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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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CRIMINAL APPEAL (NORTHERN IRELAND) ACT 1980

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THE QUEEN

v

CHRISTOPHER ROBINSON

_____

Mr Arthur Harvey QC, Mr Neil Fox (instructed by O'Muirigh Solicitors) for the Appellant

Mr David McDowell QC, Mr Samuel Magee QC, Ms Lauren Cheshire (instructed by the Public Prosecution Service) for the Respondent

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Before: Keegan LCJ, Treacy LJ and O'Hara J

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KEEGAN LCJ (delivering the judgment of the court)

Introduction

[1] This appeal against conviction is brought by the appellant who was convicted of murdering Adrian Ismay and of causing an explosion with intention to endanger life. These offences arose from the death of Mr Ismay after an explosive device was attached to his car parked outside his home on 4 March 2016. Mr Ismay worked as a Senior Prison Officer in the Training Branch of the Northern Ireland Prison Service at the time of his death. He died 11 days after the explosion on 15 March 2016.

[2] The appellant was charged on the basis of joint enterprise in that it was alleged that he provided intentional assistance and was knowingly involved in a plan to plant an improvised device under Adrian Ismay's vehicle in the early hours of 4 March 2016 with the intention of killing or seriously injuring him. The prosecution submitted that at the least, he provided intentional assistance to the attack with the requisite intent.

[3] The prosecution was based on circumstantial evidence. The case proceeded to a trial which took place before Mr Justice McAlinden ('the learned trial judge'). This trial lasted for 30 days and concluded on 6 March 2020 when the appellant was convicted of the two charges referred to above. On 27 November 2020 the appellant was sentenced to a total of 22 years imprisonment for the offences.

[4] As these are scheduled offences, leave to appeal is not required. However, this appeal was brought outside the 28 day time limit imposed by section 5(8) of the Justice and Security Act 2007. In deciding whether to extend time in accordance with the principles in *R v Brownlee* [2015] NICA 39 we have heard full arguments on the appeal points raised as "even where there has been considerable delay or a defendant had initially taken the decision not to appeal, an extension of time could well be granted where the merits of the appeal were such that it would probably succeed." *Per* paragraph 8(vi) of *R v Brownlee.*

[5] At the outset we remind ourselves of the appellate test which is whether or not the conviction is safe. The test is found in the case of *R v Pollock* [2004] NICA 34 where the Court of Appeal considered the proper approach to be taken when considering a verdict and the following principles were established:

(i) The court should concentrate on the single and simple question: does it think that the verdict is unsafe.

(ii) This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence is being introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against the background.

(iii) The court should eschew speculation as to what may have influenced the jury or judge to its verdict.

(iv) The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasonable analysis of the evidence, it should allow the appeal.

[6] As this case involves circumstantial evidence we also refer to the law in this area at the outset.

Legal Principles in relation to a Circumstantial Evidence Case

[7] The seminal decision in relation to circumstantial evidence is a decision of the House of Lords in *McGreevy v DPP* [1973] 1 All ER 503. There, this well-known passage from Lord Morris is found:

> "In my view, the basic necessity before guilt of a criminal charge can be pronounced is that the jury are satisfied of guilt beyond all reasonable doubt. This is a conception that a jury can readily understand and by clear exposition can readily be made to understand. So also can a jury readily understand that from one piece of evidence which they accept various inferences might be drawn. It requires no more than ordinary common sense for a jury to understand that if one suggested inference from an accepted piece of evidence leads to a conclusion of guilt and another suggested inference to a conclusion of innocence a jury could not on that piece of evidence alone be satisfied of guilt beyond all reasonable doubt unless they wholly rejected and excluded the latter suggestion. Furthermore, a jury can fully understand that if the facts which they accept are consistent with guilt but also consistent with innocence they could not say that they were satisfied of guilt beyond all reasonable doubt. Equally a jury can fully understand that if a fact which they accept is inconsistent with guilt or maybe so they could not say that they were satisfied of guilt beyond all reasonable doubt.
>
> In my view, it would be undesirable to lay it down as a rule which would bind judges that a direction to a jury in cases where circumstantial evidence is the basis of the prosecution case must be given in some special form provided always that in suitable terms it is made plain to a jury that they must not convict unless they are satisfied of guilt beyond reasonable doubt."

