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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **02/05/2017**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL BY WAY OF CASE STATED

FROM THE COUNTY COURT FOR THE DIVISION OF LONDONDERRY

BETWEEN:

GERARD McGUINNESS

Defendant/Appellant

and

THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND

Complainant/Respondent

Before: WEATHERUP LJ and McBRIDE J

WEATHERUP LJ (giving the judgment of the Court)

[1] This is an appeal by Case Stated from Her Honour Judge Loughran dismissing an appeal by the appellant against his conviction for common assault. In this case the common law on hearsay evidence meets the modern world of policing with body worn video recording. Mr Mallon QC and Mr Doherty appeared for the appellant and Mr Murphy QC and Ms Chasemore appeared for the respondent.

[2] On 9 November 2014 at 05:05 the police attended the home of Melissa Campbell in response to an emergency call made by Ms Campbell ("the complainant"). Constables White and Allen attended and Constable White activated

a body-worn video camera which recorded allegations made by the complainant of assault by the appellant.

[3] On 26 November 2014 the complainant made a written statement to police as follows:

> "On 9 November 2014 I reported to the police that I was grabbed by the throat, slapped on my face and smashed a glass on my head by my boyfriend Gerard McGuinness. I do not wish the police to pursue my complaint for the reasons – I have resolved my issues with me (sic) and he has apologised and assured me that it will not happen again. I believe alcohol is the cause. This statement is made of my own free will and without influence from any other person(s). I now consider my complaint withdrawn and ask that no further action be taken by the police in relation to it. I realise that because of the domestic motivation for this incident the police may send the file to the PPS for their views."

[4] On 5 June 2015 a summons was issued against the appellant to answer the complaint that on 9 November 2014 the appellant had assaulted the complainant. By a notice to the defendant dated 2 June 2016 the Public Prosecution Service listed the exhibits which the prosecution intended to use as evidence, being the master tape of the body worn camera footage.

[5] At the Magistrates Court on 8 April 2016 the appellant was convicted as charged, the body worn camera footage having been admitted in evidence against the appellant. An appeal against the conviction was dismissed by Her Honour Judge Loughran on 12 May 2016, the body worn camera footage again having been admitted in evidence against the appellant.

[6] Judge Loughran described the recording as follows:

> "It was taken in between the hallway and living room of the home of the complainant. She described the appellant as her partner whom she loves. They had been out drinking – she had a couple of beers, two WKDs, one vodka and one shot. They were arguing. She had another vodka when they returned home. The appellant grabbed her by the throat, smashed a glass over her (the fragments of glass were on the hall floor and during the recording the complainant was attempting to sweep them up but was reminded by the police officer to ensure that her feet were protected), tried to strangle her. While on other occasions when he perpetrated violence against her

> she retaliated, on this occasion she kept her hands held up (she demonstrated this) and he grabbed her by the throat again, tried to strangle her and slapped her across the face. There were four others present in the house…. During the recording the complainant addressed [one of those present] on a number of occasions to the effect that she had witnessed the violence of the appellant and that should prove to the McGuiness family what the appellant was doing to her, as they had not believed her when she complained about his violence previously."

[7] Judge Loughran admitted the recording as a statement of the complainant under the hearsay provisions of the Criminal Justice (Northern Ireland) Order 2004.

[8] The questions for consideration of the Court of Appeal were stated as follows:

(a) Was I correct in law in deciding to admit under Article 18(1)(b) and Article 22(1)(4)(a) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 the cam-recording of the statement of Melissa Campbell ("the said evidence")?

(b) Did I correctly apply the test within Article 18(2) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 in deciding to admit the said evidence?

(c) Did I lawfully exercise my discretion under Article 30 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 and under Article 76 of the Police and Criminal Evidence (Northern Ireland) Order 1989 in deciding to admit the said evidence?

