

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **3/6/05**

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT BELFAST

THE QUEEN

-v-

**ROBERT JOHN BENSON YOUNG, LORRAINE YOUNG AND SUSAN
FERGUSON**

HIGGINS J

[1] On Bill of Indictment 204/04 Robert John Benson Young (whom I refer to as the defendant) is charged in Count 1 with the murder of James Herbert Johnston on 8 May 2003, contrary to Common Law. In Count 2 Lorraine Young is charge with Perverting the Course of Public Justice by making a witness statement on 24 May 2003 purporting to allege that Robert John Benson Young was not involved in the murder of James Johnston, contrary to Common Law. In Count 3 Susan Ferguson is charged with possession of a firearm, namely a pistol magazine, on a date unknown between 1 day of January 2003 and 9 day of May 2003, with intent to endanger life or to enable some other person so to do, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981. In Count 4 Susan Ferguson is charged with possession of a firearm, namely a pistol magazine, on a date unknown between 1 day of January 2003 and 9 day of May 2003, in suspicious circumstances, contrary to Article 23 of the Firearms (Northern Ireland) Order 1981. In Count 5 Susan Ferguson is charged with possession of a firearm, namely a pistol magazine, on 27 June 2003 in suspicious circumstances, contrary Article 23 of the Firearms (Northern Ireland) Order 1981.

[2] James Herbert Johnston (known as "Johnty" Johnston) lived at 60, Ballyrobert Road, Crawfordsburn, Co Down. On the night of Thursday 8 May 2003 Mr Johnston was shot dead in the grounds of his residence. He was struck by eleven bullets and died a very short time thereafter. He lived at that

address with his partner of eleven years and her three children one of whom is Jonathan Anderson, then aged 17 years.

[3] About 10.35pm on 8 May 2003 Mr Johnston left the house to close the wooden gates that gave access to the driveway of his residence. Shortly after he left shouting was heard and then one shot followed by a succession of shots were heard.

[4] David McMurtry lived in Low Burn Cottages with two other men. Low Burn Cottages are situated on the south side of the Ballyrobert Road and to the west of No 60. Between the cottages and No 60 are two dwellings on the north side of the road. The one nearest Low Burn cottages is number 50 Ballyrobert Road, occupied by a Mr Geddis.

[5] At the time of the shooting David McMurtry was watching a film on television with Robert Gilmore and Colin Armour. On hearing the shots all three went outside. Robert Gilmore phoned the police on his mobile phone. When he was close to the front hedge Mr McMurtry saw two men. They were running as fast as they could along the footpath on the opposite side of the road and from the direction of Mr Johnston's house. One was following the other. Robert Gilmore shouted "police ". The two men ran into the driveway opening into No 50 Ballyrobert Road, the home of Mr Geddis. David McMurtry went back into his house and obtained a torch and also phoned 999 to summon the police and ambulance services. After doing so he returned to the road and saw his friends searching the edge of Ballyrobert Road with the torch.

[6] Several police in different vehicles were directed to the scene following the emergency telephone calls which were received by the police about 2240pm. On arrival of the police Mr McMurtry directed them to the entrance to No 50 into which the two men had run. Constable Jones accompanied by three other officers went down the driveway of No 50 and into the garden area by the metal gate on the left. They gathered on the higher ground close to the house and searched the garden area with torches. Constable Jones then returned to Ballyrobert Road. There he met Constable Valerie Kincaid a dog handler from Musgrave Street Police Station in Belfast, who had responded to the incident, having been tasked at 2245 and arrived about 2305 - 2310.

