

IN BELFAST CROWN COURT

THE QUEEN

V

BRENDAN GERARD O'CONNOR

WEATHERUP J

The charges.

[1] The defendant faces three charges being first, causing an explosion contrary to section 2 of the Explosives Substances Act 1883 at Stewartstown, County Tyrone on 9 July 2000; second, possession of an explosive substance with intent contrary to section 3(1)(b) of the Explosive Substances Act 1883 on 8 July 2000; third, belonging to a proscribed organisation contrary to section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on 8 and 9 July 2000, namely the Irish Republican Army, and more particularly an organisation describing itself as the Real IRA.

The events in Stewartstown.

[2] An explosion occurred outside Stewartstown RUC Station, Stewartstown, County Tyrone at 0052 hours on Sunday 9 July 2000. The explosives were contained in a Red Rover 620 motor vehicle bearing false registration plates. I am satisfied that the evidence of the witnesses at the scene establishes that the Red Rover was positioned outside the police station around 2320 hours on Saturday 8 July 2000. Two men got out of the Red Rover and shouted a warning to those in the vicinity. One of the men got into a white Volkswagen hatchback at the entrance to a petrol station and the vehicle drove off in an easterly direction. The other man who got out of the driver's door of the Red Rover and got into another vehicle that drove off in a westerly direction towards Cookstown.

[3] The evidence of four children aged thirteen to fifteen years, and concerning the man and vehicle leaving towards Cookstown, was read to the Court by agreement. The first witness described the vehicle as dark red and looking like a Volvo and being square looking; the man who got into the vehicle was described as being 20-30 years, skinny, tall, with a local accent; he was wearing dark trousers, army jacket, black boots, black gloves and a black baseball cap. The second witness described the vehicle as a maroon/red Volvo; the man who got into the vehicle was described as being of thin build and 5'10" to 6'0" tall; he was wearing a black jacket, black jogging bottoms and a black baseball cap. The third witness described a vehicle as a maroon/red Volvo. The fourth witness described the vehicle as a maroon Volvo and described one man as being dressed in black and wearing a black baseball cap.

The events on the Sherrigrim Road.

[4] The Sherrigrim Road leads from Stewartstown in a westerly direction for a distance of approximately four miles to the main road between Cookstown and Dungannon running north south. At 2325 hours on Saturday 8 July 2000 Caroline Mulgrew was driving along the Sherrigrim Road towards Stewartstown when she observed a vehicle facing her that appeared to have crashed into a fence on the right hand side of the road. Another vehicle was pulled up beside the crashed vehicle and was facing in the same direction towards Ms Mulgrew and was showing sidelights only. This other vehicle was described as a red Volkswagen Polo. Ms Mulgrew drove past both vehicles and then thought that she should offer assistance. When she came back towards the vehicles she observed a man 5'8" or 5'9" tall and of medium build, wearing a black baseball cap, black trousers, black tea-shirt and holding a handgun. She was six feet from the gunman. She noticed a dark baseball cap but did not observe any logo on the cap. She looked at the gunman for two seconds. He pointed the gun at her and told her to get back into her car. Ms Mulgrew did so. She described the man's accent as a local Tyrone accent. The crashed vehicle was later found at the scene of the crash and had been burnt out. It was a red Volkswagen Passat.

[5] Opposite the scene of the crash were premises known as Kelso Car Sales. Some yards on the Cookstown side of the crashed vehicle and on the opposite side of the road was the entrance to Kelso Car Sales. For security purposes a video recording was made of vehicles at the entrance to Kelso Car Sales and this video recorded passing vehicles on the Sherrigrim Road. The recorded time on the video was stated by the owner of the premises to have been over one hour slow in July 2000. At a recorded video time of 2211 hours on Saturday 8 July 2000 a vehicle was recorded passing along the Sherrigrim Road from Stewartstown towards Cookstown.

[6] At 0730 on Sunday 9 July 2000 Reserve Constables Jeffers and Allan arrived by police landrover at the scene of the burnt-out vehicle. Later they proceeded along the Sherrigrim Road in the direction of Cookstown and at 0920 hours observed two pink plastic gloves on the right hand side of the road at a distant of 0.7 miles from the burnt-out vehicle. The find was reported by radio and Police Constable Johnson, Scenes of Crime Officer, arrived and took possession of the gloves at 0945 hours. Reserve Constables Jeffers and Allan continued along the Sherrigrim Road in the Cookstown direction and at 0955 hours observed a black baseball cap on the left hand side of the road approximately half a mile from where the gloves had been found. Again the find was reported by radio and Police Constable Johnson attended the scene and at 1008 hours took possession of the black baseball cap.