[8] In this jurisdiction, the Court of Appeal has set out the correct approach when dealing with circumstantial evidence in *R v Kincaid* [2009] NICA 67 particularly at paragraph [22] as follows:

> "The case against the appellant depended on circumstantial evidence. While that evidence is different from direct or expert evidence it can be no less compelling and often more so. The classic approach to circumstantial evidence is to be found in the well know passage from the judgment of *Pollock CB in R v Exall 1866 4 F& F*:
>
> > 'What the jury has to consider in each case is, what is the fair inference to be drawn from all the circumstances before them, and

> whether they believe the account given by the prisoner is, under the circumstances, reasonable and probable or otherwise ... Thus, it is that all the circumstances must be considered together. It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence - there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of. Consider, therefore, here all the circumstances clearly proved.'"

[9] The above analogy has been reiterated in our courts on numerous occasions. In *R v Meehan &* Ors [1991] 6 NIJB Hutton LCJ also said:

> "Mr Weir QC criticised the approach of the trial judge as set out in this passage and submitted that each strand of the Crown case must be tested individually, and that if it is not of sufficient strength it should not be incorporated into the rope… We reject this submission. It is, of course, clear that each piece of evidence in the Crown case must be carefully considered by the trial judge but it is also clear law, as stated by Pollock CB, that a piece of evidence can constitute a strand in the Crown case, even if as an individual strand it may lack strength, and that, when woven together with other strands, it may constitute a case of great strength."

[10] We set out these legal principles as they are relevant to the argument that developed in this appeal. In doing so we record that there is no criticism of the learned trial judge's application or understanding of the law made by the appellant. It was accepted that the judge was entitled to draw inferences and that the case has to be considered in a holistic way. Therefore, the point at issue is whether or not the

judge in a circumstantial case of this nature drew appropriate inferences to find the case proven beyond a reasonable doubt against the appellant.

Background

[11] We are indebted to the learned trial judge who set out the background in this case with great care and detail. As a result of his industry it is unnecessary for us to repeat the entire narrative as that is provided in the judgment he provided. However, we summarise the pertinent facts of this case as follows. Much of this background is gleaned from the video and still imagery obtained from CCTV camera systems in the Greater Belfast area and mobile phone and internet examination. In the course of this appeal we have viewed the relevant parts of this material with the agreement of counsel. We have also considered some of the relevant transcripts of evidence from the trial.

[12] Just after 02:00 on the morning of 4 March 2016 CCTV imagery picked up a small 4-door hatchback motor vehicle coming into the area where Mr Ismay lived at 21 Hillsborough Drive in East Belfast. The CCTV recorded this car stopping near the house, a man running from the footpath to the rear passenger door, entering the car and the car leaving the area. It is accepted that this car was a red Citroen C3 registration number SKZ 6662 which was subsequently traced to the appellant's sister-in-law Ms Gemma Robinson. On 4 March 2016 this car was located outside her house, which she shared with her husband Peter Robinson, and then seized.

[13] Upon being seized the car was forensically examined and traces of the explosive RDX (Semtex) were found in the rear floor area of the vehicle and on the rear seat and the infant seat located in the rear passenger compartment. The trace amounts that were found were said to be consistent with secondary or tertiary contact with the explosive. No other evidence was found in the car. However, after the car was seized the property of Peter and Gemma Robinson was searched. This search uncovered a poppy appeal sticker in a visible position in a black bin located outside the house. On that poppy appeal sticker a partial DNA profile belonging to the appellant was found along with a fingerprint belonging to Peter Robinson. The DNA profile was said to be indicative of either primary, secondary or tertiary contact with the poppy appeal sticker.

[14] The movements of the Citroen C3 were tracked during the period when the bomb was planted. Various sightings were recorded including those by way of Automatic Number Plate Recognition ('ANPR'). These recordings showed the movement of the Citroen on the night in question as follows. Firstly, from in or around 19:00 Peter Robinson drove the car to his employment at Ardmoulin Mews Hostel where he was working the nightshift. Thereafter, sightings were established by ANPR of the Citroen in the early hours of the morning just after 02:00. Around 2.02:15 it was sighted by ANPR travelling on Kings Bridge towards Ormeau Road. At 02:17 it was captured by ANPR on Ormeau Embankment heading towards Ravenhill Road.

[15] Then the Citroen is captured by CCTV from Willowfield Funeral Home at Hillsborough Drive between 02:20 and 02:23 and the movements of the car and the figure discussed above are shown on this recording. After this, at 02:25 hours the ANPR captured the Citroen travelling in the opposite direction as it had been seen before on the Ormeau Embankment towards Ormeau Bridge. At 02:28 it was caught by the ANPR on Governor's Bridge heading towards Stranmillis in South Belfast.