[7] Jonathan Anderson had gone to bed around 10pm. On hearing the shots he got up. He went downstairs and out to the wooden gates, one of which was open. He saw a magazine for a pistol lying on the driveway about one metre in from the closed gate. This was seized later by Constable Cain and referred to as PM5 Exhibit 49. Jonathan Anderson searched for but was unable to find the deceased. He made his way to Low Burn Cottages where his cousin Robert Gilmore lived. His cousin answered the door and told him to return to the house. With Gilmore were the other two men David

McMurtry and Colin Armour. Gilmore was wearing a bullet-proof jacket and carrying a baseball bat. Jonathan Anderson went to the home of their neighbour Mr Geddis who lived at No 50 Ballyrobert Road. He spoke to him and then walked back to the Ballyrobert Road. A police car passed him and four or five policemen disembarked from the vehicle. The area was then searched for Mr Johnston. At first it was thought that he had been abducted. After a short period his body was discovered lying beside the trailer in that part of the driveway that led to the remote control metal gates, which were closed. There was no sign of life but paramedics summoned to the scene attempted resuscitation without success. Dr. Bryans the Forensic Medical Officer arrived at 2355 and pronounced life extinct. The area around the body and trailer was sealed off. Later the entire premises were vacated and a cordon formed around them. Later this cordon was extended to include parts of the Ballyrobert Road and number 50, Ballyrobert Road as well as along a route from number 50 to a lane near Sunnybrook Farm and several locations along that route.

[8] A post mortem was carried out the following day. The deceased had been struck by 11 bullets. Death was due to bullet wounds of the trunk and limbs. Three spent bullets were recovered during the post mortem examination. Other bullets and spent cases were recovered from the area leading from the gate to the trailer. These showed that two firearms were involved - a .45 ACP pistol and a 9mm pistol. The former had been used to fire at least 6 bullets and the latter at least eight bullets.

[9] Constable Valerie Kincaid was a dog handler with over eight years experience. She had with her police dog "Otto", a general purpose dog trained for recovery of evidence at the scene of a crime and for tracking purposes. Constable Kincaid had completed a Home Office course with Otto in 1998. Since then he had received further annual training and been licensed each year. Using natural canine capabilities such trained animals are able to follow the trail of human scent and follow the trail of the last person along a particular route. A fresh trail leaves a lot of scent even up to 1 1/2 hours thereafter. Scent involves disturbance of the ground and is governed by moisture, weather and wind conditions. The best conditions are dull warm evenings in the dark, with little wind. The night of 8 May was a mild night, with moisture on the ground with a slight wind. The evidence of a tracker dog is admissible provided certain conditions are met. These include proof of the dog's training, his reliability and provided the evidence is scrutinised with care - see *R v Pieterston and Holloway* 1995 2 CAR 11, *R v Sykes* 1997 CLR 752 and *R v Steenson & Oths* Belfast Crown Court unreported. I am satisfied that Otto was well trained and properly licensed on 8 May 2003. I am further satisfied that he was reliable which is evident from the events as they unfolded after the arrival of Constable Valerie Kincaid.

[10] Otto was deployed in the garden to the left of the drive leading towards the dwelling that is number 50. Near the satellite dish his harness with a long lead was put on and he automatically commenced to search for a scent. He very quickly picked up a scent and pulled strongly on the lead. He then proceeded to follow a trail that led to the gate at the bottom of the garden and into the field beyond. Footprints were identified in the mud and Constable Howell was directed to remain with them. Otto then tracked across the field and over a fence, through some trees and onto Clandeboye Avenue. He tracked along the left hand side of the avenue until he reached a gate where he fussed about. Constable Kincaid opened the gate and Otto led along a natural path through a wood, across a stream and up the steep bank on the far side. He then tracked up an area of steep open ground to a hole in thick gorse that lead to a field. He tracked across the field to the corner where two sides of a barbed wire fence met at right angles. This is delineated as points P and Q on the plans. There he fussed about and then pulled strongly down the field alongside the hedge to a trough where there was an opening leading to a path that gave access to some dwellings from Craigdarragh Road. There the trail ended. There were very fresh tyre marks at the bottom of that field. The total length of this track was measured by Mr Honan and was a distance of 746 metres (816 yards).

