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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 25/053259
	Delivered: 11/09/2026

IN THE CROWN COURT OF NORTHERN IRELAND

SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

CEULEMANS, GALLAGHER, MURNEY AND MELLON

HHJ KERR KC

Introduction

[1] The defendants face charges on this Indictment arising from police investigations into the unnotified Easter commemoration parade on Monday 10 April 2023. The parade took place in the Creggan area of Derry. During the course of the events there were a number of incidents of note including a firebomb attack of a police land rover, attempts to obscure cameras which had a view of the parade, the burning of clothes worn by members of the colour party at the parade and the discovery after the parade of a number of pipe bombs in the area of the toilet block in the city cemetery.

[2] Arising from the investigation each defendant faces charges under section 12 of the Terrorism Act 2000. The relevant charges are that each defendant faces an individual charge under section 12(2) of the Act at counts 1, 2, 3, and 5. They are jointly charged with an offence at count 4 under section 12(3) of the Act.

[3] Section 12(2) states:

“A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is:

- (a) to support a proscribed organisation;
- (b) to further the activities of a proscribed organisation,
or

- (c) to be addressed by a person who belongs or professes to belong to a proscribed organisation.”

[4] Section 12(3) of the Act states:

“A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities.”

[5] The trial commenced before me and it was made clear that the background evidence on the trial papers was agreed (subject to some minor matters to which I will refer). This included statements from police officers at the scene. I was given and had played before me a compilation of video evidence partly from CCTV, partly police sources either recorded by or seized by PSNI (Police Service of Northern Ireland). I was also given documents produced by the prosecution based on the seizure of mobile phones from the defendants. The relevant proofs as to the seizures and the later edited transcriptions were presented as agreed evidence. There were also a number of still images relied on.

[6] At the close of the prosecution case I was invited to consider applications for a direction of no case to answer in respect of each defendant on each charge. All parties produced detailed written submissions on these issues.

[7] I considered the evidence and the submissions made. I applied the test for such an application as set forth by the Northern Ireland Court of Appeal in *PSNI v LO* [2006] NICA 3 at para [14]:

“The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in *Galbraith*. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution case, “do I have a reasonable doubt?” The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict.”

[8] Having applied the test to each defendant, on each charge, I was not convinced that there were no circumstances in which I could properly convict. Accordingly, I refused all the applications.

[9] Each defendant was invited by the court through his counsel to give evidence on his own behalf. Each heard the standard admonition as to the potential effect of failing to give evidence. Each defendant in turn declined the opportunity to give evidence in his defence. No other defence evidence was proffered in respect of any defendant.

[10] At the end of the evidence all parties adopted the written submissions prepared for the direction applications as their final submissions.

The general factual background

[11] The parade was from the Creggan estate to the City Cemetery. The route is shown on the agreed map Ex 32. The cemetery is approximately half a mile from the Creggan shops. From the shops the entrance to the cemetery is through a set of gates. Inside the gates is a toilet block and the Republican memorial is a short distance inside.

[12] The parade commenced shortly after 2:00pm. There is ariel footage of the parade collecting. There was activity to the rear of the shops where there was a container with IRA sprayed on it. A person identified by the prosecution as Ceulemans can be seen entering the container. Flags are taken out by him and by a masked man. Flags are then taken by them through an alleyway to Central Drive where more men, some masked, are seen taking more flags into the alley. Ceulemans then comes out of the alley without the flags. He stays in the area and appears to be watching that direction.

[13] A crowd is seen gathering and the prosecution suggest both Ceulemans and the defendant Gallagher can be identified. About that time a number of persons in dark clothing come from the alley walking towards Ceulemans.

[14] At 2:13pm the colour party start marching. They are dressed identically in military clothing. A beret with an insignia, black glasses, black snoods, a khaki jumper with green, white and orange armband, combat trousers and military style boots. The flags they are carrying appear to be those removed from the container by Ceulemans and others.

[15] As the parade passed the shops the prosecution suggest Ceulemans was in front of the colour party, Gallagher was clapping as they passed and the defendant Murney appears to be taking photos on his mobile. As the colour party went past those two followed behind it.

[16] On Linsfort Drive, Murney was now in front of the parade. Ceulemans was to the side passing through a group of youths close to crates of petrol bombs. On the route a police land rover was parked which was displaying a sign showing the parade was unauthorised. At 2:18pm a group of youths began to attack the land rover with petrol bombs and bricks/stones etc. The bonnet was set on fire and that vehicle withdrew.

[17] During the attack the parade came to a halt. The prosecution submit this indicates pre-planning as does the fact persons with professional camera equipment watched and recorded the attack. Once the land rover had been driven away the roadway was cleared to allow the parade to pass. It is submitted that Ceulemans was present throughout this process and appeared to be leading this.

[18] Once the parade started to move Ceulemans moves with them and can be seen talking into his sleeve. Gallagher could be observed with the parade whilst Murney was on the road in front of the parade and could be seen taking photos. Once the parade moves off again, the three defendants are prominent at the front moving towards the cemetery.

[19] Ceulemans is one of the first to enter the gates followed by the other two. The colour party is close behind. Murney appears to be looking back to the colour party. As they move forward a person with a number of bags can be seen to go to the rear of the toilet block which appears to be covered by masked individuals. Red crates similar to ones earlier seen to contain petrol bombs are placed at the pillar of one of the gates and two masked youths appear to be carrying them in. Cameras at the toilet block show part of this but earlier attempts had been made to obscure the cameras. At 2:30pm the cemetery gates are closed by a masked individual as the colour party came to a halt at the Republican Plot.

[20] At the ceremony Gallagher acted as MC. He stood at the lectern. He has notes and he invites speakers to come forward identifying them by name. He thanked those present for coming to remember those who gave their lives for Irish Freedom. He referred to the Easter Proclamation which was read by another. He then calls someone he refers to as a Derry Republican to read the Derry Brigade Roll of Honour and Remembrance. Before this was done the Irish Flag was lowered and Gallagher who had Ceulemans and Murney standing behind him called on the Derry Brigade Irish Republican Army (IRA) to come forward and lay a wreath. A masked person did so. This was followed by others in the crowd.

[21] A member of a French delegation described by Gallagher as an "anti-Fascist comrade" made a short speech. Jason Ceulemans was called forward by Gallagher, described as a "former Republican prisoner" he read a statement on behalf of republican prisoners currently in prison on both sides of the border.