[16] Imagery of the vehicle whilst in Hillsborough Drive also highlighted an identifiable difference between the vehicle at that time and the seized vehicle in that an additional item was visible in the windscreen below the rear view mirror at Hillsborough Drive which was not there when the car was seized. The prosecution asserted that this was the poppy appeal windscreen sticker which was later discarded in the bin at the Robinson's home.

[17] It is accepted that the appellant owned a silver Skoda Fabia car at this time registration number KFZ 2325. A combination of CCTV, ANPR and Cell Site Analysis of Data Device Records ('DDR') shows that the appellant travelled in his Skoda Fabia from the area of his home of 16 Aspen Park, Dunmurry towards Belfast from 20:08 on the evening in question. At 20:43 a car with features in common with the Skoda turned off North Queen Street into Spamount Street and thereafter at 20:50 a vehicle consistent with the appellant's Skoda turned right from North Queen Street onto Dock Street. A minute or so later a silver vehicle was seen stopping on the northern side of Dock Street, at a position just over a car's length short of the stop line for the traffic lights, in an area partially obscured by the road sign in front of the CCTV camera at Stella Maris.

[18] A figure in a bobble hat had been seen shortly before walking up Dock Street past McKenna's Bar and the Stella Maris Hostel. A figure was then seen crossing Dock Street before walking back in the direction from which he had come, approaching the silver car which moved off a few seconds after the figure reached it. There was then no sign of the pedestrian. When the car moved off it stopped again, this time at the stop line indicating that at that time the lights were red. It performed a U-turn just after McKenna's Bar returning in the direction from which it had come. The Skoda is then seen travelling south and going through the ANPR at North Queen Street at 20:55 followed by the ANPR at Clifton Street less than 2 minutes later at 20:57.

[19] A detach notification on DDR at 20:23 suggested that the appellant's phone was switched off just after the appellant went through the ANPR at Clifton Street. The next attach notification was at 20:53 after the car had visited the docks. The Belfast Limestone Road cell site recording at this time is also consistent with the appellant's phone being in the area of North Queen Street.

[20] Thereafter there were no DDR events until 21:18 when there was another attach notification. The expert witness explained that the existence of an attach

notification without a detach notification showed that it was unlikely that the phone had been turned off but this could be accounted for by no network coverage, the battery was running low or out of power or the battery was removed.

[21] Activity from the appellant's mobile phone is recorded as follows. At 20:54, seconds after the phone was turned on after visiting the docks, the appellant texted his brother Peter Robinson. This text was recovered and reads as follows:

> "put kettle on bro, 5."

A reply to this text was sent by Peter Robinson at 21:17 which reads:

> "no problem."

[22] At 20:57 the silver Skoda Fabia went through the ANPR on Clifton Street, travelling in the direction of the West Link. Thereafter there is no ANPR evidence for the Skoda but a number of unconfirmed sightings of a silver car consistent with the Skoda travelling west on Divis Street and turning into Ardmoulin Street.

[23] A further text at 21:19 is sent from the appellant to his brother Peter Robinson which reads:

> "coming now, got held up ffs" to which Peter Robinson replied "no rush" at 21:19.

[24] Then, the appellant's phone was traced by cell sites in a manner consistent with him moving back towards the Divis area returning there about 21:22. At an unconfirmed time of 21:27 hours a silver car consistent with the Skoda was seen on Divis Street by a camera looking west from Divis Tower. On the basis of this evidence the prosecution sought to prove that the appellant had visited Ardmoulin Hostel, where the Citroen was parked, on the night that the bomb was planted.

[25] Evidence was also heard from staff who worked in the hostel. This included evidence from Kevin Quinn who was working the nightshift with Peter Robinson from 19:30 on 3 March to 08:00. In his evidence Mr Quinn said that Peter Robinson turned off the CCTV system at the hostel on the basis that "our Christy" or "our Chrissy" was calling or coming into the hostel.

[26] It was an agreed fact that the CCTV system was switched off between the recorded times of:

(i) 21:09 and 21:27:04 on 3 March 2016.

(ii) 23:15 and 23:20:17on 3 March 2016.

(iii) 02:40 and 02:47:42 on 4 March 2016.

[27] Mr Quinn also provided details in relation to Peter Robinson's whereabouts on the night in evidence. He said that Peter Robinson did not leave the hostel as far as he was aware and that he was in the crèche watching television and did not pass him.