[11] The party including Constable Kincaid then made their way to Sunnybrook Farm and then on to Clandeboye Avenue and walked back towards Ballyrobert Road. When they arrived at the gateway on Clandeboye Avenue the dog started to fuss again and two plastic gloves were found in shrubbery. The time was then 0015. Constable Kincaid remained there at that scene until it got light. She was then relieved and returned to the garden of number 50. There she met up with D/Inspector Feeney and Scene of Crime Officers Dr. Kissock and Mr. Finlay and forensically protected they retraced the route taken by Otto the previous night. The route was marked out with tape. Footprints were noted in the field on the other side of the gate at the bottom of the garden of number 50 and also at the fence on the other side of that field. These were covered. Two black balaclavas were found one behind the gate to the right hand side of number 50. This was marked as GCK3 Exhibit 56. The other was found to the right of the gate at the bottom of the garden and was marked GCK2 Exhibit 55. The gate on the left hand side of Clandeboye Avenue had a piece of mud adhering to one of the bars. In the shrubbery were found 2 black woollen gloves and two surgical gloves one of which was in two pieces. Another piece of surgical glove was found inside one of the black woollen gloves. These were all given identification marks and recovered.

[12] In the stream an off-white hooded jacket was recovered. In the last field at point P and Q red staining that appeared to be blood was discovered on the post and barbed wire of the fence around the perimeter of that field. Similar staining was found on the barbed wire fence that marked the

perimeter of the adjoining field. It was not dried out old blood and still had a shine to it. It was dry at the time but Dr. Kissock notice a large rain cloud in the distance and decided the staining should be covered. This was carried out by Mr Finlay. Between the two barbed wire fences the vegetation was slightly flattened and in the further field there were marks in the mud which looked as though they had been made by footwear

[13] Dr Kissock returned at 2pm with members of the photography and mapping departments. Between Dr Kissock's first visit and his second visit a very heavy rain shower had passed over, but not before the staining on the fencing had been covered. On this occasion various items were recovered from the route. These included the two balaclavas [exhibits 55 and 56] and the jacket from the river [exhibit 57]. Pieces of the barbed wire and the fence posts that were stained red were cut from the fence [exhibits 58 and 59]. By this time the staining had changed in appearance to a more red/brown colour.

[14] At 1458 Constable McColl was searching an area in the field on the other side of the garden of number 50 when he found a 9mm pistol. Staff Sergeant Glover an ATO was summoned to the scene and cleared the weapon. There was no magazine in the pistol or round in the breach. The pistol [exhibit 54] was recovered and examined by staff at Forensic Science Northern Ireland. It was a Brazilian made 9mm Taurus model 99 self loading pistol in good condition. The pistol magazine [exhibit 49] found at the entrance to number 60 was suitable for use with this pistol. It is marked to hold 15 rounds. Eight of the cartridge cases recovered from the drive of number 60 had been discharged in the Taurus pistol. When found the magazine had 5 rounds of ammunition in it. The magazine is normally housed in the pistol handle. In the driveway of number 50 close to the right side of the dwelling was a blue Mercedes motor vehicle registration number TJI3999. Footwear marks were found on the bonnet of this vehicle. Plaster casts [items 79 and 80] were made of footwear marks in the field on the other side of the garden of number 50. The Item 79 marks were made by two different footwear patterns one of which was a Nike outsole or facsimile. The Item 80 marks were made by two different Nike outsoles or facsimiles. One of these matched the footwear marks on the Mercedes motor vehicle, while the other matched the Nike console present in Item 79 from the field. In front of the Mercedes and slightly to the right was a wooden gate behind. Behind this was an open area between the house and the boundary hedge and contained various items including an oil tank. This has been referred to as Geddis's yard. The black balaclava GCK3 Exhibit 56 was found hanging from vegetation just on the other side of gate. The other end of this area gave access to the garden that led to the gate and field beyond.

[15] On 11 May 2003 at 1140 pm police officers went to 40, Ulsterville Park, Portadown, the home of the defendant. They were admitted by Albert Young,

the defendant's brother. The defendant was not present. A pair of trousers and jeans, both wet, were recovered from the house and a selection of surgical gloves were found in the garage.