[22] Gallagher then called on the defendant Murney to give a speech which he did as follows:

"I would like to thank the organisers of today's commemoration for giving me the honour to speak to you today. The Derry Commemoration Committee welcome each and every one of you today to their annual commemoration held at this plot in Creggan. A commemoration that is respectful and dignified. One

which pays homage to not only the revolutionary men and women of Easter 1916, but all our Republican dead. In the weeks leading up to today's commemoration, Crown Forces, including British soldiers have continually invaded Derry. They have raided and wrecked homes and terrorised families, doing so under the guise of so-called search operations. But don't be fooled, these operations yielded nothing. These were not search operations, they were merely a tactic to up the ante leading to today's commemoration, to try and somehow cower from Republicans attending here today. And from what I can see, there isn't too many republicans cowering today. But no matter what tactic or ploy the occupier and it's armed wing throw at us, we will continue to commemorate our martyrs with dignity and respect. Here we are on hallowed Republican ground and I am proud to stand here with you. Today is the most important date in the Republican calendar a date in which we pay our respect and honour our Republican dead. It is a chance for reflection, a time to reflect on our activism and our part in the struggle. Have I done enough? What else can I do? Well I can say there was a role for everyone in this struggle. No part is too small to play. The days of egos and self-driven prima donnas are gone. Those types of people sold out and took the soup. As oíglach Bobby Sands said "Everyone republican or otherwise has their own particular part to play. No part is too great or too small. No-one is too old or too young to do something. Today is the 107th anniversary of the 1916 Easter Rising, a rising that is ongoing. It is unfinished business for republicans. It will remain as the unfinished business until the occupier leaves our lands. It will be unfinished business until we have full national sovereignty. No amount of referendums that require British approval, or attending partitionist assemblies in Stormont or Leinster House will achieve the Republic that the volunteer soldiers of the IRA fought and died for. If anything these entities are further barriers to the reunification of our country. As we remember our fallen dead and rededicate ourselves to our republican objectives, we poignantly remember our comrades who find themselves imprisoned in Maghaberry, Hydebank, and Port Laois who cannot be here today. We also remember their families and loved ones. They give us the inspiration to carry on and continually move our struggle forward. I have a message for the British occupiers, their paramilitary police and their entire establishment. So long as you

continue to oppress us, you will meet with the inescapable consequences. Historically oppression breeds resistance so I quote Maire Drum “It isn’t enough to shout up the IRA. The important thing is to join the IRA. Ar aglaidh go bua. Tiocfaidh ar la. Up the Republic.”

[23] The video shows that during his quotation from Maire Drumm Murney raised his arm with his fist clenched.

[24] After this Gallagher thanked those attending and in closing remarks stated, “We must take no steps backward, our steps must be onward, cos if we don’t the martyrs that died for you and me, for this country, will haunt us forever.” This was followed by the Irish national anthem at about 3:00pm. Gallagher then asked the crowd to wait around and help the colour party leave peacefully.

[25] At this request a large number of people despite the fine weather raised umbrellas. Activity took place in the area of the toilet block where there were two CCTV cameras. Earlier at 12:55pm, a masked male could be seen approaching them with an aerosol can spraying them. This reduced their effectiveness. At about 2:25pm before the end of the ceremony, the same person appears to return with a spray can and this time does effectively block their view.

[26] The available evidence suggests the colour party changed their clothing at the toilet block. They were protected from view by the crowd, the location and the use of umbrellas. At this time fires were started and smoke could be seen in the area, one person can be seen pouring liquid which had the effect of fuelling the fire. There is a limited view of Ceulemans close by at the cemetery gate. The gates were closed until the colour party dispersed. Murney can be seen in a crowd holding the larger gate closed.

[27] The following day a police search of the cemetery found four viable pipe bombs in a waste bin beside the toilet block. Police were attacked during the search.

[28] The initial prosecution submission is that whilst there was clearly a commemoration service at the core of this occasion that service was used by others including the defendants as a violent demonstration of illegal activity including masked men in uniform, obscuring observation of the activities and personalities, petrol bombing and attacking the police presence and leaving viable explosive devices in an area it was clear the police would be checking out. The co-ordination of the incidents and the presence of a supply of petrol bombs prior to the start show the activity was pre-planned, organised and clearly had been arranged in advance.

Seizures and telephone/social media

[29] A phone was recovered lying in grass at a house beside Murney's house while it was being searched. It has been established as his. The prosecution highlight a number of matters found when the phone was examined:

- (i) On 10 February 2023, Murney communicated with Mellon about French guys coming over for the Easter and organising accommodation for them.
- (ii) On 26 March, Mellon asks Murney about the French guys and if they would lay a wreath in Dublin.
- (iii) On 6 April, a WhatsApp conversation between Murney and Mellon refers to Murney's upcoming speech. Murney refers to the quote from Maire Drumm and what he is to say leading up to it. There is a discussion about where the quote is from. In subsequent messages Mellon sends a complete draft of what was in fact said by Murney and it's stated that "it's away to Paddy, he will print it off".
- (iv) On 7 April, there is further discussion between Murney and Gallagher (referred to as Paddy Brexit) about the form and content of the speech. Gallagher says he will reprint it that night.
- (v) On 6 April 2023, there are messages between Ceulemans and Mellon about where the podium is. Ceulemans also contacts Gallagher and sends him the Derry Brigade Roll of Honour. Gallagher later sends the final draft of the speeches to be used.

[30] Gallagher's phone was seized on his arrest on 26 June 2023. In addition to messages as above involving him:

- (i) On 22 March 2023, Mellon contacts Gallagher looking for the format of the events to come. Gallagher sets them out in reply.
- (ii) On 28 March, Mellon sends Gallagher a copy of what is stated to be Ceuleman's speech. There is discussion between them during which Mellon states that he drafted the speeches and he comments to Gallagher that he had changed a lot from Ceuleman's draft "the first paragraph and some other lines is all I kept ffs."
- (iii) Between late on 6 and early 7 April 2023 there are messages between Mellon and Gallagher about the speeches.

[31] The prosecution highlight that the level of contact "is consistent with their involvement in planning prior to Easter Monday which should be added to their actions on the ground and all the circumstances of that afternoon's events."

Arrests and interviews

[32] Murney was arrested on 10 May 2023. He was interviewed on three occasions. At the start of the second interview his solicitor read a prepared statement as follows:

“I wish to record that comments made on the 10th of April 2023 relating to the oppression and resistance quoted Maire Drumm who said about it not being enough to shout up the IRA but to join the IRA. This speech was a political speech with historical references being made, it was not me making any comment inviting support of any proscribed organisation.”

[33] Before and after this prepared statement he was asked about his involvement and knowledge of all the events of that day. Video evidence was played to him of the events including before and after the speech and, indeed, the speech itself. He was asked about the violence, the colour party, his role in all events, his intentions and knowledge of the events. In the final interview he was asked about the contents of his phone.

[34] He did not respond to any questions put.

[35] Ceulemans was arrested on 28 September 2023. He stayed silent throughout his interviews. The evidence from the videos and observations were put to him. During this his solicitor at the time made comments on the matters put.

[36] Patrick Gallagher was arrested on 14 June 2023. He was interviewed on five occasions. At the outset his solicitor informed police that Gallagher would be exercising his right to remain silent. Police put their evidence to him and asked him to comment on it. He was shown videos and referred to messages.

[37] At the beginning of the third interview his solicitor read a statement:

“I Patrick Gallagher, hereby confirm as follows. I attended an Easter rising Commemoration in the Creggan on 10 April 2023 with my daughter. I did not take part in any unnotified parade nor as I walked to the cemetery did I see any police. At the Easter Rising commemoration, I introduced the readers and read out a list of those who had laid the wreaths.

This was a factual exercise which involved simply reading out a list. I had no foreknowledge of the contents of any speeches other than this was a 1916 rising commemoration. This was to commemorate all who had taken part in the 1916 rising including those from Derry. At no stage did I make any reference to any proscribed organisation under the Terrorism Act 2000.

At the conclusion of commemoration, I asked the crowd to stay around and help the colour party disperse peacefully. At previous commemorations there had been violence and I wanted this commemoration to conclude peacefully. This was an off the cuff remark. I was not present when the umbrella incident occurred nor did I know it was occurring. I played no role whatsoever in organising the arrival or departure of the colour party and my request was simply for the commemoration to conclude peacefully. I had no knowledge whatsoever of the umbrellas or the subsequent fire. Had I foreknowledge I would not have made this statement. I did not invite support for a proscribed organisation. I did not arrange manage or assist in arranging or managing a meeting which supported a proscribed organisation or further the activities of a proscribed organisation. I did not address a meeting to encourage support for a proscribed organisation or further it's activities. I did not encourage terrorism."