[28] Marie Quinn who had been working on the night in question on a previous shift gave evidence that she saw Peter Robinson pulling in that night in his car at about between 19:15 and 19:30. She said she saw him first through the window, and then when he was getting out of the side of the car in the CCTV camera. She said that he parked right up beside the gate/entrance. Another staff member, Esther Bensted suggested that Peter Robinson arrived around 19:20. She said that when she left the hostel at about 19:40 the car was still there.

[29] At 23:13 on 4 March, when Peter Robinson was on duty, the CCTV system at the hostel was also altered by him to retain footage for a period of one day rather than the period that had been set which was at least 12 days. This change in the retention period would cause the system to delete footage older than the newly configured shorter retention period of one day that is all footage from the night of 3 and 4 March would be deleted.

[30] Between 21:23 and 02:39 the appellant's mobile phone connected only to one cell site consistent with the phone being in the area of Ardmoulin Hostel or anywhere within the service area of Shankill South cell site.

[31] Then, for a period of five hours there were no DDR events requiring user activity in relation to the appellant's phone. The appellant's Skoda was not captured on CCTV or ANPR between the last sighting on Divis Tower camera at 21:27 and 02:48 when it was captured on the ANPR at Clifton Street on its journey back towards the docks. This is the second recorded visit of the silver Skoda to the docks on the night in question.

[32] Further sightings of the Skoda on North Queen Street into Brougham Street and on the various cameras near Dock Street are shown to be correct by the ANPR captured at 02:51 on Corporation Street. The evidence shows the vehicle coming to a stop before moving off in this area. At this time the cameras from Ladbrokes on Pilot Street show a man walking down the footpath on the other side of the road at the relevant time. The DDR records showed that like earlier at 21:18 before the visit to his brother's after the first visit to the docks there was an attach notification at 02:53 without an earlier detach notification.

[33] Coinciding with this later period there is further mobile phone activity emanating from the appellant. At 02:39 the appellant texted his brother Peter Robinson as follows:

> "hey bro how's work?? Couldn't sleep."

Less than a minute later, at 02:40 he called his brother connecting for 16 seconds.

[34] The timing of this last communication was 11 minutes after the Citroen C3 was recorded by ANPR crossing Governor's Bridge at 02:28. On the night in question a DDR event at 02:53 hours used the Sinclair Seamen's Church mast, consistent with ANPR and CCTV evidence showing the return journey to the docks. DDR data then showed the appellant's mobile phone using cell sites consistent with him travelling home to 16 Aspen Park, Dunmurry. It is an agreed fact that his phone accessed the internet at 16 Aspen Park at 03:15 on 4 March 2016.

[35] The appellant was arrested at his home at 16 Aspen Park, Dunmurry at 20:10 on 6 March 2016. When he was arrested the sim card and battery had been removed from his phone despite the phone having been used to send a text at 17:53 and access the internet at 19:10 and continuing to download content until 19:56.

[36] The appellant was interviewed, in the presence of his solicitor and an appropriate adult, between 7 and 11 March 2016 during which he provided two prepared statements. For the remainder of the interview he declined to answer questions put to him about the offence. In relation to his whereabouts in the relevant time he provided the following account in his prepared statement:

> "I spent Thursday and Friday of last week at my home save for going to my mother's for something to eat. I also took the dog for a walk on Thursday."

[37] The appellant also claimed that the first time he had heard Adrian Ismay's name being mentioned in relation to the incident was when the police entered and searched his home on the evening of 6 March.

[38] It is common case that the appellant and Adrian Ismay knew each other from working at St John's Ambulance together. Mr Ismay had last seen Christopher Robinson over 2 years before the incident. However, there was a connection between them. In particular Adrian Ismay had volunteered for Community Rescue Service. In 2015 the appellant had looked up this website on his telephone, visiting pages which detailed the locations at which they were based. The same day he contacted Community Rescue Service with a view to joining but he did not pursue this application.

[39] However, in the run-up to the bomb attack there is evidence that in January 2016 the appellant accessed internet pages relating to St John's Ambulance, Community Rescue Service as well as looking at Adrian Ismay's profile. He continued to do this during February. In particular on 18, 25 and 29 February 2016 the appellant looked up Adrian Ismay's profile on the internet.

[40] On 26 January 2016 the appellant searched for "Tesco Castlereagh opening times." This is not a Tesco in the appellant's local area as it is situated near Adrian Ismay's house on the Castlereagh Road end of Hillsborough Drive.

[41] On 4 March 2016, after the bomb had exploded, between 09:18 and 10:00 the appellant visited 15 pages in total relating to the story. He visited 11 more pages on the subject before he went to bed that night including just before 21:00 when he accessed a gallery of photographs regarding the attack. He again looked at a story about it just after 01:00 and he continued to view the progress of the story up to his arrest on 6 March.