[16] At 1655 on Friday 23 May 2003 a party of police went to a dwelling at 7 Oaktree Mews, Portadown. There they found the defendant Robert Young date of birth 13 September 1963. He was arrested under section 41 of the Terrorism Act 2000 and informed that the reason for his arrest was in relation to the murder of Mr Johnston. He was cautioned and replied "okay". He was taken to Antrim Police Station. Number 7 Oaktree Mews was then searched. In the left hand inside pocket of a leather jacket found lying on the bed was a passport [exhibit 63] in the name of Robert Young DOB 13 September 1963. It gave his place of birth as Lurgan and was valid from 1996 to 2006. Under the leather jacket was a mobile phone. In the bedroom was also found a black Adidas holdall [exhibit 62] in the side pocket of which was £900 in cash. Also found were a number of mobile phones, a SIM card and a quantity of men's clothing and footwear.

[17] The defendant Robert Young arrived at Antrim Police Station at 1750 and was taken to the custody suite where he was handed into the custody of the custody sergeant. He was seen by the Senior Forensic Medical Officer Dr. D. Kapur between 1930 and 2005 that evening to determine whether he was fit to be detained and fit for interview. The FMO took a brief history from him during which the defendant said he had no injuries. He measured his height as 178 cms , his weight as 12 stone and his blood pressure was normal. He determined he was fit for interview. He then carried out an examination of his body during which he found various injuries. These injuries were photographed that same evening and exhibited. The FMO noted the following injuries -

1. a 4cm healed deep abrasion on the left side of his head 7 cm above the left ear. The defendant said he had sustained this injury in a fight 3 or 4 weeks previously when he had hit his head against a rough cast wall;
2. healed linear scratches 2 and 3 cms long on the front and back of left forearm. These were almost completely healed (photograph 2). The defendant said he sustained these fighting 3 or 4 weeks ago;
3. an almost completely healed scar 3.5cm on the right wrist (photograph 3). The defendant said this was due to bricklaying;
4. five healed purple lesions on the front of the right leg (photographs 4,5 and 6) which the defendant said were due to his being involved in a fight. The lesions were almost the same size in nature purple in colour suggesting they were

relatively recent and caused by similar objects for example a circular object ;

5. a 5 cm red abrasion on the back of the left side of the chest. there was a 5cm red abrasion.

[18] It was the FMO's evidence that the injuries were not consistent with the explanations given as to their cause. He said the injury to the left side of the head was caused by contact with a sharp surface. It was not a puncture wound nor was it caused by a punch. The series of multiple scratches were linear and in different directions and could have been caused by contact with a sharp surface, a hedge or bush, a finger nail or something sharp. The injuries to the right wrist were unlikely to have been caused by a brick and the injuries to the right leg were unlikely to have been caused in a fight. They were purple lesions of the same size and caused by something sharp. At the time of this examination the FMO completed the usual medical examination form. Later he was asked to make a statement about the examination, which he did. This was dated 29 September 2003. A portion of that statement became evidence. In it he stated that: "injuries 1 - 3 could be consistent with the history that has been given". On 10 October 2003 he was contacted by Chief Inspector Wray about the details of that statement. The Chief Inspector wanted more details about his report and how the injuries might have been caused. The FMO looked again at his report and concluded that the statement that he had made was not correct. Dr Kapur was cross-examined about the wording of that statement parts of which came into evidence. He maintained that the second statement was the correct statement. In that second statement he said : " In addition to the generalities of that report I would like to expand on the following points". In relation to injury 1 he stated that it was caused by a sharp surface such as a stoned path or road "but it is not a puncture wound". In relation to injury 2 he said it was unlikely they were caused by fighting. He stated "such injuries could be caused by running through hedges, bushes or other foliage". He conceded that the Chief Inspector may have asked whether these injuries could have been caused when running through hedge or foliage. In the second statement he said that injury 4 " was a series of 5 healed purple lesions with scabs which would suggest that they were deep puncture wounds caused by the same object which gave them the same size of wound". This was contrasted with what he put in his first statement about injury 4. In the second statement he said injury 5 was caused by "a sharp object". It was unsatisfactory that these inconsistencies should have arisen in statements made about this examination. The Court has had the advantage of seeing the injuries as they were on 23 May. A layman is entitled to look at those injuries and reach conclusions as to what caused or did not cause them.

