracksuit bottoms with *white* stripes from the mid-thigh, blue/black Nike trainers and a black T-shirt with white Adidas logo. He also wore a striped beanie hat.

[429] On 16 April 2019, the masked man identified by Mr Wooller as Person PP/1(2/14), wore two items of clothing owned or previously worn by Christopher Gillen, including a black "Trespass Qikpac" jacket with yellow or light green zips and Adidas tracksuit bottoms with *blue* stripes from the mid-thigh. He, too, wore a striped beanie hat like that on Person L.

[430] Christopher Gillen was similar in height and build to both masked persons. He is said to be of distinctive build, having a tendency to lean back when standing upright, with his shoulders back and tummy forwards. He is also taller than most of his associates.

[431] The difference in height between Person D and Person L is similar to that between McIntyre and Gillen.

[432] If the court accepts that Person L is Mr Gillen on 18 April, that same individual admitted being present at the incident on 16 April to Reggie Yates.

[433] Christopher Gillen wore a similar Trespass jacket when stopped by police, with McIntyre on 20 December 2018. He also wore navy Adidas tracksuit bottoms with *blue* stripes from mid-thigh. He wore these tracksuit bottoms earlier on 16 April during the canvassing in the hours before Person PP/1(2/14) wore them at the manufacture of the petrol bombs and later on Central Drive. He wore navy tracksuit bottoms with *white* stripes from mid-thigh on a number of occasions including earlier on 18 April in the Saoradh office. Both tracksuit bottoms were recovered in the search of his home.

[434] The prosecution attaches significant weight to the fact that the navy tracksuit bottoms with *white* stripes from mid-thigh, found at his home address had a burnt or melted hole on the back of the left knee. A feature similar in size, shape and

appearance was visible on Person L's tracksuit bottoms in the footage from the disorder. This it is submitted is, on its own, very compelling evidence against Gillen.

[435] A man was seen in the area of a lamppost, opposite Creggan shops as MTV left the area at around 22:53 hrs. He pulled his T-shirt up to obscure his face from the camera. The T-shirt had a logo consistent with the large Adidas logo on the T-shirt worn by Gillen earlier in the day and later seized from him in custody. His trousers, shoes and "possibly" headwear were consistent with Person L. Around this time, the gunman was wearing a jacket (which was too big for him) that was "possibly" the black "Trespass Qikpac" jacket with yellow or light green zips.

[436] The prosecution relies on Mr Wooller's conclusion, based partly on an assumption that the group on 16 April was likely to be largely made up of the group on 18 April, that it was "much more probable" than not that Person L and PP/1(2/14) were both Christopher Gillen. (*I have rejected that assumption in the no case ruling.*)

[437] In any event, the prosecution submits that Mr Wooller's description of the level of probability significantly understates "the overwhelming clothing evidence against Gillen in respect of both 16 and 18 April."

[438] In effect, the prosecution submits that the masked man on both dates had five items of clothing (including the distinctive jacket) in common with Gillen.

[439] The prosecution submits that the features Gillen had in common with the person on 16 and 18 April cannot be dismissed as a coincidence. It is said that the possibility of another owning the very same items and wearing them in combination is so remote as can be safely discounted.

[440] Two pairs of tracksuit bottoms were seized from Gillen's home. One, a pair of navy Adidas tracksuit bottoms had *white* stripes from mid-thigh (and a burnt or melted hole in the back of the left knee). The other, a pair of black Adidas tracksuit bottoms had *blue* stripes from mid-thigh.

Other supporting evidence

[441] The prosecution relies on the fact that Gillen's Trespass jacket (worn in the stop and search on 20 December 2018) and blue Adidas trainers (worn in the Saoradh office) were not recovered suggesting they were disposed of.

[442] An Audi A4 car, linked to Gillen and which he was driving when stopped by police on 1 April 2019 pulled up at Ballymagowan Gardens during the flurry of telephone activity involving those present at Jude McCrory's home and other more senior persons who have demonstrated support for violent Irish Republicanism (including Thomas Ashe Mellon who has a terrorist conviction). Gillen phoned McIntyre four times (getting though on three occasions) in the minutes before and

after his arrival. He was also in contact with one of the senior men, Mark Canning. This phone activity likely planned the disorder.

[443] Evidence from the phone showed that between 20:20hrs and 22:19hrs Gillen's phone was using cell sites on the Londonderry Creggan 190° mast consistent with his phone being in the area of Central Drive or elsewhere in the Creggan.