[42] Some further material was admitted by the learned trial judge in the nature of bad character evidence namely the content of the appellant's Facebook account which contained some imagery of him holding an imitation weapon. His social media also demonstrated support for violent Irish Republicanism. This material also included material in relation to the Irish Prisoners Welfare Association (IRPWA) and support for Republican prisoners.

[43] The appellant made a number of purchases from Amazon between 27 January 2016 and 2 March 2016 including self-defence gloves, nitrile gloves, a jeweller's head-mounted magnifying glass, five balaclavas, a morph mask and an LED flashlight. In the search of his property two further balaclavas were found in the kitchen.

[44] On 1 and 2 March 2016, a couple of days before the device was planted, the appellant searched websites for magnetic qualities of aluminium, electromagnetism and materials for use in electrical components.

[45] The appellant did not give evidence at his trial. An expert report was filed on his behalf by a Consultant Psychiatrist Dr Gerry Loughrey. This report disclosed the appellant's history of severe childhood sexual abuse and mental health problems and Dr Loughrey also provided a diagnosis of Post Traumatic Stress Disorder. The expert opined that if the appellant gave evidence he would likely show emotional instability which might as a result affect the reliability of his evidence. Following from this the learned trial judge decided that he would not draw any adverse inferences from the failure to give evidence.

The Grounds of Appeal

[46] The original grounds of appeal contained in the notice of 21 December 2020 were substantially refined during the course of this appeal. To that end, counsel helpfully produced an agreed position which encapsulates the essence of this appeal. It is clear from this helpful joint note that the appellant does not dispute his presence at Ardmoulin Hostel on the night in question or his presence in the docks area. No issue is taken with the ANPR, CCTV and DDR evidence. Therefore, many of the essential strands of evidence in this case are agreed as the joint note states as follows:

(i) It is accepted by the appellant that the Citroen C3 belonging to the appellant's brother was the vehicle used to transport the improvised explosive device and the individual who planted that device to Mr Ismay's home on Hillsborough Drive;

(ii) No issue is taken by the appellant as to the respondent's description of the journey of either the Skoda Fabia or Citroen C3. The timings as laid out in the CCTV Schedule of Sightings and the journeys of both vehicles are confirmed using ANPR;

(iii) No issue is taken by the appellant as to the respondent's description of the Device Data Records (DDR) showing the appellant's mobile telephone connecting to transceivers in a fashion that would coincide with the journeys of the Skoda;

(iv) It is accepted that the Skoda travels to Dock Street around 20:51 (CCTV Schedule Skoda sighting 5), stops short of the traffic lights, and at the same time a figure crosses the road and there are movements visible close to the car;

(v) It is accepted that the appellant attended at the Ardmoulin Hostel in and around 21:30 and that his visit coincided with Peter Robinson disabling the CCTV systems. It is accepted therefore that the appellant lied in his prepared statement to the police when he denied leaving his home on the evening of 3-4 March save to visit his mother;

(vi) No issue is taken as to the law and the application of legal principles by the trial judge.

Matters in dispute

(i) The extent of the evidence relating to the poppy sticker and its importance to the wider context of the case;

(ii) Whether the evidence is sufficient to show that an individual was picked up and dropped off at Dock Street by the appellant's Skoda;

(iii) The extent of the inferences that should be drawn from:

1. The Facebook material;
2. Scientific internet searches;
3. Searches relating to Mr Ismay prior to the murder;
4. Searches relating to the explosion after the fact; and
5. The possession of balaclavas and improvised balaclavas found during the search of the appellant's home.

[47] The grounds of appeal were helpfully refined by Mr Harvey into a core contention that the learned trial judge made impermissible inferences on the basis of a circumstantial case which he used to establish the appellant's guilt beyond a reasonable doubt. This is a question of fact which we have determined on the basis of the evidence before us. We have focussed on the three limbs of the argument presented with focus by Mr Harvey which we summarise as follows:

(i) That the judge was wrong in his assessment of the evidence regarding the poppy appeal sticker and that that polluted his assessment of the rest of the case.

(ii) That the judge was wrong in the assessment of the appellant's movements in the Skoda at the docks to infer that the appellant was involved in the pick-up and drop-off of someone and/or the facilitation of the Citroen C3 car to plant the bomb.

(iii) That the judge was wrong in making any inferences on the basis of the internet search history or the materials found in the appellant's property.