The legislative provisions

[9] The admissibility of hearsay evidence in criminal proceedings is dealt with in the Criminal Justice (Evidence) (NI) Order 2004 (*italics added*) -

> **Admissibility of hearsay evidence**
>
> 18.-(1) *In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if -*
>
> (a) any provision of this Part or any other statutory provision makes it admissible,
>
> *(b) any rule of law preserved by Article 22 makes it admissible,*

(c) all parties to the proceedings agree to it being admissible, or

(d) the court is satisfied that it is in the interests of justice for it to be admissible.

(2) In deciding whether a statement not made in oral evidence should be admitted under paragraph (1)(d), the court must have regard to the following factors (and to any others it considers relevant) -

(a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;

(b) what other evidence has been, or can be, given on the matter or evidence mentioned in sub-paragraph (a);

(c) how important the matter or evidence mentioned in sub-paragraph (a) is in the context of the case as a whole;

(d) the circumstances in which the statement was made;

(e) how reliable the maker of the statement appears to be;

(f) how reliable the evidence of the making of the statement appears to be;

(g) whether oral evidence of the matter stated can be given and, if not, why it cannot;

(h) the amount of difficulty involved in challenging the statement;

(i) the extent to which that difficulty would be likely to prejudice the party facing it.

(3) Nothing in this Part affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

Preservation of certain common law rules in relation to hearsay

22.-(1) The following rules of law are preserved.

Res gestae

4 *Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if -*

(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded,

(b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement, or

(c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

Court's general discretion to exclude evidence

30.-(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if -

(a) the statement was made otherwise than in oral evidence in the proceedings, and

(b) the court is satisfied that *the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence.*

(2) Nothing in this Part prejudices -

(a) any power of a court to exclude evidence under Article 76 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) (exclusion of unfair evidence), or

(b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

[10] A further discretion arises under the Police and Criminal Evidence (Northern Ireland) Order 1989 as follows:

Exclusion of unfair evidence

76(1) In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, *the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.*"

Admissibility under Article 18(1)(b)

[11] The issue is whether the recording was a statement made by a person "so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded".

[12] The general approach was outlined by the House of Lords in R v Andrews [1987] 1 AC 281. Two men entered the victims flat and attacked him with knives. The victim went to a nearby flat for assistance. Two police officers arrived some minutes later and the victim informed them that the defendant and another person had been the assailants. The statement of the victim was admitted in evidence under the res gestae exception to the hearsay rule. Lord Ackner summarised the position as follows (*italics added*) –

"My Lords, may I therefore summarise the position which confronts the trial judge when faced in a criminal case with an application under the res gestae doctrine to admit evidence of statements, with a view to establishing the truth of some fact thus narrated, such evidence being truly categorised as "hearsay evidence"?

1. The primary question which the judge must ask himself is - can the possibility of concoction or distortion be disregarded?

2. To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself that *the event was so unusual or startling or dramatic as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection.* In such a situation the judge would be entitled to conclude that the involvement

or the pressure of the event would exclude the possibility of concoction or distortion, *providing that the statement was made in conditions of approximate but not exact contemporaneity.*

3. In order for the statement to be sufficiently "spontaneous" it must be *so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the declarant was still dominated by the event.* Thus the judge must be satisfied that the event, which provided the trigger mechanism for the statement, was *still operative*. The fact that the statement was made in answer to a question is but one factor to consider under this heading.

4. Quite apart from the time factor, *there may be special features in the case, which relate to the possibility of concoction or distortion.* In the instant appeal the defence relied upon evidence to support the contention that the deceased had a motive of his own to fabricate or concoct, namely, a malice which resided in him against O'Neill and the appellant because, so he believed, O'Neill had attacked and damaged his house and was accompanied by the appellant, who ran away on a previous occasion. The judge must be satisfied that the circumstances were such that having regard to the special feature of malice, there was no possibility of any concoction or distortion to the advantage of the maker or the disadvantage of the accused.