[444] At 23:19hrs, approximately 15 minutes after the shooting Gillen, who had not been with the others at that time, was called by McIntyre for 32 seconds (para 256).

[445] Gillen was seen on the CCTV at the 720 Bar when Jordan Devine wheeled the container of empty bottles towards Junior McDaid House on 15 April (para 257).

[446] The masked and unmasked men clearly knew each other and were comfortable with each other's presence. Gillen and the others alleged to be masked were associates of each other and the unmasked defendants (paras 258 to 260).

[447] Four of the five masked defendants were in the Saoradh office together earlier on 18 April, along with James Devine who was likely one of the masked men.

[448] Gillen is particularly closely associated with McIntyre, the other older member of the group of masked men. They interacted closely during the disorder. Gillen was the first person McIntyre called after he switched his phone back on. He was with him the next day in the car.

The defence case on behalf of Mr Gillen

[449] The defence relies on the fact that the identification evidence against Mr Gillen is based on clothing which was commercially mass produced. One of the pairs of black Adidas bottoms seized following a search of Mr Gillen's home has blue stripes from mid-thigh to the trouser bottom. Although they are similar to these worn by the masked male making petrol bombs (PP/1(2)d) on 16 April, the stripes appear to be purple in the images ((PP/1(2) d). The prosecution describes them in the images as black with blue, mid-blue or purple stripes from mid-thigh to the trouser bottom.

[450] However, the defence take no issue with the similarity in colour and design of the other pair of tracksuit bottoms seized, with those worn by Person L on 18 April.

[451] The defence also rely on the differences in footwear worn by the person alleged to be Gillen, on 16 April and 18 April. On 16 April, the footwear is described as trainers with a white mid sole and a reverse Nike tick. On 18 April 2019, the footwear is described as two toned blue Nike Air Max Plus.

[452] In interview with police on 15 March 2022, in relation to the public disorder allegations on 16 April 2019, a prepared statement was read on his behalf in which he said:

“I Christopher Gillen would like the following to be put on record. I completely deny any involvement whatsoever in the offences which are alleged against me on 16th April 2019.”

[453] When asked if he was present with the French production company Pangaia, when police were petrol bombed, Mr Gillen responded “... it’s not me.”

[454] When asked by his solicitor whether he was the masked male as alleged by police he responded, “I am not that person.”

[455] The defence point out that the height of Mr Wooller’s analysis that Gillen is both PP/1(14)) and Person L/Subject Y on both the 16 and 18 April 2019 is expressed as follows:

“I stated above that I considered it likely that Person L and Person PP/1(14/2) were one and the same person; this was based on their having some items of clothing in common, a not dissimilar build and being present in the two assembled and potentially linked groups.”

[456] The prosecution attaches significant importance to the similarity of the jackets worn on both 16 and 18 April. The defence contend that despite the similarities, it cannot be proved that they are the same jacket. Mr Wooller accepted that he could not say for certain what colour the zip, central zip and pocket zip were. He said the pocket and central zip were either yellow or green. When he was challenged about the colour he said:

“... but yes there is still going to be some question mark over [the colour] because as has again been discussed at length, we are dealing with mixed colour lighting.”

[457] Mr Wooller also concluded that it is likely that a beanie hat worn by Person L on 18 April and Person PP 1 (14)/2 (dark toned with a light stripe around the front) showed a level of consistency in head wear but he accepted that there was a *real possibility* that they are not the same.

[458] Mr Wooller emphasised the point he made throughout his evidence that he is not an expert in clothing types, nor is he an expert in anatomy or biomechanics. The most he can say is that the physical build of Person L and Person PP/1(14) was not dissimilar.

[459] In relation to 18 April 2019 and the alleged offences of riot (count 3); possession of petrol bombs (count 4); throwing petrol bombs (count 5); and arson on the Ford Transit tipper truck (count 9); the defence point out that there is no facial imagery of person L to prove his identification and all that can be said is that Person L is wearing a particular combination of mass produced articles of clothing.

[460] In relation to the damage to the rear of the left knee area on a pair of blue Adidas tracksuit bottoms seized from Mr Gillen's home on 9 May 2019 and the similarity with a feature seen on person L in a number of images on 18 April 2019, Mr Wooller's evidence is that the trousers have "the appearance" of a burnt/melted area. Whilst the prosecution submits that the area of damage is very similar in size/shape and appearance, there is no evidence that it is in fact the same dimensions or type of damage. The defence also submit that the tracksuit bottoms that are attributed to Gillen are not linked to him forensically.