[38] In following interviews he did not answer any questions about his role, knowledge or messages.

[39] Mellon was arrested on 25 January 2024. He was interviewed about 10 April with questions put to him regarding his communications with others and his knowledge of the events. He remained silent throughout. His solicitor provided a prepared statement:

"I Thomas Ashe Mellon would like to make it clear that I absolutely deny any involvement in the offences with which I've been arrested for."

No case to answer

[40] I confirm it is on the basis of the evidence set out above that I declined to rule there was no case to answer in respect of all charges.

Defence submissions

(a) Ceulemans

[41] I have written submissions on his behalf signed by Mr McHugh KC dated 1 December 2025. They are expressed to be supplemental and in addition submissions made at the "No bill" stage of the case and referred to as No Bill 1 dated 7 June 2024 and No Bill 2 dated 11 October 2024.

[42] The document refers by paragraph to the prosecution opening which I have previously set out. It sets out the allegations of conduct set out therein including; carrying and handing out flags, being at the front of the colour party, wearing an earpiece, walking in front of the colour party and pointing it's direction.

[43] It then refers to him being sighted close to petrol bombs, clearing masonry from the road, not remonstrating with youths for attacking the police, appearing to talk into an earpiece, walking with two co-accused and later movements with them. Then at the ceremony reading a speech as a former republican prisoner, and afterwards at the toilet block close to the pedestrian gate.

[44] In relation to the contacts/messages relied upon he accepts the phone and number are attributable to him. He accepts he made or received the messages contained in the evidential phone reports.

[45] At para 8 and following the response to the images and evidence relating to count 1, the court is invited to give the ordinary meaning to the verbs "arrange" and "manage." At paras 10 and 11 the Oxford Dictionary of English (3rd ed) of the words are set out. "Arrange" "organise or make plans for (a future) event." "Manage", "Be in charge of (a business, organisation or undertaking) ... maintain control over (a person or animal)."

[46] It is submitted that "there is an absence of particularity or specificity" in purporting to identify the behaviour of the accused which is said to constitute arranging or managing a meeting or assisting in the same. Further, it is submitted that the meeting in count 1 could only be said to commence when Gallagher was on the podium and finished when he left it. Oxford English Dictionary (OED) defines meeting as "an assembly of people for a particular purpose especially formal discussion."

[47] It is submitted that none of his observed actions related to either arranging, managing or assisting therein the "meeting" as defined. Further, on a factual basis:

- (i) the evidence does not show any flags handled by the defendant were used in the colour party;
- (ii) a large number of persons walked past the youths with petrol bombs;
- (iii) If and there is no auditory evidence of it, the defendant directed removal of masonry it is not inculpatory behaviour;
- (iv) there is no clear evidence of him speaking into his right sleeve;
- (v) the fact he walked close to two co-defendants or was standing beside or close to them at various stages is not an inculpatory act or acts;

- (vi) the contents of his speech were not criminal or inculpatory. It was a political speech protected by Article 10 of the European Convention on Human Rights (ECHR); and
- (vii) being seen close to the gate at the toilet block is not inculpatory.

[48] The submission then turns to the Murney speech. It adopts the submissions made for the No Bill application and summarises them as follows:

- (i) it is accepted that the defendant was involved in the creation of the draft document, he did not contribute to the inclusion of the Maire Drumm quote. If it is alleged the speech did encourage support for a proscribed organisation that is the only section that does so;
- (ii) that the speech is not criminal but is a political speech protected by Article 10; and
- (iii) the telephone traffic refers at least in part to a different event occurring on the 8 April. No direct evidence shows the discussions relate to the 10th as opposed to the 8th and indeed the reference to posters suggests it was not the 10th, there being no evidence of the use of or presence of such posters on the 10th.

[49] Taking all those points the submission at this stage is clearly that the charges are not proved.

(b) Gallagher

[50] I have detailed written submissions on his behalf signed by Mr O’Keefe KC and Mr Colm Fegan of counsel.

[51] After a brief introduction, reference is made to two significant matters in the opening:

- (a) in relation to count 2, the prosecution accepted that “this was clearly a memorial to those who died in the past. That is a legitimate purpose.” Despite the prosecution contention that there was “another purpose” it is submitted if Gallagher’s involvement was limited to the legitimate purpose then he could not be guilty of count 2.
- (b) in relation to count 4 the prosecution opening states that support for a proscribed organisation “need not be the main or only purpose of the address providing it is one of the purposes.” It is submitted the statute says to be liable the section refers to “the purpose” of an address not a number of purposes.

[52] In respect of count 2 the following submissions are made:

- (a) there is no act of arrangement or management attributed to the accused;
- (b) the earlier events before the cemetery were not part of a meeting;
- (c) Gallagher's role was solely connected to the commemoration which it was accepted was legitimate;
- (d) there is no authority for the proposition that there may be multiple purposes to the commemoration. It is submitted the offence can only take place if the sole purpose of the meeting is to support a proscribed organisation;
- (e) under 12 (2) the defendant must know the meeting is to support a proscribed organisation and the evidence does not support that proposition; and
- (f) it was not the intention of Parliament to criminalise an Easter commemoration.

[53] In respect of count 4 the following submissions are made:

- (a) there is no evidence the defendant ever received the final version of the speech including the Maire Drumm quote. If he did not know of it before the address he could not be part of a joint enterprise;
- (b) there is no evidence he had any input into the content of the speech. The evidence suggests that it was written by Murney and Mellon;
- (c) the effect of the case of *Fennell*. It is submitted that in *Fennell* [2017] NICC 13 the Crown Court ruled that the same content did not constitute an offence under section 12(3). In accordance with the principle of judicial comity this Court should follow that decision unless it is convinced that the decision was wrong.
- (d) Under Articles 5 and 7 of ECHR. The *Fennell* case also means the accused cannot have been aware that the speech given by Murney was criminal. The quality of law requirements under Articles 5 and 7 require that the application of the criminal law is foreseeable. Due to *Fennell* it could not be foreseeable that a court would consider the Maire Drumm quotation to be unlawful.

(c) Murney

[54] I have written submissions signed by Mr Larkin KC and Mr Forde of counsel.

[55] In them submissions are made as to the issue of no case to answer. Further the issue of proof of jurisdiction is raised. I have rejected the former. I reject the submissions as to the latter and shall give my reasons later in this judgment.

[56] The submissions then deal with whether the events could be described as a meeting. It is submitted that nobody in the evidence describing the events refers to any of the activities as a meeting.

[57] It is submitted that there is no evidence the defendant arranged or managed or assisted in so doing. The case, as made through the evidence of Constable Hamilton p26, was that the unnotified parade was organised by the National Republican Commemoration Committee. There is no evidence the defendant was part of or connected with that group.

[58] During the speech the defendant thanked the organisers.

[59] The submissions suggest there is no evidence the defendant had any knowledge.

[60] As to addressing a meeting, the submissions describe the overarching argument is the fact that in the *Fennell* case the use of the Maire Drumm quotation was found not to breach the statute.