5. *As to the possibility of error in the facts narrated in the statement, if only the ordinary fallibility of human recollection is relied upon, this goes to the weight to be attached to and not to the admissibility of the statement* and is therefore a matter for the jury. However, here again there may be special features that may give rise to the possibility of error. In the instant case there was evidence that the deceased had drunk to excess, well over double the permitted limit for driving a motor car. Another example would be where the identification was made in circumstances of particular difficulty or where the declarant suffered from defective eyesight. In such circumstances the trial judge must consider whether he can exclude the possibility of error." (page 300G – 301F)

> "…. I would, however, *strongly deprecate any attempt in criminal prosecutions to use the doctrine as a device to avoid calling, when he is available, the maker of the statement.* Thus to deprive the defence of the opportunity to cross-examine him, would not be consistent with the fundamental duty of the prosecution to place all the relevant material facts before the court, so as to ensure that justice is done."(page 302E – F)

Admissibility - The time factor

[13] The appellant contends that the statement comprising the recording cannot be sufficiently 'spontaneous' for the purposes of the res gesta exception to the hearsay rule in the absence of evidence as to how much time had passed between the injury being suffered by the complainant and the phone call being made to the police.

[14] The emergency call was made by the complainant at 04:53. The police arrived at the house at 05:05. The recording was timed from 05:07 to 05:21. In the recording the complainant outlined the events that had occurred in the house earlier. Police asked her what time she and the appellant had returned to the house and she stated that it had been 10 minutes before she made the emergency call. On this basis the assault in the house commenced around 04:43 hours and the police arrived 22 minutes later at 05:05 hours.

[15] Constable Allen made a witness statement and noted that when he arrived at the complainant's address there was a male at the rear of the property who was standing at the back door shouting. Constable Allen approached this person who identified himself as the appellant. Constable Allen entered the property and spoke to the complainant and he then arrested the appellant at 05:13 hours, that is, 30 minutes after the assault in the house commenced.

[16] The appellant was interviewed by police on 9 November 2014 from 13:34 hours to 13:50 hours. He denied the assault and blamed the complainant for attacking him. He was asked what time he and the complainant had arrived home and he replied that it had been just before he was arrested by about 5 to 10 minutes.

[17] We are satisfied, contrary to the submission of the appellant, that there was evidence as to the time that had passed between the injury and the report. The complainant's account placed the injury after 04:43 and the video report was timed from 05:07. The appellants account placed the incident at 05:03, being 10 minutes before his arrest. In any event, the issue is not a matter simply of timing, but rather of spontaneity, where delay is a factor.

[18] Judge Loughran considered whether the complainant's utterance was an instinctive reaction to the event giving no real opportunity for reasoned reflection. She was so satisfied considering a number of matters. First, her words were spilling

out of her in a highly emotionally charged way. Secondly, she did not take time to ensure that her young child was sheltered from the scene. It was a police officer who shepherded the child away. Thirdly she did not seem to care about the possibility of injury to her unshod feet. She swept up the fragments of glass and had to be reminded by police to put on her shoes. Further elements were stated by Judge Loughran to fortify her conclusion that the possibility of concoction or distortion could be disregarded. Fourthly, the complainant made some remarks about herself which were not particularly favourable, namely that on previous occasions she had retaliated against the appellant. Fifthly, she addressed the appellant's niece making clear to her that what had happened was evidence for the McGuiness family of the truth of her allegations of the violence of the appellant towards her. Sixthly she told police that she loved the appellant.

[19] All the above matters the Judge was entitled to take into account in determining the spontaneity of the statement of the complainant in the body cam video.

Admissibility - Special features

[20] The appellant contends that there are special features of the present case by which the possibility of concoction or distortion cannot be disregarded. The special features are that the complainant was intoxicated, that the appellant denied the substance of the complaint and contended that assaults on the appellant were a feature of her drunken behaviour and that the account of the assault on the complainant was not consistent with the limited extent of the injuries found on the complainant.