[461] Whilst the prosecution also relies on images at which show an unmasked male prior to the Audi being burnt, said to be Gillen, on 18 April, the defence submit that due to blurring facial features it is not possible to definitively identify him from those images.

[462] Mr Wooller was asked to comment on those images and opined that the person's trousers, shoes and possibly headwear were consistent with those of Person L and having seen the imagery he suggested that the large white Adidas logo on the T-shirt of Christopher Gillen was consistent with that seen on the person he had suggested could be Person L.

[463] When he was cross examined about this issue, he agreed that his opinion was that it was possible that the person in the image (X9) may have been wearing a beanie hat but he agreed that it could also be a rolled-up snood.

[464] It was suggested to him that on image X9 the only thing that can be observed is a solid block logo. Mr Wooller agreed that the rendering (ie how the image appeared) of that logo is solid and the actual script of the logo cannot be seen. He also agreed that what he had opined as showing three stripes on the side of the trousers, in fact, appeared as a block and it was impossible to discern three breaks in the stripes. Mr Wooller explained that the reason for the "block" appearance of those features is a combination of the resolution and the fact that at that distance the image is slightly defocused and it is common for light areas to coalesce under those conditions.

[465] Therefore, in his opinion, the appearance of that logo on this T-shirt is consistent with the image seen later the reference imagery. On behalf of Mr Gillen the defence rejected the submission that essentially three stripes have merged into one, although Mr Wooller maintained that that is "commonly what happens."

[466] In relation to the robbery of the Ford Transit tipper truck (count 8), the defence submit that the identification of the robbers by Mr Knightly and his partner Miss McEleney set out above in relation to Paul McIntyre, is not consistent with clothing alleged to have been worn by Mr Gillen. Mr Knightly's gave the following description:

"They were all between 5ft 8in and 5ft 10in. They were all wearing black bomber/puffa style jackets with hoods, black tracksuit type trousers and black trainers. I recall seeing the white soles of their trainers. They were all dressed very similar, and I don't remember seeing any makes or logos in their clothing. They were wearing gloves with fingers (not mitts), these were not woollen gloves, they were more like ski gloves and were also black in colour. They all had scarves covering their faces ... the scarves were black in colour with some white lines running through them."

[467] Clearly, this description is not consistent with the distinctive Qikpac coat Mr Gillen is alleged to have been wearing during the riot.

[468] The defence notes that this was not a fleeting description, and the description given by Miss McEleney also does not accord with the clothing of the person alleged to be Person L or Subject Y. She described the first male:

"He was not all in black: black coat three quarter length past his hips with the hood up with red stripes on the arms; his bottoms were navy/black with white on them (somewhere not sure) and all white slippers, black thick gloves."

[469] She described male 2, who got into the passenger side of the lorry as:

"wearing a black scarf around his face. This male was all in dark/black clothing and a three quarter length coat with a black hood up; navy/black bottoms."

[470] She described male 3 as:

"His clothing was all in black. He was wearing a black jumper type top with a hood and had the hood up ... and had a black scarf covering his face; he was wearing black tracksuit bottoms that appeared plain black; I think he was wearing black footwear but I am unsure."

[471] She described male 4, who had remained in the hallway and in respect of whom Mr Knightly had not provided a description, as:

“Dressed all in black, black scarf, black top and bottoms.”

[472] The defence make the point that there was adequate lighting to enable both individuals to give accurate descriptions about the clothing of the robbers and there is no evidence that either Mr Knightly or Miss McEleney observed any of the males who enter the flat wearing navy Adidas tracksuits with three stripes from the knee down to the trouser bottoms, or two toned blue Nike sports footwear and in particular wearing a Trespass logo jacket with yellow/green zips.

Conclusion

[473] The Qikpac jacket with yellow/green zips worn by the masked man identified as Person L by Mr Wooller is a relatively distinctive jacket and certainly it is not suggested that any other person seen on the footage was wearing a similar one, apart from Person PP/1 (2) on 16 April, also alleged to be Gillen.

[474] Mr Gillen is known to wear a similar jacket. He was seen wearing it on bodyworn footage from a previous stop and search on 20 December 2018. It was not recovered from his home.