[61] The submissions then go on to quote extensively from that judgment and make similar submissions to those made on behalf of Gallagher with respect to Articles 5, 7, and 10 of the ECHR. It is no disrespect to the industry of counsel that I do not repeat them. Any points made of unique significance to this accused will be considered later in my discussion of the case.

(d) Mellon

[62] I have written submissions from Mr Mallon KC and Mr Doherty of counsel.

[63] The primary submission is that the defendant was not present at the events at Creggan.

[64] The second matter is that although he was involved WhatsApp messages as established by the prosecution there is no evidence of any content relating to any of the events described before or after the commemoration in the graveyard.

[65] Further, it is submitted that a number of the messages relied on relate to a different event and not to the events of the 10th at the Creggan.

[66] In relation to the speech on the 10th the evidence does not establish that this defendant saw the final draft and in particular the quote from Maire Drumm.

[67] Further, the content of the messages whether in relation to the speech or for example to the attendance of the visiting French delegation suggest that Mellon was not in a managing or arranging position. Rather his position was of one being given directions what to do or say.

Discussion

[68] I make it clear that in setting forward the arguments by prosecution and defence I may cite from one defence argument rather than dealing with all submissions on each point. I make it clear that I have considered each and every defence submission on the material issues on the case and have been selective solely to avoid repetition of issues.

[69] Prior to dealing with the actual offences in the case it is necessary to refer to the late submission on behalf of Murney that this court has no jurisdiction to hear this case because there is an absence of a Director's consent and there is no Advocate General's permission for prosecuting the offending. The latter is required where it appears to the Director of Public Prosecutions that an offence has been committed outside the United Kingdom or for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom. In those circumstances, his (Director's) consent can only be given with the permission of the Advocate General for Northern Ireland.

[70] This issue is dealt with at length in the prosecution reply to the direction application signed by Mr Russell KC and Sarah Mindford of counsel, from para 4 et seq.

[71] I note from that the chronology of lodgement of the Directors' consents and accept the unchallenged statements as to the dates and content. This was clearly done in accordance with normal practice. Indeed, it was made clear that if required proof would be provided.

[72] The suggestion by the defence that the consent of the Advocate General of Northern Ireland was required because of an extraterritorial element is in my view entirely unjustified. All the offences took place within the jurisdiction. The evidence consists of observations, video evidence, analysis of phones seized within the jurisdiction, even the impugned speech (address) in the cemetery clearly refers to this jurisdiction and how persons in this jurisdiction can further the cause of socialist republicanism.

[73] In the response to these submissions the prosecution refer to the case of *Crawford* [2022] NIQB 24. In it the court considered a challenge to a consent not personally signed by the Director but by Mr Herron a senior officer delegated by him. At para 40 the court said:

"However, it does not follow that the DPP has to undertake this exercise in every case of this nature himself. That is because the wording of section 36 which allows delegation of functions. In this case the person so delegated was an experienced solicitor, Mr Herron, who has now become the

DPP. As such we see nothing impermissible in the authority granted for the prosecution.”

[74] The prosecution submit this is relevant to the suggestion that the Directing Officer did not have the authority to form a view as to whether there was an extraterritorial element and, thus, the need to seek the Advocate General’s approval.

[75] The prosecution then rely on the judicial review in *Crawford*. In that case part of the evidence was collected in the Republic of Ireland founding charges of membership within the jurisdiction. The court considered an application that an Attorney’s consent was required because the evidence emanated from outside the jurisdiction even though the charge was within. The court presided over by the Lady Chief Justice rejected that ground for review and described it as “inherently weak and does not reach the test of arguability for judicial review.”

[76] I have read and considered the defence rejoinder to the prosecution response. It restates the submissions but makes no reference to the authorities cited by the prosecution nor does it refer to any new authorities. In my view, it adds nothing of merit to the issues.

[77] I reject the defence submissions as to consents. I am satisfied I have jurisdiction in this case.

[78] All charges arise from section 12 of the Terrorism Act 2000 as follows:

“12(1) A person commits an offence if:

- (a) he invites support for a proscribed organisation, and
- (b) the support is not, or is not restricted to, the provision of money or other property (within the meaning of section 15).

(1A) A person commits an offence if the person-

- (a) expresses an opinion or belief that is supportive of a proscribed organisation; and
- (b) in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is-

- (a) to support a proscribed organisation, or
 - (b) to further the activities of a proscribed organisation, or
 - (c) to be addressed by a person who belongs to or professes to belong to a proscribed organisation.
- (3) A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities."

The offences under section 12(2)

[79] All the defendants are charged under this subsection. As set out above in the opening, the prosecution states that the events before the cemetery were all managed and arranged. If not a meeting then the cemetery events cannot be seen in isolation. On any view this was a highly choreographed event. It was staged. In summary it is stated that "it is not accepted by the Crown that this was a lawful commemorative event as is submitted on behalf of Mr Mellon, that is evident from the colour party who marched through the Creggan, the throwing of petrol bombs, the spray painting of CCTV cameras and the words spoken. The court can properly infer that the events from the shops onwards were carefully planned as a propaganda exercise for the IRA."

[80] In the reply to the defence submissions it is stated:

"The court is invited to review all the circumstances and take a holistic approach to this question. The accused each seek to separate out individual aspects of their behaviour and say that each individual aspect does not amount to arranging managing or assisting in the same. The prosecution contend that to the contrary a global approach is required. In considering the evidence globally the prosecution highlight the behaviour relied upon. The prosecution then set out the various matters that relate to each defendant, Ceulemans is most involved over all on their submission, there is no evidence Mellon was involved at all."

[81] I remind myself that in order to convict of the offence against each defendant I must be sure of their guilt to the criminal standard. I also remind myself that in so far as the case is a circumstantial case the evidence must reach a level where it excludes a reasonable possibility of an innocent explanation.

[82] I begin with the defence submission that the definition of the word “meeting” excludes activities taking place which are not part of the commemoration ceremony. The definition in the OED is “an assembly of people for a particular purpose, especially formal discussion.”

[83] The submission based on this is that:

“The subject of count 1 (and the same count against other defendants) can only be said to have commenced when the crowds at the cemetery had stopped to hear the first words spoken by Mr Gallagher from the platform. It is further submitted that the ‘meeting’ concluded after Mr Gallagher finished his final address to the crowds and people began to disperse.”

[84] I do not accept the thrust of this argument. The charge is of arranging or managing or assisting in the arrangement or management of a meeting. However, one may attempt to limit the scope of a meeting, such arrangements and management would and could include preparatory matters such as where involved parties might meet before the event, who was to come, what was to be brought, how parties were to dress, where relevant where or how the press would be involved and how people would leave after the address that was made.

[85] I do not accept that only matters occurring within the cemetery should be considered.

[86] It appears to me that the prosecution case is that from the arrival in Creggan the gathering with the flags, the presence of petrol bombs and masonry, the attempts to thwart camera footage, the attack on the land rover, the arrangement for disguising the colour party by umbrellas from being seen and the availability of material to burn their clothes whilst restricting access to the area was clearly planned and managed. I agree.

[87] Further, it is submitted that all of that was a propaganda exercise and/or show of force designed to support the IRA, I accept this proposition for reasons I shall later set out.

[88] It is then submitted that the evidence shows that each of the defendants was involved to differing degrees in the planning of the events connected to the commemoration ceremony at the graveside. I agree.