[19] I will return to these injuries later in this judgment.

[20] The defendant was interviewed on 10 occasions between 2003hrs on 23 May 2003 and 2036hrs on 25 May 2003. He denied any involvement in the

murder of Mr Johnston or that he knew Mr Johnston. He said that on 8 May 2003 he had travelled to Holywood to look after his sister Lorraine's little boy as his older sister was unable to do so on that day. He said he remained at Lorraine's home at 7, Church Lane, Holywood until about 0200 on 9 May and that he had travelled back to his home at 40, Ulsterville Park, Portadown. He said Lorraine had returned from work and the two of them sat and had a drink until he left to return home. He said he drove to Holywood and returned to Portadown in his brother's Ford Fiesta registration number FLZ 4336. He always used this car as his brother was working mostly outside Northern Ireland. He also said he had not worked recently as a bricklayer. He told the police that he was a registered carer for his sister's son and that he was paid a care allowance for this.

[21] He said he took the boy out on trips in North Down and the detectives explored with him the areas he would have visited. These included country parks to the east and west of Helen's Bay. It was clear he had not visited the area of the route taken by Constable Kincaid with Otto. He was asked about his injuries and said he sustained them fighting and falling over drunk. He accepted he had some scrapes on his body. He was shown photographs 27 to 30 which show the barbed wire fence where the blood was found and he said "it'll not come back as mine". The DNA results of the examination of the blood found on the barbed wire fence was explained to him. When told that the possibility of the blood coming from someone other than himself was one in a thousand million he said: "I was not involved in that murder and how my blood is there is beyond me and I've nothing else to say on it".

[22] The defendant was arrested on Friday 23 May which was the start of the second May Bank Holiday week-end. His sister Lorraine was arrested at lunchtime on Sunday 25 May. The same firm of solicitors represented both whilst in custody. Initially the defendant was represented by the principal in the firm. He had arranged to go away that week-end and was replaced by another experienced solicitor. They had other clients in custody that week-end and some delays were experienced in starting the interviews of the defendant on time. When Lorraine Young was brought into custody she was initially represented by a solicitor who was not an experienced criminal lawyer. The experienced solicitor who had represented the defendant on Sunday 25 was released with the agreement of the defendant to attend the interviews of his sister at Strandtown Police Station. On the evening of Sunday 25 May the defendant was interviewed twice in the absence of his solicitor. Following these interviews he was charged with the murder of Mr Johnston. Detective Constable McMurrin gave evidence about interviews 1 - 8. When he was about to commence his evidence about interview 9 which commenced on 25 May at 1843, Mr McDonald QC intervened and informed the court that the admissibility of the last two interviews with the accused were challenged. The grounds put forward were that the defendant was interviewed without his legal adviser being present. The presence of his legal

adviser was important he submitted, especially where the defendant might be asked about the DNA results about which he had been asked in the previous interview and also when adverse inference might be drawn from a failure to answer specific questions. A *voire dire* was held at the conclusion of which I ruled that the interviews were admissible. I went on to say that I would review that ruling at the end of the evidence about the content of those interviews and the cross-examination of the interviewing officers in the main trial. I did so and found no reason to alter my ruling. I said I would give my reasons later which I do now.

[23] The defendant gave evidence in the *voire dire*. He said he had concerns about his solicitor (not the principal of the firm) not turning up on time. The duty sergeant would tell him he was on route so he did not ask for another solicitor. He knew the solicitor had another client in Cookstown in custody and that he was also to represent his sister. His solicitor told him she was to be interviewed and he was concerned that someone should represent her at those interviews. His solicitor said he was the only one available. He claimed that before the last two interviews took place, his solicitor had spoken to him and told him he was to be charged. Later a policeman came in and told him he would be ready soon for another interview. He assumed this was for the purpose of being charged, but he did not know he was going to be interviewed. He said that a number of maps had been produced in interviews when his solicitor was present but that he had not had a detailed consultation with his solicitor about them. The custody sergeant on duty on 25 May was Sergeant McMahan, an experienced custody officer. He produced the custody record and confirmed that the defendant's solicitor had been delayed on occasions due to other clients who were in detention in other police stations.