[475] It is correct that the precise colour of the zips on the jacket are unclear. They may be yellow or green. The colour of the stripes on the trousers worn by Person PP/1(2) do appear purple rather than blue. Whilst those trousers appear to be dark, probably navy in images, including in an image of those seized from Gillen’s home, in fact they are black with blue stripes. As Mr Wooller has explained, there is a question mark generally over colour because of the effect of mixed lighting sources. It is a matter which requires caution.

[476] The tracksuit bottoms worn by Person L on 18 April have three white stripes from the mid-thigh.

[477] A burn or damage mark has been identified on the back of Person L’s left knee. No expert evidence has been called to contradict Mr Wooller’s evidence about this mark. It matches a damage mark on the trousers found in Gillen’s home, which also have similar white stripes from mid-thigh. The extent of the defence challenge is that the precise dimensions of the mark seen on the footage is not available.

[488] Individually, none of the items of clothing, including the Qikpac jacket, is out of the ordinary. But, the combination of these items with similar tracksuit bottoms found in Gillen’s home (in particular, the similar striped design) stretches coincidence.

[489] However, it is the distinctive burn or damage mark in the same place as that seen on the masked man on 18 April which makes coincidence an unlikely explanation.

[490] It is plain to any lay observer that Gillen, in unmasked images is tall and does have a noticeable stance, whereby his stomach protrudes. That is not inconsistent with that seen on the masked man on both occasions.

[491] The cell cite evidence does not exclude him from the area of the disorder and the later image of an unmasked person, said to be Gillen, just before the shooting although unclear, bears some similarity to him and the T-shirt he is wearing is broadly similar to that worn by Gillen in the Saoradh officer earlier. The absence of a jacket in this image is notable, however, it is speculation to suggest that there is a connection with the coat worn by the gunman, which appears oversized.

[492] Whilst the defence submit that there is no evidence that Mr Gillen ever left his home that night, there is evidence to suggest that this is not the case. The car linked to him, and which he was driving a matter of weeks before 18 April was seen arriving in Ballymagowan Gardens at 21:08hrs, around the time of the flurry of telephone calls. He telephoned Paul McIntyre on three occasions, 21:06hrs, 21:09hrs, and 21:19hrs. Reggie Yates, the journalist, asked who the driver was and he was told by Gallagher that he was "another Saoradh activist. You met him earlier in the office." MTV footage shows Gillen in the office that day. In the absence of evidence to the contrary, I am satisfied that Gillen was in Ballymagowan Gardens around the time the orchestration of the riot was planned, and it is unlikely that his involvement in telephone calls with relevant others, and association is a coincidence.

[493] Given the evidence that Mr Gillen wore a similar distinctive Qikpac jacket previously, its absence from his home when it was searched has some significance. There may of course be an explanation, but if there is, Mr Gillen has chosen not to give it.

[494] The defence emphasise the limited extent of Mr Wooller's opinion - that Mr Gillen *could be* Person L and *could be* Person PP/1(2). I accept that Mr Wooller's evidence is only part of the evidence; it is for me as the tribunal of fact to reach the ultimate conclusion in this case.

[495] In my view, looking at the prosecution case overall, I consider that the burn/damage mark seen on Person L's trousers is a unique feature which appears to match that seen on the trousers seized from Gillen's home. They are also similar in all other respects. The Qikpac jacket worn by Person L is similar to that worn by Gillen previously and has a relatively distinctive zip. Police searched for a dark jacket with a green zip. None was recovered. Person L's general build and tendency to protrude his stomach when standing, is not inconsistent with that seen in images of Gillen. There is evidence that he was at Ballymagowan Gardens and involved in

communications with Paul McIntyre at the relevant time. In my view, these circumstances are unlikely to be a coincidence and answers are required to explain the similarities in the clothing and the burn/damage mark in particular. In those circumstances, I must consider whether it is proper to draw any adverse inference from the defendant's failure to give an answer and if so, what inference should be drawn.

[496] I remind myself that an adverse inference may only be drawn if the prosecution case is sufficiently strong to call for an answer and there is no sensible reason for the defendant not to have given evidence, other than that he has no answer to the prosecution case or none that would stand up to cross-examination.

[497] If I am sure that both conditions have been met, the fact that the defendant did not give evidence may be considered as lending some support to the prosecution case. But such an inference cannot of itself prove guilt.