The arrest of the defendant.

[7] On 16 August 2000 police seized a red Volkswagen Golf from premises at Pomeroy, County Tyrone, where the defendant resided. On that date the defendant was arrested under section 14(1)(b) of the Prevention of Terrorism Act 1989. He was interviewed by Detective Sergeant Graham and Detective Constable Patterson in the presence of his solicitor at Armagh Police Office between 1956 hours and 2023 hours and he made no reply to questions. The defendant was released. After further police enquiries, which included the finding that the defendant's DNA was present on the pink plastic gloves found at Sherrigrim Road on the morning of Sunday 9 July 2000, the defendant was re-arrested and interviewed at Lisburn custody suite by Detective Sergeant Lyle and Detective Constable Mahon on 4 February 2003 at 1633 hours in the presence of his solicitor. He made no reply to questions save that in relation to the presence of his DNA on the pink plastic gloves the defendant stated -

“I have never, never worn gloves like that before. Never. “

[8] On 4 February 2003 the present charges were preferred. In response to the charges of causing an explosion and being in possession of an explosive substance with intent the defendant made no reply. In response to the charge of belonging to a proscribed organisation the defendant replied -

“I am not a member of any illegal organisation.”

The DNA evidence.

[9] On 10 July 2000 Ms Knowles, a Senior Scientific Officer with the Forensic Science Agency received the pink rubber gloves and the baseball cap that had been from Sherrigrim Road together with buckle swabs from the defendant. She sought to determine any potential DNA typing characteristics. The gloves consisted of the left and right hands respectively of a pair of pink

household gloves size L. The insides of both gloves at the webs of the fingers and the back of the right hand glove were swabbed to recover material. An insufficient quantity or quality of DNA could be extracted to enable DNA typing using the SGM plus system of DNA analysis to be carried out. The black baseball cap was tape-lifted and the tapes examined for hairs which had material suitable for DNA analysis but no such material was found. The front portion of the headband was removed but an insufficient quantity or quality of DNA could be extracted which would enable DNA typing using the SGM plus system of DNA analysis to be carried out. The swabbing of the gloves had involved the necks of the gloves being wedged open and a moistened swab being applied. One swab was used for the right glove and applied to the webs and the back of the hand. A different swab was used for the left glove and only applied to the webs of the fingers.

[10] DNA extract relating to the swabs from the pink plastic gloves was sent for low copy number (LCN) DNA analysis. Mr Appleby of the Forensic Science Service gave evidence of his examination and results. Standard DNA profiling method is used when the DNA present is equal to that in about 300 cells. LCN DNA profiling increases the sensitivity of the technique so that in theory only a few cells are required for successful analysis. In relation to the DNA extracts relating to the left and right gloves Mr Appleby found that partial mixed DNA profiles had been obtained from the DNA present in those samples and a major contributor profile was evident in each sample. The major profiles matched each other and the reference profile relating to the defendant. Accordingly it was concluded that the majority of the DNA detected could have originated from the defendant. The match probability, on the assumption that there was no evidence of the involvement of a close male relative of the defendant, was such that the chance of obtaining a matching profile from a person taken at random from the general population was in the order of one in one billion. In addition two minor DNA characters were also present in the profiles obtained from the gloves. One character was present in each profile obtained. The presence of the minor DNA profiles did not affect the interpretation of the major profiles obtained.

[11] In a letter to Detective Inspector Milford, the officer in charge of the case, on 25 January 2002 Mr Appleby stated that when employing the LCN DNA profiling techniques certain caveats to the significance of any results obtained would apply. It was stated that LCN technique is used when the quantity or quality of DNA thought to be present in an item was minimal. He stated as an example that experimentation has indicated that a profile may be obtained from an item if a person has only touched it once. Due to the sensitivity of the technique mixed profiles are commonly obtained indicating the present of DNA from more than one person. It was stated that it was also not possible to determine the length of time any cellular material detected had been present on an item or the specific cellular source of any DNA detected.