[21] As to the complainant's condition, the notebook entry of Constable White stated that the complainant was willing to make a statement but was then intoxicated. The denial of the assault and allegations against the complainant appear from the police interview of the appellant. The injuries recorded by Constable White were a red mark around her neck/upper chest area and she appeared distressed.

[22] The above aspects of the case were not referred to as special features relating to the possibility of concoction or distortion either in the Case Stated or in the appellant's skeleton argument. In any event we are satisfied that the matters referred to are not special features which, in the present case, relate to the possibility of concoction or distortion. The complainant's intoxication did not prevent her articulating the details of her complaint. The presence of injury was not explained in any other manner. The presence of glass on the floor was confirmatory. In essence the special feature on the appellant's account was the malice of the complainant in seeking to attribute blame to the appellant for what was said to be the results of her own drunken behaviour. Judge Loughran was aware of the matters relied on by appellant as special features, although not articulated as such on the hearing of the appeal.

[23] We are further satisfied that the matters relied on by the appellant are not matters that advance a case of concoction or distortion in the present case.

[24] We have viewed the recording. We are satisfied that Judge Loughran was entitled to reach the conclusion that she did that the possibility of concoction or distortion could be disregarded.

Exclusion of admissible evidence

[25] Once it has been decided that the statement is admissible the Court has a discretion to exclude the evidence.

The power of exclusion arises under Article 30 of the 2004 Order where the court is satisfied –

> "…. that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting, taking account of the value of the evidence."

In addition there is the general power under Article 76 of the 1989 Order of exclusion of unfair evidence on which the prosecution proposes to rely –

> "…. if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it".

[26] In Riat and others v R [2012] EWCA Crim 1509 consideration was given to the effect of the English equivalent of Article 30 of the 2004 Order and Article 76 of the 1989 Order as follows:

> "21. Even when a statutory gateway is passed and does not contain a specific 'interests of justice' test, [Article 76] applies to evidence which the Crown wishes to adduce and [Article 30] applies to all tendered hearsay.
>
> 22. The non-exhaustive considerations listed in [Article 18(2)] as directly applicable to an application made under [Article 18(1)(d)] are useful aides memoire for any judge considering the admissibility of hearsay evidence, whether under that [Article 18(1)(d)] or under [Article 76] or otherwise.

> 23. [Article 30] provides a freestanding jurisdiction to refuse to admit hearsay evidence. It does not apply to any other evidence tendered in a criminal case. If the evidence is tendered by the Crown, it stands in parallel to the general discretion under [Article 76], which power is specifically preserved by [Article 30(2)]. It goes, however, further than [Article 76] because it applies also to evidence tendered by a defendant, which might, of course, be targeted either at refuting Crown evidence or at inculpating a co-accused."

[27] Article 18(1) provides for the admissibility of hearsay in four circumstances, (a) under a statutory provision, (b) under preserved common law rules that include the res gestae principle, (c) by agreement and (d) in the interests of justice. For the purposes of admissibility under Article 18(1)(d) in the interests of justice, Article 18(2) sets out factors to which the court should have regard. These same factors may also be relevant to a consideration of the exclusion of hearsay evidence otherwise admissible.

Exclusion – improper purpose

[28] It is necessary to consider the purpose of the proposed admissibility of evidence under the res gestae exception. The Court must be satisfied that there is no improper purpose or no resort to unfair tactics by the prosecution. The use of the res gestae exception must not be used as a device simply to avoid calling, where available, the maker of the statement, so as to deprive an accused of the opportunity to cross-examine the maker of the statement.