[89] However, when it comes to the next step I consider the prosecution submission that because the defendants can be proved to be persons involved in planning the ceremony that that provides evidence upon which the court could hold them responsible for all the clearly illegal matters highlighted above in para 86. I do not agree. If I ask myself if there is a reasonable possibility that an organisation such as

the IRA divided the planning of the events of that day between those involved in the ceremony and others responsible for the overt acts of violence and the movements of and protection of the colour party then I would be bound to answer yes there is. In other words, I reject the suggestion made by the prosecution that the evidence of communications before 10 April 2023 justifies finding that the defendant's or any of them can be convicted of arranging any of the acts specified in para [86] above on that basis.

[90] The section contains two bases for finding guilt ie arranging or assisting arranging and secondly managing or assisting managing. Although I do not find the evidence of pre-10 April could establish arranging those activities, it would still be open to consider whether they managed or assisted in managing any of them based on the evidence of their actions on the day.

[91] I have considered the evidence from the scene from the initial meeting in the Creggan to see if that combined with their alleged roles in the ceremony can justify conviction on the charges in relation to those events:

(a) *Ceulemans*

The matters put forward are:

- (i) his handling of the flags and association with the colour party;
- (ii) his prominent position with the colour party from Central Drive to the cemetery, his interaction with them, and his wearing of an earpiece;
- (iii) his prominence at the cemetery and delivery of a speech; and
- (iv) his communications with the others about the speeches.

(b) *Gallagher*

The matters put forward are:

- (i) his prominence in the colour party moving to the cemetery;
- (ii) his prominence at the ceremony as the MC;
- (iii) his communications before the event with his co-defendants;
- (iv) his directions as to dispersal of the colour party; and
- (v) calling forth the Derry Brigade of the IRA.

(c) *Murney*

The matters put forward are:

- (i) his prominent position in the colour party as it moves from Central Drive to the cemetery;
- (ii) his recording of events along the route as they happened;
- (iii) his prominent role at the commemoration including giving the speech the subject matter of the other charge(s) on the indictment; and
- (iv) his pre-event communications with his co-accused.

(d) *Mellon*

The matters put forward are:

- (i) the communications with the co-accused including the content of the speech.

[92] I have considered those matters and whether the activities of each could provide a basis for proving he was involved in the management of the meeting. I shall return to this issue and consider the basis of the defendant's respective roles in relation to the commemoration ceremony and the surrounding events and any submissions on that by the defence.

[93] The decision as to whether Murney's address to the meeting was for the purpose of encouraging support for a proscribed organisation or to further its activities, is a fundamental matter.

Fennell [2017] NICC 13

[94] In what he describes as his "Ruling", HHJ Miller KC begins by setting out the relevant facts. On 5 April 2015, an Easter commemoration was held by the Republican Prisoner Welfare Association (RPWA) at St Coleman's cemetery in Lurgan. A group of about 70 including children attended. A video of the events was posted on YouTube and on the Facebook account of the RPWA. Police obtained a download on 13 April before the posts were removed. The footage was played in full to the court.

[95] The footage showed a female compere who introduced a male who read a Roll of Honour for the local republican dead. Then the defendant was introduced as the main speaker. He then addressed the meeting for eight minutes and 22 seconds. The address included the same quotation from Maire Drumm as in this case.

[96] He was later arrested and interviewed. As in this case he declined to answer questions but relied on a prepared statement denying any offences and describing his prosecution as political.

[97] Arising from the evidence the prosecution charged him with three offences:

- (i) Encouraging terrorism contrary to section 1(2) of the Terrorism Act 2006;
- (ii) Inviting support for a proscribed organisation contrary to section 12(1) of the Terrorism Act 2000; and
- (iii) Addressing a meeting contrary to section 12(3) of the 2000 Act. The latter being same offence as these defendants face.

[98] Having dealt with what he describes as discrete issues, one of which was the defendant's failure to give evidence, (to which I shall return) the LTJ moved on to consider Article 10 of the ECHR. He sets out the article in full and notes that it is accepted that the right is not absolute but that "any limitation placed by statute must be such that it is proportionate and necessary."

[99] He then states that in order to satisfy that test he refers to the *Sunday Times v the UK* (1979) EHRR 245:

"Firstly the law must be adequately accessible: the citizen must be able to have an indication, that is adequate in the circumstances, of the legal rules applicable in a given case. Secondly a norm cannot be regarded as law unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be on appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

[100] The judge then referred to the ECHR test for derogation as "a pressing social need" and that even where there is a legitimate reason for a derogation it must be "proportionate".

[101] The judge then went on to consider the charges brought. He deals with the two offences charged under section 12 at para 27. He refers to the judgment in *R v Choudray (Anjem)* [2016] EWCA Crim 61 and quotes passages from the judgment of Lady Justice Sharp. Which, I might emphasise, refer to the offence of section 12(1) of the Act but also are clearly relevant to section 12(3) with which these defendants are charged. The cited passages are:

"It is however important to note what the section does not prohibit. It is common ground as we have said that it does not prohibit the holding of opinions or beliefs supportive of a proscribed organisation; or the expression of those opinions or beliefs (though depending on the circumstances the expression of opinions or beliefs might

in principle constitute of professing an offence under section 11 of professing membership)."

[102] Then in relation to the elements of 12(1):

"The prosecution must therefore make the jury sure (i) that the organisation was a proscribed organisation within the meaning of the 2000 Act (ii) that the defendant used words which in fact invited support for that proscribed organisation and (iii) that the defendant knew at the time that he did so that he was inviting support for that organisation."

[103] I note that I will return at a later stage to that test.

[104] Judge Miller KC then set out the "fundamental principles relating to Article 10." He cited these from the judgment of Lady Justice Sharp at para [74]. She in turn was citing from the decision of the Grand Chamber in *Zana v Turkey* 27 EHRR 667 (1997):

"(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 it is applicable not only for "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism. Tolerance and broadmindedness without which there is no "democratic society." As set forth in Article 10 this freedom is subject to exceptions which must however be construed strictly and the need for any restrictions must be established convincingly.

(ii) The adjective "necessary" within the meaning of article 10(2) implies the existence of a "pressing social need." The contracting states have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The court is therefore empowered to give the final ruling on whether a restriction is reconcilable with the freedom of expression as protected by Article 10.

(iii) In exercising its supervisory jurisdiction the court must look at the impugned interference in the light of the case as a whole, including the remarks held against the applicant and the context in which he made them. In particular it must determine whether the interference in issue was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient.” In doing so the court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10, and moreover, that they are based themselves on an acceptable assessment of the relevant facts.”

[105] Judge Miller KC then considered the relevant speech based on those principles. He acknowledged the detailed analysis of the speech by both parties. He noted the prosecution reliance on two particular passages, one of which was the quotation from the Maire Drumm speech.

[106] Interestingly, he held that the silence of the defendant *Fennell* at trial was in principle evidence from which he could draw adverse inferences against him but found it was not of assistance to him in the instant case. Having reminded himself of the standard of proof earlier, his conclusion was:

“In short I have concluded that however offensive the words used by the defendant might be in the ears of many right thinking members of society they were expressions of personal opinion, which did not invite or encourage support for the IRA. In these circumstances he is entitled to be acquitted on counts 2 and 3. [Counts 2 & 3 were the offences relating to section 12(1) and section 12(3) of the 2000 Act].”

[107] As a result of this decision it is argued on behalf of the defence that a number of legal consequences follow. Before setting out the propositions the thrust of the argument is that the relevant passage from Maire Drumm’s speech, which is primary evidence in relation to the offence alleged under section 12(3), has been litigated and has been found not to amount to a criminal offence under that section.