[498] I do consider that the strength of the prosecution case is such that an adverse inference should be drawn that the masked man holding a petrol bomb in image Person L(3), L(3) is Gillen and that he is also the person throwing a petrol bomb in image Y30.

[499] Having considered all of the evidence, I am satisfied beyond a reasonable doubt that he is guilty of riot (count 3); possession of petrol bombs in suspicious circumstances (count 4); and throwing petrol bombs (count 5) on 18 April 2018.

[500] In relation to the alleged offences on 16 April, Gillen is alleged to be present and to be guilty of making petrol bombs (count 14), possession of petrol bombs in suspicious circumstances (count 15) and throwing petrol bombs (count 16) on a joint enterprise basis. Whilst there appears to be a person present in a similar jacket, the footage is not of sufficient quality to enable me to identify him as a person directly involved with petrol bombs, or that he is the same person identified as Person L on 18 April as the person present on 18 April. Whilst there is some evidence that the person is wearing tracksuit bottoms with blue/purple stripes, similar to the second pair of trousers seized from Gillen's home, there are no distinctive marks, unlike those worn by Person L on 18 April.

[501] The prosecution relies on the fact that the person whom I have identified as Gillen on 18 April, is one of the masked persons who met the MTV film crew when they arrived at the shops and indicated that he had also been involved in the rioting on 16 April.

[502] Whilst it is submitted that this is tantamount to a confession, it is unclear whether it amounts to more than simply being present, with others directly involved. In my view, the evidence is insufficient to prove guilt to the criminal standard.

[503] I therefore find Gillen not guilty of the charges on 16 April 2019.

[504] In relation to counts 8 and 9, (robbery and arson of the tipper truck) the weakness in the identification evidence is apparent. None of the clothing descriptions of the robbers are consistent with Mr Gillen. The conditions in which Ms McEleney made her identification were good although no doubt this was a traumatic incident. Mr Knightly, her partner and the owner of the tipper truck also gave an inconsistent description.

[505] Ms McEleney said that from videos that she was sent subsequently showing the tipper truck at the junction before it was set on fire, the males who got out of it were the same males who stole it. From the quality of the footage, the identity of those involved in the arson is insufficiently clear to enable me to make identifications.

[506] In those circumstances, the prosecution case in relation to these offences is not sufficiently strong to call for an answer from Mr Gillen. I therefore draw no adverse inference from his failure to give evidence and find him not guilty of count 8 and count 9.

The identification evidence against Joseph Campbell

[507] Joseph Campbell is charged with riot (count 3); possession of petrol bombs in suspicious circumstances (count 4); and throwing petrol bombs (count 5) on 18 April.

[508] He is charged with possession of petrol bombs in suspicious circumstances (count 15) and throwing petrol bombs (count 16) on 16 April.

[509] On 18 April 2019, the masked man identified by Mr Wooller as Person F, was present with Person L (Gillen) at the outset of the incident and, later, at all three rounds of petrol bombing. He was present at the shooting but did not appear to have a role and is not charged with murder.

[510] The prosecution allege that he was wearing two items of clothing similar to that owned or previously worn by Joe Campbell, including navy Adidas tracksuit bottoms with white stripes to mid-calf and an Adidas logo on the left ankle, and white Adidas trainers with dark stripes and other notable features. On 28 March 2019, Bodyworn Footage from a stop and search, shows him wearing similar trousers, and also on 10 April 2019 on CCTV from the 720 Bar. On the MTV footage of the Saoradh office from earlier on 18 April, he is seen wearing similar white trainers.

[511] He clearly had a larger build than most of the other persons seen.

[512] On 16 April 2019, the prosecution alleges that the masked man identified by Mr Wooller as Person PP/1(11) wore two items of clothing owned or previously worn by Joe Campbell, including dark Adidas trainers with light stripes and other notable

features and light grey Adidas tracksuit bottoms with blue stripes extending the full length.

[513] On both 16 and 18 April, the masked man alleged to be Campbell wore a “visually identical” dark hooded jacket with a ventilation flap across the chest. His trainers on 16 April were the reverse colour scheme to that on 18 April.

[514] The prosecution describes him as on the periphery of the activity on both occasions and that he appears rather ineffectual.

[515] It is alleged that grey tracksuit bottoms with blue full-length stripes wholly consistent with those worn by PP/1(11) were recovered in a search of his address.