Consideration of the grounds of appeal

Ground 1: the poppy appeal sticker

[48] Mr Harvey pointed us to the fact that the expert evidence of Mr McClean on this issue was not definitive. He also reminded us that the DNA found on the sticker could have been by virtue of secondary or tertiary contact and so could have been placed on the sticker by various methods of contact not involving presence or contact with the car. Therefore, Mr Harvey submitted that this piece of evidence could not be used to link the appellant to the crimes and also that the learned trial judge had drawn an improper inference due to the presence of the DNA evidence. Mr Harvey submitted that this polluted the judge's consideration of the entire case.

[49] The learned trial judge deals with this evidence in two places in his judgment. First, at paragraphs [25], [26] and [32] he sets out the evidence in relation to the poppy appeal sticker which comes from a number of sources namely stills of the Citroen C3 at Hillsborough Drive, the DNA evidence and the expert evidence. Then at paragraph [215] the judge records his conclusion in the following way:

> "The defendant is forensically linked to a cynical ploy to render the vehicle less conspicuous in the area where the attack was to take place. The DNA evidence described above by itself does not establish that the defendant had direct contact with the poppy appeal car sticker in the context of it being attached to the windscreen of the

Citroen C3 motor vehicle in furtherance of this planned attack."

[50] The foregoing highlights the fact that the judgment must be read as a whole. In defending this ground of appeal Mr McDowell made the observation that in itself this piece of evidence would be insufficient to establish guilt. That is undoubtedly correct upon examination of the expert testimony as Mr McClean who could not be definitive that the poppy appeal sticker, subsequently found, was on the car window when in Hillsborough Drive where the bomb was planted.

[51] In answer to questions during the trial Mr McClean compared images of the car at Hillsborough Drive and when it was seized. His opinion was that there was something at the top of the windscreen between the visors when the car was at Hillsborough Drive which was not there when the car was seized. This was not challenged. He was then asked what this item was and in reply he said that he could only make a dimension comparison. He was asked about the poppy appeal sticker as follows:

"Q. How did it compare to the-to the window sticker that was recovered from 3 Deerpark Parade?

A. It compared in shape and dimension

Q. And to what degree of support did that lend to the fact that they were the - or to the proposition that they were the same?

A. It supported, but it would support anything that was of a similar shape and dimensions."

[52] In light of the above, Mr McDowell submitted that the evidence in relation to the poppy appeal sticker should be looked at in context and that it assumes more significance when viewed in the light of other features of the case. We examined this submission in some detail during the hearing. Having done so we are persuaded that it is correct. The poppy appeal sticker cannot be looked at in isolation and it was not looked at in isolation by the learned trial judge. That approach is in accordance with the law in this area which we have set out above particularly at paragraph [9] which records the decision of *R v Meehan* where this approach is discussed by Hutton LCJ.

[53] The learned trial judge viewed all of the evidence in the round and an assessment of the poppy sticker was made taking into account the following factors:

(i) The Citroen C3 was plainly the one seen at Hillsborough Drive as the device was planted.

(ii) It was driven by Peter Robinson to and from his work at Ardmoulin Hostel.

(iii) The car had something on its windscreen in Hillsborough Drive which was not there when seized.

(iv) A poppy appeal sticker was found in the Robinson's bin a few days later, suggesting it had been recently deposited.

(v) Such a sticker would not have been displayed on a car in the community where the Robinsons lived but would have allowed a car to fit in the community where Mr Ismay lived.

(vi) There was DNA on the sticker matching that of the appellant.

(vii) There was other circumstantial evidence linking the appellant to the use of the Citroen not least that the defendant visited Peter Robinson at his work and was tracked in his own vehicle and by virtue of mobile phone records.

[54] We consider that the learned trial judge was entitled to make the inferences that he did on the basis of the above. We reject the argument made by Mr Harvey that his consideration of this evidence polluted his overall consideration of this case. To the contrary, we consider that this evidence was one part of the evidence which the learned judge considered as a whole. Therefore, this ground of appeal must fail.

Ground 2: The evidence in relation to the Skoda

[55] The learned trial judge deals with the issue of the appellant's movements in the Skoda involving ANPR, CCTV and cell phone records. Much of this evidence was uncontroversial however Mr Harvey made two core points. First he said there was a gap in the evidence for about 30 minutes after the Skoda was captured by ANPR at 20:23 at Clifton Street. Second, he said the footage from the docks involving the movements of the car and the figure or figures walking in the area was not enough to establish that he was picking up and dropping off a person there.