[29] Where allegations of domestic violence are made the complainant may later withdraw the allegation against the accused. The withdrawal of the allegation may arise by reason of the complainant's fear for personal safety if the complaint is to be pursued. It may arise as a result of reconciliation between the parties and the complainant's desire not to pursue the allegation. The voluntary withdrawal of a complaint may involve an attempt to place responsibility for the incident elsewhere than with the accused, which may be the result of an attempt to exculpate an accused properly blamed in the first place or may be exoneration for an accused improperly blamed in the first place, whether deliberately or mistakenly. There will be instances where it may be a public interest to proceed in proceeding against the alleged assailant despite the withdrawal of the complaint. There are a variety of circumstances that may arise that are relevant to the truth of a complaint and to the fairness of the proceedings. This is not simply an issue as to whether the maker of the statement is available to give evidence.

[30] The appellant relies on Attorney General's Reference (No.1of 2003) [2003] 2 Cr App R 453. The defendant was charged with assault on his mother. Immediately after the event the mother stated to a number of witnesses that she had been

assaulted by the accused. She later made a statement that she had sustained injuries falling downstairs and did not want to give evidence against her son. There was no evidence that fear of her son was the reason why the mother no longer supported her original statements. The trial Judge refused the prosecution application to rely on the mother's original statements as part of the res gestae. The Court of Appeal stated:

> "If the purpose of the Crown was that the res gestae evidence should be given without any opportunity being given to the defence to cross-examine the maker of the statement, the court might well conclude that the admission of the evidence would indeed have an adverse effect on the fairness of the proceedings and refuse to allow it to be given. As a general principle, it cannot be right that the Crown should be permitted to rely only on such part of a victim's evidence as they consider reliable, without being prepared to tender the victim to the defence, so that the defence can challenge that part of a victim's evidence on which the Crown seeks to rely, and if so advised elicit that part of her evidence on which the defence might seek to rely."

[31] A submission by the prosecution in AG' Reference (No 1 of 2003) that the defence could always call the mother to give evidence was not considered an adequate response. If the defence called a witness, they could not ask leading questions or cross-examine, while the prosecution would be able to do so. That gives the prosecution an advantage which might well, of itself, adversely affect the fairness of the proceedings.

[32] In Barnaby v DPP [2015] EWHC 232 (Admin) the defendant was convicted of assaulting the victim. Evidence was admitted of 999 calls made by the victim and on police arriving at the premises 6 minutes later, evidence was admitted of the victim's statements to police, all implicating the defendant. There was also evidence that the victim was agitated and upset and showing signs of injury and evidence of incriminating text messages from the defendant to the victim.

[33] Fulford LJ was satisfied that the evidence of the telephone calls and of the conversations with police officers shortly afterwards fell within the res gestae principle. The prosecution had not sought to call the victim to give evidence, nor had the prosecution tendered the victim for cross-examination. The victim had expressed her fears as to the likely consequences of further harm if the defendant discovered she had co-operated with police. Fulford LJ concluded that this was not a situation in which the prosecution was seeking to resort to unfair tactics in order to avoid introducing evidence that was potentially inconsistent with the case against the defendant or because it simply anticipated that there was a risk the witness might give an untruthful account. Rather the prosecution stance was said to be a

seemingly sensible recognition of the potentially dangerous situation in which the victim had been placed. In those circumstances it was appropriate to admit the res gestae evidence notwithstanding that in a strict sense the victim was available as a witness.

[34] In Morgan v DPP [2016] EWHC 3414 (Admin) the defendant was convicted of assault on the victim. The evidence included a 999 call made by the victim and also body-cam footage of the victim from a police officer who attended the scene in response to the 999 call. Treacy LJ found that the trial judge was entitled to conclude in the circumstances that concoction or distortion could be disregarded. On the issue of whether the evidence should be excluded for unfairness, it was noted that, while the complainant could not be cross-examined, her evidence did not stand alone as it was supported by the evidence of the police as to her demeanour and the evidence of injury sustained and the body-cam evidence of damage. As to the complainant's non-attendance at Court, the police evidence set out the complainant's attitude to attending court. It was concluded that the prosecution was justified in not seeking to call the witness as she was terrified of the prospect of going to court and having to relive the incident through giving evidence.