[516] Mr Wooller concluded that it was “much more probable that Person F and PP/1(11) are one and the same person, than they were not: and that it is more probable that Joseph Campbell is both Person F and PP/1(11), than he is not.” Again, this conclusion was partially based on an assumption that the same broad group was present on both 16 and 18 April, which I have rejected. The extent of the opinion, absent this feature is that the Campbell *could* be the person identified as Person F and *could* be person PP/1(11).

[517] The prosecution repeats the submission that because of the connection between the incidents, the evidence implicating the defendants should be considered as a whole.

[518] The connection between Campbell and 16 April; that between 16 and 18 April; and that between Campbell and 18 April significantly strengthens the proposition that the person on both occasions was Campbell.

[519] If it was the same masked person on both occasions, in total he had four items of clothing in common with Campbell.

[520] On 18 April, in image Y27, he is alleged to be holding a lit petrol bomb in one hand. The image is taken from behind him. In images F10 and F11 it is alleged that he is seen carrying an empty crate, alleged to have been carrying petrol bombs.

[521] On 16 April, image PPI 11(f), he is alleged to be holding a petrol bomb.

Supporting evidence

[522] Campbell’s navy Adidas tracksuit bottoms, with white stripes to mid-calf and both his white adidas trainers and black Adidas trainers were not recovered suggesting that they were disposed of.

[523] While Mr Wooller had noted Campbell as “clearly having a larger build than most of the other persons seen,” the prosecution submits that he was, in fact, of a particularly distinctive and identifiable shape.

[524] Campbell’s face is described by the prosecution as soft-featured, which could be seen above the mask in the footage of the disorder on 16 and 18 April. The prosecution submits that this description means “baby faced” although no witness describes it as such. The mask worn by Person F and PP/1(11) exposed their eyes, eyebrows and the bridge of their nose. That part of their faces is said to bear an obvious similarity to each other and to Campbell’s.

[525] Gait analysis provides moderate support for the proposition that the figure in the questioned footage is Campbell in the reference footage.

[526] Evidence from his phone showed no recorded events for Campbell’s phone between 19:58hrs and 23:17hrs, meaning that his phone was turned off during the period of the disorder until after the shooting. At 23:17hrs, his phone was again connected to the network, for a short period of around 30 seconds, using the Londonderry Creggan 190° cell ID which provided coverage to an area of south Creggan, including an address connected to him at 4 Carrickreagh Gardens.

[527] In a signed statement to the police on 23 April 2019, Campbell allegedly lied to police about his whereabouts on the evening of 18 April. In that statement, he stated that on the morning of 18 April 2019 he went to the Saoradh office at Junior McDaid House and stayed there until around 3/4pm, before returning home to 4 Carrickreagh Gardens where he stayed all evening in the house with his aunt and uncle. He claimed to have ordered a Chinese takeaway. He stated that he knew nothing of the disorder in Creggan until the following day when he was told by neighbours that a girl had been shot. It is apparent from the 720 Bar footage that he was at the Saoradh office around the time of the meeting at 19:00hrs on 18 April.

[528] The prosecution invites the court to draw an adverse inference against Mr Campbell because he has not given any evidence to explain the contents of his statement, nor has he subsequently given any explanation for what appears to have been a lie. Nor is there other evidence of an innocent reason for the lie and the prosecution submit that the court should conclude that the lie provides support for his identification as a masked individual because it was a deliberate lie and relates to that issue.

[529] The masked and unmasked men clearly knew each other and were comfortable with each other’s presence. Campbell and the others alleged to be masked were associates of each other and the unmasked defendants. Four of the five masked defendants were in the Saoradh office together earlier on 18 April, along with James Devine who was likely another of the masked men.

[530] During the day of 18 April, Campbell was regularly in the company of James Devine another of the youngest of those at the Saoradh office. Person F was regularly seen in the company of Person C (alleged to be James Devine) throughout the disorder.

[531] Campbell was in phone contact with Mr Barr on 18 April. The day after the murder Gillen called him at 09:21hrs and again at 14:07hrs and 14:08hrs.

[532] Bad character evidence shows Campbell's support for violent Irish republicanism and an animus towards the police. He has subsequent convictions for possession of an article for use in terrorism on 26 February 2023 in relation to a Facebook post and a conviction for inviting support for a proscribed organisation on 14 June 2025, also in relation to a Facebook post. There is clear evidence of his association with Saoradh.