[12] Mr Appleby stated in evidence that, given the area of sample from the webs of the fingers, on balance the gloves were worn. He accepted the possibility of transfer of DNA by other routes such as the shaking of hands involving a transfer to a person who then touches an item and transfers the first person's DNA to that item. However Mr Appleby was of the opinion that a major contributor would involve the wearing of the gloves and that the transfer of DNA to the hand of the wearer would not amount to a major contributor. He posed the rhetorical question, if the defendant's DNA is present by secondary transfer where is the DNA of the wearer of the gloves? There are many variables to the quality and quantity of DNA. Some persons are described as good at "shedding" DNA and others are poor at shedding DNA. Washing of the hands, length of contact with the item, efficiency of swabbing, the presence of contaminants all contribute to the results.

[13] I am satisfied beyond reasonable doubt that the defendant's DNA was recovered from the inside of each of the plastic gloves.

The evidence of photo comparison.

[14] Dr John Bowie is technical director of a firm engaged in photo comparison work. He has carried out a comparison of the motor vehicle appearing in the video of Kelso Car Sales at video time 2211 on Saturday 8 July 2000 and the red Volkswagen Golf seized from the defendant's residence on 16 August 2000. The seized vehicle was one that the defendant made use of, whether as a driver or passenger, although he was not the registered owner. The defendant was observed by police on 24 March 2000 as a rear seat passenger in the vehicle in Cookstown on 8 April 2000, driving the vehicle at Pomeroy on 10 July 2000, driving the vehicle in Cookstown and on 31 July 2002 driving the vehicle in Cookstown. After the defendant's vehicle was seized it was driven past the Kelso premises in the dark and recorded on video. Stills were taken from the video of 8 July 2000 and the video of the drive past of the defendant's vehicle.

[15] The defendant's vehicle was identified as an early mark two Volkswagen Golf. The mark one Golf was manufactured between 1976 and 1984. The mark two Golf was manufactured between 1984 and 1991. There are two versions of the mark two Golf. The mark three Golf was manufactured between 1991 and 1998. While the mark two Golf had a square shape the mark three Golf had softer rounded lines at the front and back. While the mark two Golf had bolted bumpers the mark three Golf had integral bumpers. There are then two features that distinguish the early mark two Golf from the late mark two Golf. First, the early mark two had a driver's window that was divided so as to produce a square window and a quarter light towards the windscreen. The later mark three had one driver's window. Second, the early mark two placed the driver's side mirror at the

point where the driver's window was divided. The later mark two placed the driver's side mirror to the front of the driver's door next to the windscreen. Having compared the vehicle shown on the video of 8 July 2000 and the defendant's vehicle, Dr Bowie concluded that there were significant similarities and lack of significant differences so that there was strong support for the contention that they were vehicles of the same make, model and styling. The poor quality of the video prevented the comparison being placed on the highest level of a similarity scale classed as very strong support.

Dr Bowie then completed a comparison of the defendant's vehicle with other models of the Volkswagen Golf and identified the differences. Dr Bowie then made a comparison of the defendant's vehicle with other vehicles of similar size and shape, for example, Fiat Uno, Nissan Micro, Vauxhall Nova, Peugeot 205 and other, and differences were noted.

[16] It was Dr Bowie's conclusion that it was highly probable that the vehicle seen on the video recording of 8 July 2000 was a Volkswagen Golf early mark two as seized from the defendant. It was not possible to say that it was the same vehicle.

[17] I am satisfied beyond reasonable doubt that the vehicle shown on the video from Kelso Car Sales on the 8 July 2002 showing the video clock time of 2211 was an early mark two Volkswagen Golf.

The circumstantial case for the prosecution.

[18] The strands in the prosecution case are as follows.

First the bomb vehicle was placed in Stewartstown at 1120 hours on Saturday 8 July 2000. The driver of the bomb vehicle went to a red vehicle that drove off towards Cookstown. The driver was described as wearing black clothing including a black baseball cap and as being of a certain height and build and with a local accent.

Secondly, on the road to Cookstown a vehicle crashed 1.8 miles away from Stewartstown and within minutes of the events in Stewartstown. A man of the same description with black clothing, black baseball cap, height and build and local accent was at the scene. The red motor vehicle leaving Cookstown was described by the children as a Volvo and the red vehicle burnt out on the Sherrigrim Road was a Volkswagen Passat. The prosecution contend that it is a reasonable inference, by reason of the coincidence of time and place and description of the man concerned that the vehicle crashing on the Sherrigrim Road and the man present at that scene were the same vehicle and the same man that had been observed leaving Cookstown some minutes earlier.