[108] The submissions are multifaceted. Firstly, it is submitted that this court should follow and apply the law as it is submitted it was interpreted in *Fennell*.

[109] I am referred to a number of authorities. In *Mooreland* [2022] NIQB 40, Mr Justice Humphreys was asked to depart from a direction of the High Court. He considered the principal of precedent and cited the decision of Goff LJ in *R v Greater Manchester ex parte Tal* [1985] QB 67:

[42] ...“If a judge of the High Court sits exercising the supervisory jurisdiction of the High Court then it is, in our judgment, plain that the relevant principle of stare decisis is the principle applicable in the case of a judge of first instance exercising the jurisdiction of the High Court, viz., that he will follow the decision of another judge of first instance, unless he is convinced that that judgment is wrong, as a matter of judicial comity; but he is not bound to follow the decision of a judge of equal jurisdiction.”

[43] Indeed, this principle was recognised by Scofield J in the *Safe Electricity* case when he expressed some doubt about the analysis of Morgan J in *Re Central Craigavon Limited* [2010] NIQB 73, whereby he found the breach of the Ministerial Code to be “technical” and did not thereby give rise to a contravention under section 28A(10). However, the learned judge stated that he was not persuaded the reasoning was “clearly incorrect” and therefore would not depart from it.

[44] Whilst I am not strictly bound by it, in order for me to depart from *Safe Electricity* therefore, I must be convinced the decision is wrong or plainly incorrect.”

[110] Those judicial views are, it is submitted, highlighted in *Willers v Joyce* [2016] UKSC 44 at para [9]:

“So far as the High Court is concerned, puisne judges are not technically bound by decisions of their peers, but they should generally follow a decision of a court of co-ordinate jurisdiction unless there is a powerful reason for not doing so. And, where a first instance judge is faced with a point on which there are two previous inconsistent decisions from judges of co-ordinate jurisdiction, then the second of those decisions should be followed in the absence of cogent reasons to the contrary ... I would have thought that Circuit Judges should adopt much the same approach to decisions of other Circuit Judges.”

[111] The defence assert there is no cogent reason for not following *Fennell*.

[112] It is submitted that the importance of precedent is vital in criminal law and *Jay Chandler v the State* [2022] UKPC 19 is cited at para [64]:

“The reasons why a court of final appeal must be very slow to depart from an earlier ruling are well known. One of the principal advantages of stare decisis is its contribution to legal certainty. It promotes the predictability of law and assists the planning of human activity. In private law it assists the giving of legal advice and the settlement of disputes. It enables people to carry out commercial and other transactions with some confidence that their arrangements are not going to be undermined retrospectively. Similarly in public law and in criminal law it facilitates the giving of legal advice both to the organs of government and to citizens who are affected by the coercive power of government. It assists the citizen in understanding the circumstances in which he or she may be subjected to that power. By promoting continuity over time, it supports the rule of law in the sense that everyone whether a citizen or an organ of government is bound by rules fixed in advance.”

[113] The submissions then are that Articles 5 and 7 are engaged. It is submitted that the prosecution’s relating to section 12(3) would not have been foreseeable in advance. It is submitted that under Article 5 any prosecution should be bound by the law as stated in cases such as *Del Rio Prade v Spain* (2013) EHRR - “require that where a national law authorises a deprivation of liberty it must be sufficiently accessible precise and foreseeable in its application to avoid the risk of arbitrariness.”

[114] Further, it is submitted under Article 7 as cited from the same authority;

“When speaking of “law” Article 7 alludes to the very same concept as that to which the convention refers elsewhere when using that term, a concept which comprises statutory law as well as case law and implies qualitative requirements, notably those of accessibility and foreseeability. These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence carries.”

[115] Further, it is submitted that as stated in *Rimmington* [2005] UKHL 36 Lord Bingham stated, “Article 7 precludes the punishment of acts not previously punishable and existing offences may not be extended to cover facts which did not previously constitute a criminal offence.”

[116] The defence submit that since *Fennell* no prosecutions have been brought in respect of other or similar cases of memorials or of any use of the Maire Drumm quotation. They say the instant prosecution is not based on certainty or foreseeability and therefore offends Articles 5 and 7, accordingly the court should apply Article 6

and stay the proceedings as an abuse of process. It is submitted that it must be presumed that the defendants knew the law as of 2023 and that was that the relevant quotation did not encourage support for a terrorist organisation.

[117] The prosecution submit that *Fennell* is not binding on this court and that it, as is normal for a decision at first instance, was highly fact dependant. They refer to passages in the *Fennell* judgment, to make it clear they submit that *Fennell* was not nor did it purport to be a legal ruling on the relevant passage from Maire Drumm's speech. They cite the passage of *Fennell* from para 30 onwards:

“Both Crown and defence accept that these offences involve an interference with the article 10 right to free speech. It was accepted that on the defendants behalf that these particular offences have a basis in domestic law and also *“they are formulated in a manner consistent with the requirement that they are foreseeable within the meaning of article 10.”* Moreover no issue is taken with the proposition that prosecution of a defendant who *“invites support for a proscribed organisation”* is in pursuit of a legitimate aim, namely maintaining national security and for the prevention of disorder. The question remains, however, whether in the given circumstances this defendant's words fulfil the section and whether the interference with his right to freedom of speech is necessary and proportionate.”

[118] By example they submit that the case of McDade (unreported 9 May 2013) is a case on the section 12 offences which would be of assistance to the prosecution but make the case they would not put forward such an argument “because it is clear that each case falls to be determined on its own individual merits.”

[119] Further, the prosecution refer to communication between the parties suggesting that some of them were well aware of the criminal nature of their activity. These are set out in paras 62 to 64 of their response to the applications for a direction of no case to answer. Of note is Mellon messaging Ceulemans in the early hours after the meeting where he says “Good turnout, hard to believe you can read. Wonder how long it will take to arrest Stephen Murney and what the charges will be but I had the fist up in the office in solidarity.” Also, shortly after the meeting Murney is asked by Christy for the video of the colour party “before you get lifted and they take your phone.”

[120] In relation to Article 10, the prosecution refer to the decision of the LCJ in *Lee Brown and the Public Prosecution Service* [2022] NICA 5 at para [18]:

“Article 17 prevents applicants from relying on Convention rights in those circumstances for example where there is extreme hatred, violence, xenophobia and

racial discrimination, anti-Semitism, terrorism and war crimes, negation of historical facts and totalitarian ideology incompatible with democracy.”

[121] The prosecution sum up its submissions on these issues at para 67 as follows:

“The prosecution say the defendants are prevented from relying upon Article 10 ECHR in light of Article 17 ECHR. Terrorism is incompatible with democracy and the impugned speech including the Maire Drumm quote is a prime example of an address at a meeting with the purpose of encouraging support for or furthering the activities of a proscribed terrorist organisation. The speech which included the impugned quote is a distinct call to arms and call to support. The quote should not be viewed in isolation. The entire speech and events during the entirety of the day require to be considered globally. The speech promoted the IRA’s ideology with an intent to recruit - it was clearly designed to swell its ranks.”