[24] On the afternoon of 25 May an application was made to a County Court Judge for an extension of time in which to interview the defendant. The defendant had a consultation with his solicitor before that application was made. The application was granted at 1510 on 25 May. Later the defendant had a consultation with his solicitor. At 1727 the custody sergeant met with the defendant and his solicitor. His solicitor told the custody sergeant that the defendant was agreeable to being interviewed without his solicitor being present but that he would request his solicitor if he felt it was necessary. The defendant confirmed this to the custody officer. When the interview scheduled for that evening was about to commence the custody sergeant saw him again and told him that the detectives were ready to recommence interviews. The custody sergeant reminded the defendant that his solicitor was not present, but the defendant was still agreeable to proceed in his absence. The interviews then proceeded. No request for his solicitor to attend was made nor was a request to change solicitor made. Two interviews took place. At the first interview the defendant confirmed that he was content to proceed without his solicitor present. He was asked if he was fully aware of what was going on in the interview and he replied that he was. Towards the

end of the interview he confirmed that he understood everything said to him and that nothing needed to be clarified for him, that he understood the caution and agreed that the detectives had been completely fair and straight with him and had given him every opportunity. At the last interview he confirmed again that he was content to proceed without his solicitor. The detectives told him that if he wanted to have the advice of another solicitor they would stop the interview.

[25] It was submitted by Mr McDonald QC that there had been a breach of the code governing interviews under the Terrorism Act 2000; that under the ECHR the defendant was entitled to legal advice, particularly where adverse inference might be drawn from any failure to answer questions; that he should have been asked to avail of the services of another solicitor; that legal advice includes participation in interviews; that his right to legal advice should be construed strictly and that even if there had been no breach of the Code the court should nonetheless exercise its discretion to exclude the evidence of these two interviews. It was submitted that the defendant should have given his agreement in writing to being interviewed without his solicitor being in attendance and that an officer of the rank of inspector or above should have inquired into the reason why he was agreeable to being so interviewed. This submission was based on Code 6.11 of the Code of Practice referable to arrests under the Terrorism Act 2000. Code 6.11 provides that a person who has asked for legal advice and subsequently changes his mind, can be interviewed provided he has agreed in writing to be interviewed without legal advice and also that an officer of the rank of inspector or above has given authority for the interview to proceed, having first inquired into the reason for the change of mind. The custody sergeant considered that this code did not apply where the defendant had received legal advice and decided to dispense with the presence of his solicitor. He was correct to so conclude. Legal advice does not include the solicitor attending the interview. Code 6.7 provides that where a person in custody has been permitted to consult a solicitor, that solicitor must be allowed to attend the interview, if the solicitor is available. In this instance while the solicitor was present in the police station not long before the interview commenced the defendant permitted him to leave to be present at the interview of his sister, for whom he was concerned. There was no breach of this code in permitting the interviews to proceed in the circumstances I have outlined. The Codes under the Police and Criminal Evidence Order (NI) 1989 relating to interviews are in similar terms. Under the Terrorism Act 2000 the admissibility of a statement made by an accused in a trial on indictment for a scheduled offence was governed by Section 76(2) of that Act. By the Terrorism Act 2000 (Cessation of Effect of Section 76) Order 2002, which came into force on 26 July 2002, Section 76 ceased to have effect. Thereafter the provisions of Article 74 of the Police and Criminal Evidence (NI) Order 1989 apply. Article 74 relates to confessions. It is not suggested that the defendant made any confession or admission in the last two interviews. The defendant claimed that he was unaware that he

would be interviewed again. It is incredible in the circumstances I have outlined that he did not know he was to be interviewed. His solicitor may well have told him he would be charged based on his assessment of the interviews and what he knew of the police investigation. That would not be unusual, but would not prevent a further interview by the police.