Thirdly, another vehicle was present alongside the red Passat. This vehicle was described as a red Volkswagen Polo facing in the direction of Cookstown. The prosecution contend that it is a reasonable inference that this vehicle was connected with the events concerning the red Passat and that this vehicle removed the driver of the red Passat and the man in the black baseball cap from the scene of the crash in the direction of Cookstown after they had set fire to the red Passat with the use of the bottle of white spirit found at the scene.

Fourthly, the video from Kelso Car Sales would have shown within a matter of seconds any vehicle leaving the scene of the burnt out red Passat and travelling towards Cookstown. A vehicle passed through the video shot with the video time at 2211. The evidence indicates that the video clock was unreliable and had been over an hour slow. The prosecution contend that it is a reasonable inference that the vehicle on the video had travelled from the location of the red Passat at the time the red Passat had crashed and from the evidence of photo comparison that the vehicle shown on the Kelso Car Sales video was an early mark two Volkswagen Golf and that this vehicle was the vehicle described by Ms Mulgrew beside the red Passat and that she was mistaken when she described the vehicle as a Volkswagen Polo.

Fifthly, the pink plastic gloves were found 0.7 miles from the red Passat travelling towards Cookstown. The defendant's DNA was found inside each glove and that that arose because the defendant had been wearing the gloves.

Sixthly, the defendant had use of a red early mark two Volkswagen Golf. The prosecution contend that it is a reasonable inference that the vehicle of which the defendant had use was the same vehicle that was present on the Sherrigrim Road at 11.25pm on Saturday 8 July 2000; and further that the defendant was present in the vehicle and discarded the plastic gloves from the vehicle as it travelled away from Stewartstown.

In addition the prosecution contend that the defendant lied to police when he denied that he had ever worn such gloves and seek to rely on that lie as evidence supportive of the prosecution case. See *Blackstone Criminal Practice 2005 paragraph F 1.12*.

[19] Chief Superintendent McIvor was the Commander Operational Support, Rural Region of the Police Service of Northern Ireland. He reviewed the file in relation to the bombing of Stewartstown RUC Station. As a result he formed the opinion that on 8 July 2000 the defendant was a member of the organisation describing itself as the Real IRA. He based that opinion on his conclusion that the bombing had been carried out by the Real IRA because of the use of the quantity and type of explosive associated with that organisation at that time, being 300 lbs of home made explosive, and because of the

organisation and conduct of the bombing, which no other organisation would have carried out in that area at that time. It was agreed by Counsel for the prosecution that there was no basis for the conviction of the defendant on the membership charge if he were to be found not guilty of the explosives charges.

The submission of no case to answer.

[20] At the conclusion of the prosecution case the defence applied for a direction that the defendant had no case to answer. The test applied by Lord Lane in *R v Galbraith* [1981] 1 WLR 1039 stated –

“(1) If there is no evidence of the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

There will of course, as always in this branch of the law, be border-line cases. They can safely be left to the discretion of the judge.”

[21] The defence submission was that the present case fell under the first limb as there was no evidence that the crimes alleged had been committed by the defendant. Alternatively the defence contended that if there was any evidence against the defendant it was not such that taken at its highest a jury properly directed could properly convict the defendant. On the other hand the prosecution contended that there was circumstantial evidence against the defendant which was such that a reasonable jury properly directed could reasonably draw the inference of the defendant's involvement.

[22] By reason of the DNA evidence in relation to the gloves and the evidence of a vehicle of the same model as that used by the defendant leaving the scene of the burnt-out vehicle on the Sherrigrim Road and in all the circumstances of the case I was satisfied that a reasonable jury properly directed could reasonably have drawn the inference of the defendant's involvement in the offences and found that the defendant had a case to answer.

The defendant's evidence.