The defence case on behalf of Mr Campbell

[533] The defence make many of the general points relied on by the other defendants: Mr Wooller's acknowledged lack of expertise specifically in clothing comparison along with the mass-produced nature of all the items. Whilst he made suggestions as to possible footwear matches, all of his observations about potential colours came with the caveat that colour appears different under different types of light. Whilst he describes footwear as "light toned", one of the suggested images is said to be actually white. The same point is made in respect of Joe Campbell's clothing, which he describes as "black" which can encompass a range of colours and tones.

[534] Since the court has already rejected an assumption that the two groups of rioters on both 16 and 18 April 2019 were, broadly speaking, likely to consist of the same individuals as a partial basis for identification, the strength of his opinion is that Person F on 18 April and Person P1(11) on 16 April are *possibly* one and the same.

[535] With regard to Mr Campbell's physical build, which Mr Wooller describes as distinctive, the defence challenge his expertise to comment suggesting that this is a mere layman's observation.

[536] The defence also relies on the fact that there were two individuals being considered by Mr Wooller before he settled on the person to whom he attached the label "Person F." The defence suggest that the decision may have been influenced by a police indication that Joe Campbell was a person of interest.

The alleged supporting evidence

[537] The defence challenge the prosecution submission that the cell site evidence supports the case that Campbell was at the scene of the riot on 18 April 2019. While his phone may or may not have been turned off between 19:58hrs and 23:17hrs during

the period of the disorder until after the shooting, it connected again to the network at 23:17hrs using the Londonderry Creggan 190° cell ID. The area of coverage includes an address connected to him, at 4 Carrickreagh Gardens, and so the defence submits that it does not assist the prosecution case.

[538] In relation to 16 April, there is no alleged supporting cell site evidence at all.

[539] The defence dispute the weight that can be attributed to the gait analysis evidence from Nadia Asgeirsdottir, an acknowledged expert in gait analysis. Whilst her opinion is that analysis provides “moderate support” for the proposition that Joe Campbell was one of the masked rioters, the defence highlights a number of caveats in her evidence which may suggest that less weight should be afforded to her opinion:

- (a) The figure in the questioned footage is wearing what appears to be a hooded top with the hood up, which limits observation of head position and movement.
- (b) There is variation of the speed of walking of the figure in some of the questioned footage.
- (c) The path of progression observed being taken by the figure in some of the questioned footage and the subject in the some of the reference footage is not in a straight line, which may have affected their gait.
- (d) The figure in the questioned footage and the subject in the reference footage is wearing what appears to be loose clothing, which limits the observation of knee and elbow position and movement.
- (e) The figure in some of the questioned footage and the subject in some of the reference footage appear to lift their right or left hand up to their head, which may have affected their gait.
- (f) The figure in some of the questioned footage and subject in some of the reference footage are holding what appears to be an object in their right and/or left hand, which may have affected their gait.
- (g) The figure in some of the questioned footage and the subject in some of the reference footage are only partially in frame.
- (h) There is a limited number of steps observed being taken by the figure in some of the questioned footage and the subject in some of the reference footage.
- (i) The figure in some of the questioned footage and the subject in some of the reference footage are partially obscured by other persons and/or objects.

- (j) The figure in some of the questioned footage and the subject in some of the reference footage are walking close to other persons and/or objects, which may have affected their gait.
- (k) The subject in some of the reference footage is holding their hands in front of their torso and/or in pockets, which may have affected their gait.
- (l) The subject in some of the reference footage appears to be adjusting their clothing, which may have affected their gait.
- (m) The subject in some of the reference footage continually turns their head and torso, which may have affected their gait.

[540] As a result of the quality of the footage and/or the fact that the subject was obstructed, there is no material available to the court in respect of a number of different characteristics (5, 9, 10, 13 and 14), typically used as comparators. The defence also point out that the expert was not provided with very much footage of the subject walking sideways on to the camera. Most clips were either towards or away from the camera, and the analysis was affected by the quality of the footage from the camera and lighting issues.

[541] The amount of footage of the subject was very limited. Thus, clip 1 and 2 are the same clip. Appearance 2 was 4 seconds long. Appearance 8 and 9 are 12 seconds and 5 seconds long. So, in actual fact, very little footage was available for analysis.

[542] It was noted that the analysis revealed a number of apparent differences in gait. The expert explained that these variables can be from within the same person because of mental state at the time or walking close to a person or object where an individual may subconsciously vary gait to avoid walking into objects. However, the variables can also indicate a different person. With regard to the corresponding features, these were said to be fairly common.