[35] In the present case Judge Loughran noted the reliance by the prosecution on the public policy consideration of the importance of proceeding with the prosecution of persons accused of domestic violence in cases where the complainant made a withdrawal statement which was not dictated by fear but rather by a sense of loyalty to a partner.

[36] In the exercise of the discretion whether to exclude the evidence, the Judge considered each of the factors set out in Article 18(2) of the 2004 Order before deciding to admit the body-cam video statement of the complainant under the res gestae exception. The recording was stated to have strong probative value, there was other evidence from the two police officers as to the condition of and the injuries to the complainant, the recording was very important, there was no indication that the complainant was other than reliable, the evidence of the making of the recording was reliable and the complainant was unwilling to give evidence because of reconciliation. As to the appellant's difficulty in challenging the statement and the likely prejudice arising, there was stated to be some such difficulty and some prejudice but not such as to render unfair the admission of the evidence.

[37] Of particular note in the circumstances of the present case in relation to the exercise of the discretion are the purpose of the prosecution in seeking to rely on the out of court statement of the complainant, the supporting evidence as to the complaint, the reason for the complainant's non-attendance at Court and the additional evidence that was available to the appellant.

[38] As to the supporting evidence, the police officers gave evidence as to the complainant's circumstances and demeanour, the presence of the appellant creating

a disturbance at the scene, the injuries occasioned to the complainant and the presence of glass on the floor of the premises.

[39] As to the complainant's non-attendance at Court, the reason appeared from her written statement, namely that she had reconciled with the appellant and did not wish further police action to be taken. In those circumstances it would be apparent that the complainant would not wish to be involved in proceedings against the appellant. It was also stated by the complainant that she had not withdrawn her complaint out of fear of the appellant and there was no evidence to the contrary and the prosecution have not suggested otherwise.

[40] As to the additional evidence available to the appellant, the Judge noted that the complainant stated that a niece of the appellant had witnessed the incident involving the appellant and she could have been called as a witness for the defence. In the event neither the niece nor the appellant gave evidence.

[41] As to the purpose of the prosecution in relying on the res gestae exception, this is not an instance of seeking to avoid inconsistent evidence or anticipating an untruthful account or providing protection from reprisal. Rather, this is an instance of providing support to the complainant in the changed circumstances brought about by the reconciliation of the parties while at the same time seeking to deal with the alleged previous conduct of the appellant. This is a balance which the prosecution has to make in deciding whether and in what manner to prosecute the appellant and does not involve any improper motive or device or unfair tactics.

[42] The Judge concluded that the evidence should not be excluded, either under Article 30, where the case for excluding the statement outweighs the case for admitting it, or under Article 76, where the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it. This is a conclusion that the trial Judge was entitled to reach.

[43] In answer to the stated questions –

(d) Was I correct in law in deciding to admit under Article 18(1)(b) and Article 22(1)(4)(a) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 the cam-recording of the statement of Melissa Campbell ("the said evidence")?

Yes.

(e) Did I correctly apply the test within Article 18(2) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 in deciding to admit the said evidence?

The Article 18(2) factors are not a test for the admission of evidence under the res gestae exception.

Article 18(2) states factors to which the Court must have regard in deciding whether a statement not made in oral evidence should be admitted under Article 18(1)(d), namely that the Court is satisfied that it is in interests of justice that the statement is admissible.

However, when a statement not made in oral evidence is admissible as evidence under Article 18(1)(b) and Article 22(1)(4)(a) under the res gestae principle the factors stated under Article 18(2) are useful aides memoire in considering the exercise of the discretion as to the admissibility of hearsay evidence.

(f) Did I lawfully exercise my discretion under Article 30 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 and under Article 76 of the Police and Criminal Evidence (Northern Ireland) Order 1989 in deciding to admit the said evidence?

Yes.