[23] The defendant elected to give evidence. He denied any involvement in the bombing at Stewartstown on Saturday 8 July 2000 or any possession of explosive substances or any membership of an illegal organisation. It was the defendant's evidence that in 2000 he was aged 22 years and living with his parents and three brothers and two sisters in Pomeroy some fifteen miles from Stewartstown. His father was a joiner. He worked in the building trade with his father part of the time and also was involved with a number of others in selling diesel from premises in Bellaghy. He stated that he was "baffled" by his DNA being on the gloves. He was aware of the use of such gloves by his mother in the kitchen of his home but he had never worn such gloves in the home although he may have picked up and moved a pair of such gloves in the kitchen on some occasion but could not remember doing so. Further he stated that his father would have worn such gloves on occasions when working on building sites but the defendant had never worn such gloves on building sites although he may have lifted and moved his father's gloves in the back of his father's van although he could not remember doing so. The diesel business in which the defendant was involved included deliveries of diesel by lorry undertaken by the defendant and others engaged in the business and such deliveries would have included the area of Stewartstown. Plastic gloves were worn by those driving the lorry when transferring the diesel in order to keep the diesel off the hands. The defendant's evidence was that various types of gloves would have been used in the diesel lorry and may have included pink plastic gloves. Had there been pink plastic gloves on the lorry he would have worn them although he could not remember doing so. The gloves would have been in the cab of the diesel lorry but had there been spillages of diesel onto the gloves they would have been thrown on the back of the lorry to keep the smell of the diesel out of the cab. The diesel lorry was described as "curtain sided," being a reference to canvas sides, and items on the back of the lorry may have fallen from the lorry.

[24] During interview by the police on 4 February 2003 the defendant was asked about his DNA on the pink plastic gloves and whether he had ever had any contact with such gloves and he replied that he had never worn gloves like that before. When asked in cross examination why he had not told police about his possible contact with such gloves in his mother's kitchen or his father's van or the diesel lorry he stated that he had not been concentrating on the question. He had meant to say that he did not put the gloves on the Sherrigrim Road but it was possible that he had worn such gloves.

[25] The defendant did not answer questions during interview save on the issue of the gloves. His evidence was that he had received legal advice not to

answer any questions except on two matters, namely the gloves and membership of an illegal organisation. Accordingly when asked about the gloves he had given the answer that he had never worn such gloves and when charged with membership he had denied membership of any illegal organisation.

[26] The defendant gave evidence about the Volkswagen Golf that was used by the defendant. The vehicle was owned by another person who lived near the defendant in Pomeroy and it was said to be used by that person and members of the defendant's family and those involved with the defendant in the diesel business. On the date of the defendant's arrest on 16 August 2000 the Volkswagen Golf was seized from the defendant's home in Pomeroy. On one occasion when stopped by police the defendant had told the police officer that he was the owner of the Volkswagen Golf. His evidence that it was more convenient to tell police that he was the owner of the vehicle as it avoided involvement in additional investigations to establish the identity of the owner of the vehicle. The defendant agreed with the police evidence that on occasions he was the driver of the vehicle and on other occasions he was a passenger in the vehicle while being driven by another.

Assessment of the case against the defendant.

[27] On the strands of the prosecution case I am satisfied as follows.

The bomb vehicle was placed in Stewartstown at 2320 hours on Saturday 8 July 2000; the driver of the bomb vehicle went to a red vehicle that drove off towards Cookstown; the driver was an adult male with a local accent who was wearing black clothing, including a black baseball cap.

On the road to Cookstown the red escape vehicle crashed 1.8 miles away from Stewartstown and within minutes of the events in Stewartstown. The crashed vehicle was a red Volkswagen Passat. By reason of the coincidence of time and place and the description of the man concerned, I am satisfied that the vehicle crashing on the Sherrigrim Road and the man present at that scene were the same vehicle and the same man that had been observed leaving Stewartstown some minutes earlier.

Another vehicle was present alongside the red Passat on the Sherrigrim Road. That other vehicle was described as a red Volkswagen Polo facing in the direction of Cookstown. It is a reasonable inference that this vehicle was connected with the events concerning the red Passat and that the other vehicle removed the driver of the red Passat and the man in the black baseball cap from the scene of the crash in the direction of Cookstown, after they had set fire to the red Passat with the use of the bottle of white spirit found at the scene.

The pink plastic gloves were found 0.7 miles from the red Passat in the direction of Cookstown. Defence Counsel were critical of the removal of the gloves from their position on the roadside before a mapping officer had taken particulars to enable a location map to be prepared that identified the location of the find. However the gloves were photographed in the position in which they were found and the location was capable of precise identification. As stated above I am satisfied that the defendant's DNA was found inside each glove.

The video from Kelso Car Sales showed a vehicle passing through the video shot with the video time at 2211. As stated above I am satisfied that the vehicle shown in that video shot was an early mark two Volkswagen Golf. The defendant had use of an early mark two red Volkswagen Golf.