[56] The learned trial judge's conclusion on this issue is found at paragraphs [136]-[151] of the judgment. At paragraph [151] he stated as follows:

> "I conclude that contrary to what he told the Police that he had not been out of the house that day other than to walk his dog and to visit his mother, the defendant drove his motor vehicle from his home in Dunmurry to the docks are of Belfast between 20:00 and 21:00 on the night of 3 March 2016 and that although his whereabouts cannot be ascertained from the available evidence for the period between 20:23 and 20:50,he definitely stopped his vehicle on Dock Street at approximately 20:51 and that by

> arrangement he picked up an individual at this location who got into the rear driver's side of the vehicle and that as he drove away from the docks with this individual on board, he contacted his brother via SMS message to inform him that he would be with him in Ardmoulin Mews within a short space of time. The factual determination that the defendant picked up a passenger on Dock Street is based on fact that the vehicle that I have concluded was the defendant's silver Skoda Fabia motor vehicle definitely stopped on Dock Street are careful and repeated scrutiny of the video clip "JL2 Stella Maris.mp4"between 2 minutes and 5 seconds and 2 minutes and 11 seconds on a computer screen using a display resolution of 1920 x 1080 definitively shows activity approaching the rear driver's side of the vehicle, the momentary obscuring of the rear drivers side wheel of the motor vehicle and darkening/lightening in the immediate vicinity of the rear driver's side door of the motor vehicle which is followed by the vehicle moving off shortly afterwards."

[57] In addition to the judgment which sets out this evidence in detail we have viewed some of the CCTV footage and the schedule of sightings of the car including cell site analysis. We have viewed the relevant maps showing where the appellant's car and mobile phone was located across Belfast during the relevant time when the bomb was transported and planted under Mr Ismay's car.

[58] It is accepted that the appellant travelled to the docks. It is also accepted that he visited Ardmoulin Hostel. The prosecution made the case that the appellant picked up and dropped off a man at the docks. We consider that the learned trial judge was justified in drawing an inference in relation to this for the following reasons:

(i) On the first visit to the docks the car stopped well short of the stop line at the traffic lights.

(ii) The man walked back on himself after crossing the road, towards the car, suggesting that the car was his intended destination.

(iii) Having stopped, the Skoda performed a U-turn and made its way back in the direction it had come; it had no more business in the docks.

(iv) The Skoda returned to the docks later that night, after the Citroen had been to Hillsborough Drive, and appeared to drop someone off.

(v) The defendant lied in his prepared statement about his whereabouts that night.

[59] The cell site evidence is also vitally important in this case as it highlights a pattern of movement combined with attempts to prevent detection at various significant times. In our view it cannot simply be coincidence that the CCTV at the hostel is turned off to coincide with the appellant's initial visit i.e. sometime between 21:09 and 21:27 and a time after the bomb was planted when the car must have been returned i.e. between 02:40 and 02:47. It cannot simply be coincidence that the appellant's mobile phone is on at significant times namely before the visit to the hostel at 21:19 when he texts his brother and at 02:39 after the bomb is planted when he texts again and calls his brother. It cannot simply be coincidence that the mobile is switched off at significant times and when he is visiting the docks. On the night in question the DDR event at 02:53 used the Sinclair Seamen's Church mast, consistent with ANPR and CCTV evidence showing the return journey to the docks. DDR data then showed the appellants phone using cell sites consistent with him travelling home to 16 Aspen Park, Dunmurry. It is an agreed fact that his phone accessed the internet at 16 Aspen Park at 03:15 on 4 March 2016.

[60] We do not accept that the gap of time of around 30 minutes from 20:23 that Mr Harvey points to is material when viewed in light of all of the other evidence. There is more than enough evidence through the car sightings, CCTV and phone records to establish that the appellant travelled to Ardmoulin Hostel and then to the docks. We consider that there was ample evidence to justify the learned trial judge's conclusion as to the appellant's movements on the night and thereby his involvement in the crimes that were committed. Therefore, we dismiss this ground of appeal.

Ground 3: Inferences drawn from other material

[61] There are a number of elements of this third ground of appeal. First, Mr Harvey focussed on the Facebook material, in particular the imagery of the appellant which he said was from a Halloween party and therefore light hearted. Second, Mr Harvey referred to the appellant's support for Republican prisoners and said that too much was read into that. Third, Mr Harvey attempted to dilute the internet searches by suggesting that that the appellant had an innocent interest in Mr Ismay, that he was researching Tesco's opening in a general sense and that the search relating to the magnetic qualities of aluminium was benign. Finally, Mr Harvey argued that materials found at the home were not determinative of anything and so inferences could not be drawn from those items being present.