[122] There is a final issue to be considered. In the submissions on behalf of Mr Gallagher at para 35 et seq, it is submitted that the offence under section 12(3) cannot be committed as a secondary party. The wording of section 12(3) suggests that this offence cannot be the subject of a joint enterprise. Logically where a necessary element of the offence is that an individual has addressed a meeting, inchoate liability by way of joint enterprise or otherwise is not sufficient. The natural interpretation of section 12(3) permits individual liability only and expanding its remit offends the principle that a criminal statute must be strictly interpreted. See *Allison & or* [2009] NICC 65 and *Choudary* [2016] EWCA Crim 61 at para 52. In *Jefferson* (1994) 99 Crim App R 13 the Court of Appeal held that accessory liability applies to all offences “unless [it is] expressly or impliedly excluded by statute.”

[123] The argument calls in aid *Algamar (No 2)* [2018] 4 WLR 145 where the court set out the ingredients of the offence. Further in *Fennell*, it is submitted nobody other than he was charged on a joint enterprise basis. The submission does not suggest any facts upon which to identify who could have been charged but was not.

[124] I note that on this charge Gallagher raises the alternative argument that he had no knowledge or control over the speech.

[125] The prosecution challenge these submissions. In para 70, it is submitted:

“Responsibility for a criminal offence may be incurred either as a principal offender, or as an accessory. Liability as an accessory applies to all offences including statutory ones unless it is excluded by statute. That exclusion can be

express or implied. In the instant case there is no express exclusion within the statute. The defence advance their case by arguing the exclusion is implied. They argue it is implied through the wording of the section supported by the ingredients of the offence as referred to in *Alagmir*. There is nothing in the wording of the section which hints at an implied exclusion of inchoate liability. The section is framed in exactly the same terms as many statutes creating everyday offences are framed.”

[126] The submissions point out that the point did not fall to be argued in that case as the defendant was individually charged.

[127] Further, it is submitted the Interpretation Act makes it clear that words in the singular include the plural and vice versa.

[128] On this issue although not expressly argued I think an essential matter relates to the mens rea of the accessory. I refer to *Archbold* 2024 17B68 “The decision of the Divisional Court in *National Coal Board v Gamble* [1959] 1 QB 11 was cited for the proposition that the mental element in assisting or encouraging a crime is an intention to assist or encourage the commission of the crime and that this requires knowledge of any existing facts necessary for it to be criminal.”

[129] Later citing *Johnson v Youden* [1950] 1 KB at 546 “that an intention to assist or encourage the commission of an offence requires knowledge [by the accessory] of any facts necessary to give the principals conduct or intended conduct its criminal character.”

Conclusions

[130] The charges arise out of the events that occurred in the City Cemetery Derry on Easter Monday 10 April 2023.

[131] That was the day scheduled for Easter Commemoration, an annual event. Such ceremonies are common throughout Ireland and are part of the heritage of the country. They are normally peaceful events which ordinarily will have a parade, a roll call of the fallen and a number of speeches which are likely to be republican in nature. I am sure they constitute meetings as defined by the Terrorism Act 2000. Where in this judgment from here on if I say I am sure I mean that I am satisfied to a reasonable doubt ie the criminal standard of proof.

[132] I am sure that at 14:05 Ceulemans enters a storage container with IRA spray painted on it and emerged carrying two flags, he passed them on and carrying others proceeded to where a group of men were gathering. I will address the submission that there is no evidence to show the flags he took out were part of the colour party at the cemetery as the point is not relevant at this stage.

[133] I am sure as the parties gathered a parade commenced towards the cemetery. I am sure that attempts were made to obscure cameras in the area. I am sure a land rover of PSNI officers was observing in the area with the vehicle displaying a notice warning the parade was not authorised. I am sure that at least two crates of petrol bombs and masonry had been prepared and brought to the scene. I am sure that the police land rover was attacked and the attack was a planned and co-ordinated attack, coming as the parade reached it and the parade halted while the attack took place. The attack was photographed.

[134] I am sure that on the parade moving towards the cemetery the colour parade formed and that those taking part were dressed in a military fashion dressed identically with a black beret with insignias, sunglasses, black snoods, obscuring most of their faces. Khaki armbands with green, white and orange, khaki trousers and heavy laced up boots.

[135] I am sure that when the ceremony had ended arrangements had been made to ensure the Colour party could not be identified. The arrangements included, choosing an obscure area close to the toilet block, the use of multiple umbrellas to shield them from view both to the sides and above, the presence of civilian clothes to change into and provision to burn the clothing they had been wearing in the parade. I am sure steps were taken to prevent access to the area until those involved had cleared. It is an offence under section 12(2)(a) and (b) to arrange, manage or assist in arranging or managing a meeting which he knows is (a) to support a proscribed organisation, (b) to further the activities of a proscribed organisation.

[136] I am sure that the activities as described were organised and co-ordinated. I am sure that the purpose was to allow illegal activity, to prevent the PSNI monitoring the activity and thereby demonstrate their strength and ability to attack the police.

[137] I am sure that only an organisation would have the power and resources to carry out this degree of organisation. I am sure that given the location, the date and occasion, and the victims of the assault, that the IRA are the only organisation in a position to carry out these collective acts and a desire to do so. I am equally sure that no other group would have been permitted to act in this way. I am sure the IRA are a proscribed organisation.

[138] I am sure that the two purposes as set out in 12(2)(a) and (b) are satisfied.

[139] Given that fact I must decide whether the evidence establishes that any of the defendants knowing the purpose of the meeting managed it or assisted in so doing.

[140] I have set out above the evidence as relied upon by the prosecution in relation to Ceulemans. I note the responses from his counsel in their written submission at para 15. In relation to the removal of flags from the container their submission is that a break in continuity of the CCTV/video evidence means that one cannot show that the flags he lifted out were used in the colour party. I acknowledge the point but must

say that picking up and passing out flags, heading towards an area where the parade is forming up and being closely connected to the parade as it travelled to the ceremony is strong evidence that they were so used. It is hard to imagine Ceulemans taking flags out that either were not being used or were for some other persons using flags in the area unconnected to the events of the memorial.

[141] As to the other points, I agree that being close to others connected to the charges, being close to the petrol bombs or being in the area of the cemetery gates are not individually indicative of being involved in the management or assisting the management of the meeting. I also accept that the wearing of an ear piece and appearing to talk in his hand are factors to take into account but not compelling. The prosecution submission must be that collectively coupled with his role as a speaker they establish that he was so involved.

[142] I have considered whether his failure to give evidence could be used against him. Whilst permissible a court must be careful not to substitute refusal to give evidence for solid evidence which calls for an answer.

[143] I do not consider any individual incident relied upon or the incidents collectively provide a strong enough base to call for an answer by way of evidence. In my view the evidence is not sufficient to prove that Ceulemans was involved in the management or assisted in the management of the meeting. A solid circumstantial case usually has at least one strong strand of evidence as a basis for the submission that it excludes the reasonable possibility of an innocent explanation. None of the individual circumstances reach that level nor do they collectively. Accordingly, I find him not guilty of count 1.

[144] Patrick Gallagher is charged with the same offence on count 2. The video footage shows him to be in the area at the start of the parade. He was seen as the parade passed the Creggan shops clapping. He was at the rear of the parade when it stopped while the land rover was attacked with petrol bombs and other missiles.

[145] He can be observed at the front of the colour party as it proceeded to the cemetery. He entered the gates along with some masked men. Inside he was the master of ceremonies who introduced the various items on the itinerary. He saw the colour party in military uniform. He invited the Derry Brigade Irish Republican Army to come forward and a masked person from the colour party stepped forward to lay a wreath.