[28] There are two areas that require further consideration. In the first place it is necessary to consider the issue of the defendant wearing the plastic gloves and the connection of the plastic gloves with the explosives offences. Secondly it is necessary to consider the identity of the vehicle that was present beside the crashed red Passat on the Sherrigrim Road on Saturday 8 July 2000 and its relationship to the Volkswagen Golf used by the defendant.

The plastic gloves.

[29] I am satisfied beyond reasonable doubt that the defendant's DNA was found inside the plastic gloves found by police on the Sherrigrim Road on the morning of 9 July 2000. The evidence was that the presence of the defendant's DNA could have arisen from the defendant having worn the gloves but two alternative explanations were advanced for the presence of the defendant's DNA inside the plastic gloves. The first involves transfer of the defendant's DNA to the hands of the wearer of the gloves. The second involves the defendant having picked up the gloves when they were inside-out in his mother's kitchen or his father's van. When questioned about the possibility of the defendant's DNA being transferred from the hands of the defendant to the hands of another who had then worn the gloves, Mr Appleby referred to the "anomaly" that the DNA of the wearer was not the major contributor. Mr Appleby was not questioned about the transfer of DNA to the webs of the fingers of the gloves by picking up the gloves while inside out, but I shall assume that it is possible if the gloves were to be picked up in a certain manner. However I am satisfied that this "anomaly" also applies if the defendant had picked up the gloves when they were inside-out. The gloves were not inside out when found on the road side. If they had been picked up by the defendant while inside-out I am satisfied that they would have been turned outside in and worn again in order for them to be found in the condition they were found on the roadside. The anomaly remains as to the absence of the DNA of the wearer of the gloves, if that person was other

than the defendant. I am satisfied beyond reasonable doubt that the defendant had worn the plastic gloves.

[30] If the defendant had worn the gloves in what circumstances had that occurred? In evidence he advanced the possibility that the gloves had been present in the diesel lorry and had been worn when he was making deliveries of diesel. As the red Passat had been set on fire the gloves had been examined for the presence of accelerants and no traces were found. Accordingly there were no traces of diesel on the plastic gloves. However if the plastic gloves had come from the diesel lorry it is not known how long it had been since they had been in contact with diesel or how long they had been lying by the side of the road or whether any traces of contact with diesel might have been lost by the lapse of time or the exposure to the elements. On the prosecution case the plastic gloves were used in the bombing operation either to prevent traces of explosives on the hands or to prevent fingerprints being left on any object. Examination of the gloves for traces of explosives revealed nothing.

[31] How did the gloves come to be present on the road? If they had been worn by the defendant on the diesel lorry it was the defendant's evidence that they must have fallen from the lorry. By the absence of traces of accelerants on the gloves I consider it unlikely that they had been in contact with diesel and unlikely that they would have been thrown on the back of the lorry and unlikely that they would have fallen from the lorry and unlikely that that would have occurred at a place and time that coincided with the escape route from the bombing. The prosecution case is that the gloves were thrown from the vehicle that was carrying the driver of the bomb car from the bombing. The gloves were thrown from the escape vehicle in order to dispose of suspicious items. However it was Ms Mulgrew's evidence that the bomber with the black baseball cap was armed with a handgun. Would those in the car have wished to dispose of the plastic gloves with such urgency as to avoid them being found in the car if the vehicle were to be stopped, when any search would be likely to reveal the presence of the gun? Had the escape vehicle been stopped they could not have avoided suspicion. Of course there is no accounting for the steps that might be taken in the panic of escape.

[32] When questioned by police in the presence of his solicitor about the presence of his DNA in the gloves the defendant replied that he had never worn such gloves. I am satisfied that the defendant did not misunderstand the question asked by the police officer. He made a positive denial of ever having worn such gloves. I am satisfied that he did not misstate his reply and that he did not intend to say to the police officer that he had not put the gloves on the Sherrigrim Road. I am satisfied that the defendant was not telling the truth to the police when he denied ever having worn such gloves. Further I am satisfied that the defendant was not telling the truth to the Court when he attempted to explain away his answer to the police.

[33] It is necessary to exercise caution in considering lies told by a defendant. A direction in accordance with *R v Lucas [1981] QB 720* should generally be given to the jury. The threefold direction requires that -

- (a) the lie must be deliberate and must relate to a material issue;
- (b) they must be satisfied that there was no innocent motive for the lie reminding them that people sometimes lie for example in an attempt to bolster-up a just cause or out of shame or a wish to conceal disgraceful behaviour; and
- (c) the lie must be established by evidence other than that of the witness who is to be corroborated.