[543] The defence refute the suggestion that Joe Campbell told lies to police or that there is a basis for drawing an adverse inference from any lies that were told.

Conclusion

[544] There is nothing distinctive in the tracksuit bottoms and trainers worn by Person F on 18 April. The clothing has no identifying features like the unique burn/damage mark on Gillen's tracksuit bottoms. There is nothing to suggest that the wearing of these items of clothing is anything other than a coincidence. There are no personal items linked to Campbell, such as jewellery.

[545] The prosecution submit that the unlikelihood of a coincidence is increased by Mr Campbell's significantly larger build, the gait analysis evidence, his soft features, seen above his mask in some images, bad character evidence in the form of Facebook posts, particularly an image of a masked man carrying a firearm and messages of support for violent Republicanism.

[546] Additionally, the prosecution invites me to draw an adverse inference from the lies allegedly told in police interview about his whereabouts on 18 April and separately, from his failure to give evidence.

[547] Whilst I accept that Mr Campbell is of a larger build than others seen on the footage, that feature along with the gait analysis is simply not enough to suggest that the clothing is more than a coincidence. The description "soft featured" was one given by counsel for the prosecution - not by any witness. I am unable to discern with any degree of certainty that the masked man was "baby faced" or that there is any distinct similarity with images of Campbell when he is seen on the reference footage, unmasked.

[548] As with all these defendants, the evidence of association with others who are hostile to police and who have demonstrated support for violent Republicanism is relevant to motive and is part of the overall picture. But I cannot convict either wholly or in part because of bad character. At most, it is a piece of circumstantial evidence to be added to the other strands of prosecution evidence.

[549] In relation to Campbell's alleged lies to police about his whereabouts on 18 April, I remind myself of the warnings given to juries about inferences that can properly be drawn:

[550] A defendant's lie, whether made before the trial or in the course of evidence, or both, may be probative of guilt. A lie is only capable of supporting other evidence against the defendant if the jury is sure that:

- (a) It is shown, by other evidence in the case, to be a deliberate untruth, ie it did not arise from confusion or mistake.
- (b) It relates to a significant issue.
- (c) It was not told for a reason advanced by or on behalf of the defendant or for some other reason which does not point to the defendant's guilt.

[551] In short, if I am sure that Campbell lied to police, I must consider why he lied. The mere fact that a defendant tells a lie is not in itself evidence of guilt. A defendant may lie for many reasons, for example, to conceal disgraceful conduct of his, short of the commission of the offence, or out of panic or confusion. If I consider that there may be some innocent explanation for his lies then I should take no notice of them.

But if I am sure that he did not lie for some such or other innocent reason then his lie(s) can support the prosecution case.

[552] In view of the evidence that Campbell was at the meeting at the Saoradh office around 7pm-7:30pm on 18 April, I am sure that the account given to police about his whereabouts that evening is untruthful. He may have lied because he is guilty of the alleged offences. On the other hand, he may have lied because he was frightened, following the death of Lyra McKee. The evidence the court has heard is that Campbell was a new face amongst those believed to support militant Republicanism. He was young; both he and James Devine are described by the prosecution as “the kids.” I cannot rule out the reasonable possibility that he lied out of panic, given the circumstances of his arrest and I therefore do not consider that his lies support the prosecution case that he is guilty of the alleged offences. Even if an adverse inference could be drawn, it would amount to no more than his presence. I cannot convict because of it.

[553] The question remains as to whether I should draw an adverse inference from Campbell’s failure to give evidence. That depends on the strength of the prosecution case. I do not consider that the case is sufficiently strong to justify drawing an adverse inference. The similarity in clothing could be explained by coincidence. Even, if an adverse inference ought to be drawn from Campbell’s lies, it can only support the prosecution case. I cannot convict because of it.

[554] Whilst Person F and Person PPI (11) may both be Joe Campbell, and probably is Joe Campbell, I cannot be sure on the evidence presented to me.

[555] I therefore find him not guilty of all counts.

Final

[556] I thank counsel for their assistance in dealing with the complex legal and factual issues as they arose during the course of the trial.

[557] Lyra McKee was murdered in an act of senseless violence. The gunman has not been brought before any court and the evidence against those suspected of assisting or encouraging him has fallen short of that required for conviction.

[558] I wish to acknowledge Lyra’s family and friends who have endured a lengthy and protracted trial which will have brought little, if any, comfort or relief. I regret that.