[146] He invited Ceulemans forward to read a statement on behalf of former republican prisoners. He then invited Murney to speak. Following the address from Murney he thanked those attending and referred to himself and those at the meeting as "revolutionary republican activists." He then invited the crowd to stay around to allow the colour party to disperse peacefully. At this point on a sunny day a number of persons opened up umbrellas.

[147] I have earlier set out his prepared statement where he states in effect that his job was simply to read a list at a 1916 commemoration. He denied seeing any police as he walked to the cemetery. I do not accept this. He is clearly shown around and with the parade while it stopped during the attack on the land rover. It is, in my view, inconceivable that he was not fully aware of a petrol bomb and projectile attack on the police a short distance from where he was. I do not consider for the purposes of this charge it matters whether his comment about the crowd waiting for the colour party was with full knowledge of what was planned to happen.

[148] I am sure the defendant was actively involved in managing this meeting. I am sure he was aware from the parade beforehand, and the appearance of the masked military style colour party, and the presence of representative(s) of the Derry Brigade Irish Republican Army that this meeting was in support of the IRA a proscribed organisation. I am strengthened in that view by being sure that he saw and was aware of the attack on the police by petrol bombs and missiles but do not think this finding is necessary in order to convict the defendant of count 2.

[149] I have considered the defence submission that his contact with the press after the ceremony is a factor indicative of his innocence. I do not accept that submission. The defendant chose not to give evidence. I make it clear that no inference has been drawn against him in reaching my verdict. I am sure the defendant is guilty of count 2 and I so find.

[150] I turn to the case against Mellon on count 4. As I have indicated, I do not consider that the messaging and contact between the defendants can provide relevant evidence to establish that they had knowledge of the events that I have held led this to become a meeting in support of the IRA instead of a Memorial service.

[151] The matters discussed during the highlighted exchanges included the speeches of Ceuleman and Murney, the availability of a drum, the podium and the arrangements for French attendees.

[152] As a result I have decided that there is no probative evidence to connect them to arranging the meeting or assisting in so doing. The count is potentially available on the basis of managing or assisting to manage the meeting.

[153] There is no evidence that Mr Mellon attended the meeting and no evidence that he did anything to manage or assist in managing it. Therefore, I find him not guilty of count 4.

[154] I turn now to consider the case against Murney on both counts and against the other three defendants as aiders and abettors in relation to the impugned address.

[155] I am sure there was a meeting. I am sure there were three or more persons.

[156] Much has been made of the *Fennell* case and I have set out above the arguments put forward on both sides.

[157] The court's opinion is that *Fennell* as a first instance decision is not in any way binding on this court. I do not say that from the point of view of precedent alone. I say that from the perspective that contrary to what has been submitted the decision was not a legal decision on the effect of using the impugned words from Maire Drumm's speech. As stated by the LTJ at para 30:

"The question remains, however, whether in the given circumstances this defendant's words fulfil the requirements of the section and whether the interference with his right to freedom of speech is necessary and appropriate."

[158] Then in para [33] citing Lady Justice Sharp:

"The prosecution must therefore make the jury sure (i) that the organisation was a proscribed organisation within the meaning of the 2000 Act; (ii) that the defendant used words which in fact invited support for that proscribed organisation, and (iii) that the defendant knew AT THE TIME HE DID SO that he was inviting support for that organisation."

[159] The court's duty in *Fennell* was to consider all of the words used and to consider them in the context in which they were made.

[160] The court's view is that the context as described by the court in *Fennell* is entirely different to that which this court faces. There was no overt violent acts prior to the Memorial, there was no evidence of driving the police away, of the use of petrol bombs or of attempts to obscure CCTV cameras. Further there was no reference to a military style Colour party or elaborate plans to allow them to escape undetected and burn their clothes.

[161] I consider that Articles 5 and 7 are not infringed because the principle contended for does not arise from the *Fennell* judgment which was a factual decision based on the evidence in that case.

[162] As to Article 10, I consider it clear that behaviour falling inside the terms of section 12(3) of the Terrorism Act 2000 is a derogation based on a legitimate aim and is necessary and proportionate.

[163] Accordingly, I must decide what the defendant knew when he made the speech and whether in that context, taking the entirety of the speech, he was inviting support for a proscribed organisation (the IRA).

[164] I am sure of the following:

- (i) that Murney was present as the colour party commenced marching in military style as previously described;
- (ii) that along the route he was taking photographs;
- (iii) that as the parade marched onto Linsfort Drive Murney was walking ahead of them. They approached the police land rover and the petrol bomb attack on it commenced. The parade stopped while the attack took place and the land rover drove off;
- (iv) that after the attack and the police left, the parade continued to the cemetery with Murney at times with his co-defendants at the head;
- (v) that at the cemetery Murney saw the military style colour party; and
- (vi) that Gallagher invited the Derry Brigade Irish Republican Army to come forward and one of the masked individuals in the colour party came forward to lay a wreath.

[165] After other matters Murney was called forward to make his speech. In it he referred to the commemoration as respectful and dignified. He referred to Crown forces including British soldiers continually invading Derry. They had been raiding homes. He suggested they were trying to cower Republicans from attending. He asked whether they had done enough and whether there was a role they could play. That the rising of 1916 was ongoing. It was unfinished business. He refers to the Republican prisoners. His message to the British occupiers and their entire establishment:

“So long as you continue to oppress us, you will meet with the inescapable consequences. Historically, oppression breeds resistance so I quote Maire Drumm “It isn’t enough to shout up the IRA, the important thing is to join the IRA.”

[166] Before the words “join the IRA” he raises his arm with a clenched fist.

[167] I have had regard to his prepared statement and his assertion that this was a political speech with historical reference being made it was not him making any comment inviting support of any proscribed organisation.

[168] In the context of these comments which are clearly entirely different to the situation described in *Fennell*, one has the defendant speaking towards, amongst others, a group of effectively masked men one of whom stepped forward when Gallagher invited the Derry Brigade of the Irish Republican Army and not only said the important thing is to join the IRA but as he did so, raised his arm in a clenched fist.

[169] Taking into account the circumstances at the time, the words used as a whole and the final comment accompanied by a clenched fist, I am sure the defendant addressed the meeting and the purpose of the address was to encourage support for a proscribed organisation and to further its activities. I am sure the defendant is guilty of the offence charged.

[170] I have set out the defendant's observed movement through the period leading up to and at the memorial. I do not see any cogent evidence to show his involvement in the management or assisting in the management of the meeting and I find him not guilty of that count.

[171] Finally, the other three defendants are charged as accessories to the speech. This is based on the evidence of their communications. I might say that I accept the prosecution's submissions that there is no reason at law to prevent secondary participation in this offence as was suggested.

[172] However, I consider secondary participation cannot arise on the facts of this case. I have earlier set out what is required for a secondary party to be liable. In my view there is one matter which is not present and that is knowledge of facts that give the behaviour its criminal character.

[173] As I have held this offence relates not only to the words used but requires the words to be considered in the context they were used before they can be considered criminal. Without having to parse and analyse in detail what each of the defendants may have contributed to the speech I consider there is no evidence to show that any of the other three defendants knew of the circumstances in which the words would be used at the time they are alleged to have been involved as secondary parties. I consider knowledge of the circumstances which would make the behaviour criminal is an essential element and is not proved. As a result, I find all three defendants not guilty of count 5.

[174] Finally, can I commend all counsel for the professional and sensible way they dealt with the evidence in this case and for the extensive, informed and helpful submissions they have made.