[34] I am satisfied the lie was deliberate and related to a material issue. Any innocent motive would have related to a desire not to implicate himself by admitting the wearing of the gloves on an innocent occasion, but he knew that his DNA has been found inside the gloves so he had every reason to advance innocent user and did not do so. The lie has been established by the forensic evidence. I am satisfied that the defendant's lie to police is a matter to be relied on as evidence supportive of the prosecution case. Further I am satisfied that the defendant's lie to the Court in seeking to explain his answer to the police reduces his credibility.

[[35] What is the connection between the gloves and the bombing? There has been no trace that connects the gloves with explosives or with the bombing or with any vehicle or with any item connected with the bombing. There is no evidence that any one involved in the bombing operation was wearing such gloves. The prosecution rely on the coincidence of place and time in the finding of the gloves on the route of the escape vehicle. The gloves were found about half a mile from the black baseball cap. While a black baseball cap was worn by the driver of the bomb car the black baseball cap recovered in the Sherrigrim Road has not been linked to the gloves or to any item or person connected with the bombing. The gloves were found 0.7 miles from the burnt-out red Passat but have not been linked to that vehicle or to any item or person otherwise connected with the bombing.

The Volkswagen Golf.

[36] The prosecution rely on a further strand of circumstantial evidence, namely the Volkswagen Golf of which the defendant had use. I am satisfied from the evidence of Dr Bowie that the vehicle shown on the Kelso video is the same make and model of Volkswagen Golf as that of which the defendant had use. However I cannot be satisfied that the vehicle shown in the Kelso video is the vehicle to which those in the red Passat transferred after the red Passat was set on fire. I consider that it was probably the same vehicle and

that Ms Mulgrew was probably mistaken when she identified the vehicle as a red Volkswagen Polo. However Mr Kelso's evidence on the error on the video time was that he had first reported to police that the clock was one hour five minutes slow, and had then made a written statement to police that he could not say how much time the video clock had lost but it was over one hour, and he then gave evidence that it was something like an hour. Ms Mulgrew had noted the time on her car clock at 11.25pm when she returned to her vehicle after being ordered to do so by the gunman. It is not known if her car clock was accurate nor how long the escape vehicle remained at the scene after Ms Mulgrew left. However the discrepancy on the video clock would have to be approximately one hour fifteen minutes for the vehicle in the video to be the vehicle leaving the scene of the burning red Passat. No other part of the Kelso video was shown to the Court but Prosecution Counsel agreed that it was not possible from a viewing of the video to identify any other traffic movement or incident which would connect the vehicle passing at clock time 2211 to the escape of the bombers.

[37] Further, even if I were satisfied that the Volkswagen Golf shown in the video was the escape vehicle, I cannot be satisfied that it was the Volkswagen Golf used by the defendant. There was no evidence on the prevalence of early mark two Volkswagen Golf in Northern Ireland. Nor could it be established that the vehicle in the Kelso video was red. Nor can I conclude that the defendant was in the vehicle. Accordingly I find that the evidence relating to the Volkswagen Golf does not add to the evidence relating to the plastic gloves in connecting the defendant to the explosives offences.

Finding.

[37] At the conclusion of the trial I have to be satisfied of the guilt of the defendant beyond reasonable doubt. The conclusion that the defendant wore the plastic gloves found by police on the Sherrigrim Road on the morning of Sunday 9 July 2000 at a point 0.7 miles from the burnt-out red Passat used by the bombers of Stewartstown RUC Station, supported as it is by the untruths told by the defendant in relation to the wearing of the plastic gloves, is not sufficient to satisfy me beyond reasonable doubt that the defendant was involved in the bombing. The evidence does not establish any basis on which I can be satisfied beyond reasonable doubt that there is a connection between the plastic gloves and any item or person involved in the bombing. Accordingly on the charge of causing an explosion contrary to section 2 of the Explosive Substances Act 1883 I find the defendant not guilty. On the charge of possession of an explosive substance with intent contrary to section 3(1)(b) of the Explosive Substances Act 1883 I find the defendant not guilty. On the charge of belonging to a proscribed organisation contrary to section 30(1)(a) of the Northern Ireland Emergency Provisions Act 1996 I find the defendant not guilty.