[62] The evidence of bad character was held to be admissible by the learned trial judge in a ruling of 2 October 2019. The learned trial judge deals with this evidence between paragraphs [91] and [111] of his judgment and his conclusion is at paragraphs [214]-[218] which is expressly framed on the basis that he conducted

anxious and careful scrutiny "of the whole of the evidence" in reaching his conclusions. Again the learned trial judge cannot be criticised for that.

[63] In our view, it is obvious that the learned trial judge would draw inferences from this category of evidence because it cannot be seen in anything other than a sinister light. As the learned trial judge records at paragraph [214]:

> "The defendant repeatedly checked out Mr Ismay's online profile and went so far as to check up on the opening times of a large supermarket located at the opposite end of Hillsborough Drive."

In our view this only points to one conclusion which is that the appellant was checking out the area where Mr Ismay lived.

[64] On 1 and 2 March 2016, a couple of days before the device was planted, the appellant searched websites for magnetic qualities of aluminium, electromagnetism and materials for use in in electrical components. He further viewed a page entitled "why iron is chosen as the material for the core of the transformer. Why don't we use aluminium?". Mr Harvey's valiant attempts to minimise this search were unsustainable as it clearly related to the magnetic qualities of aluminium and that coincides with the fact that the bomb was planted under the car by magnet.

[65] Also, the learned trial judge was entitled to take into account the appellant's "intense and enduring interest in the internet news coverage of the attack" which he describes at paragraph [216] of his judgment. We agree with the learned trial judge that "this can only be explained by the defendant's prior knowledge or an intimate involvement in the attack."

[66] The appellant's social media activities demonstrate a clear support for violent Irish Republicanism and support for Irish republican prisoners. We accept Mr Harvey's point that the court should not read too much into the Facebook images. The items found in the appellant's house are not enough in themselves to establish guilt nor is the appellant's support for militant Irish Republicanism. However, in our view the learned trial judge was correct in his conclusion that this was relevant evidence and part of the overall picture. The issue is really the inferences that can be drawn from this evidence.

[67] It is understandable that Mr Harvey isolates a few pieces of evidence and critiques how the learned trial judge dealt with them individually. However, this category of evidence must be considered alongside all of the other evidence in this case. When that exercise is undertaken, there are very compelling strands of circumstantial evidence to consider particularly those associated with the internet searches relating to Mr Ismay, the search relating to Tesco Castlereagh opening hours and the search regarding the magnetic qualities of aluminium. We consider that the other material from Facebook is less convincing on its own but it forms part

of a picture as does the appellant's sympathies with militant Irish republicanism and the items found in the house. We accept that when looked at in the round these strands gain more significance because this was a terrorist attack.

[68] In our view the learned trial judge may have placed a little too much emphasis on the appellant's Facebook pictures and his political support however this does not affect the overall result in this case given the overwhelming amount of other evidence about the appellant's motivations and interests in the run up to Mr Ismay's murder. The appellant's own actions amply demonstrate a sinister and evil purpose. Therefore, this ground of appeal is dismissed.

Conclusion

[69] Accordingly, we conclude that none of the grounds of appeal in this case are sustainable. We agree that the learned trial judge was entitled to reach the conclusion that he did on the basis of all of the strands of evidence taken together. In reaching this conclusion we particularly note that the appellant lied about his whereabouts in his prepared statement. Also, that the CCTV was turned off at Ardmoulin Hostel at highly relevant times when the car which transported the bomb was located there. We note that the appellant's mobile phone was also turned off at significant intervals and when his property was searched his sim card and battery were removed. The movements of the appellant's own car and phone activity at relevant times is significant. Added to these pieces of evidence, carefully constructed by police through painstaking searches, is the evidence of the appellant's interest in Mr Ismay and where he lived. In our view it is simply beyond credulity that all of this evidence can be explained by coincidence.

[70] In truth, the numerous strands collectively point to only one conclusion in this case. In our view the learned trial judge was correct to conclude that the evidence establishes beyond a reasonable doubt that the appellant was intimately and inextricably involved in the facilitation and execution of a terrorist operation which involved the attachment of a viable improvised device to the underside of Mr Ismay's vehicle with the intention of causing the death of Mr Ismay or causing him really serious injury. Having assessed the evidence as a whole the learned trial judge was entitled to make the inferences that he did. Accordingly, the elements of the offences of which the appellant was convicted namely murder and causing an explosion with intent to endanger life were established.

[71] Overall, we do not have any concern about the safety of this conviction applying the test in *R v Pollock*. Therefore, we decline to extend time and the appeal against conviction will be dismissed.