[26] Under Article 76 of the 1989 Order the court may refuse to allow evidence to be given if it appears to the court, having regard to all the circumstances, including the circumstances in which the evidence was obtained, that 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. Having considered the evidence of the content of the last two interviews I concluded that the admission of those interviews into the evidence would not have an adverse effect on the fairness of the proceedings and I so ruled.

[27] In the first of the two interviews he was questioned about his relationship with his sister, he denied involvement in the shooting of Mr Johnston and agreed that the detectives had been fair with him. In the last interview he denied membership of the LVF. He said he knew Stephen Warnock. He denied knowing whether the LVF had sanctioned the shooting of Mr Johnston. It was suggested that it was possible that the shooting of Mr Johnston was a contract killing. The defendant said he did not know. He said he had been living at 7 Oaktree Mews for several days and had gone there as death threats had been delivered to his house for him and his brother by police from Bangor. He said he had been in the house on Sunday and saw a card left by the police for his brother to contact the police. It also said that police had taken his clothes. He said that he had "texted" his brother to find out what they were looking for and his brother had replied by the same method. He said he had taken clothes to 7, Oaktree Mews. He was asked what was in the black bag that was found in the bedroom and he replied "underwear, socks and money", "about £900" and that it was his. When asked where it came from he said that was not relevant. He denied being paid this money to shoot Mr Johnston. He was not prepared to say who gave him the money. It was put to him that he had been hiding from 8 May and he replied "Yeah okay". He said he had been living at home since 8 May except when he stayed at the home of a Mr Willis (not 7, Oaktree Mews). He was asked about the mobile phones found in 7, Oaktree Mews. He identified a Siemens A55 mobile phone as his as well as a green Nokia 3410 mobile phone that he had bought in Dublin. He was asked again about the money and said it was his and that he was not going to account for it. He was asked whether he had obtained it legally and replied no. He was not prepared to say how he obtained it. Mr McDonald QC then applied for the court to recuse itself from the trial on the basis that the court was now aware that the defendant was in possession of money not obtained legally and therefore guilty of a criminal offence. It did not seem to me that this evidence, whatever it meant, required the court to recuse itself. Where the money came from was not a relevant

factor in this case. Whether to recuse himself is a matter of discretion for the trial judge in the light of all the circumstances and in particular whether the defendant can receive a fair trial. I was satisfied that it was proper to proceed and that the fairness and integrity of the trial was in no way compromised.

[28] The various items recovered from the scene by the Scenes of Crime Officers were examined at the Forensic Science Laboratory. The pieces of wood, a fragment of twig and three swabs from the barbed wire fence (exhibits 58, 59 and 60) were all blood stained. Blood staining was lifted from these items and the swabs obtained and the swabs from the scene were sent for DNA typing. Two blood-lifts from the top of one of the fence posts showed a partial DNA profile and in so far as it could be typed it showed the same DNA characteristics as the defendant and could have come from him. Blood from the three swabs, the twig and the top of one of the fence posts gave a full DNA profile from 10 different regions. This DNA profile was compared with the DNA extracted from a buccal swab taken from the defendant and showed the same DNA characteristics as the defendant and could have come from him. The likelihood that an unrelated man from the Northern Ireland population would show this combination of DNA characteristics is less than one in one thousand million. I conclude and it was not suggested otherwise but that this was the defendant's blood. Insufficient DNA for typing was extracted from the gloves, the Taurus handgun Exhibit 54 and one of the balaclavas. The other balaclava Exhibit 56 consisted of a black knitted balaclava helmet composed of black acrylic fibres. A number of hairs were found the roots of which were not suitable for DNA typing. Material from around the mouth hole was cut out and removed for DNA typing. Examination revealed this to contain a major and a minor DNA component. The major component showed the same DNA characteristics as Alan Ferguson and could have come from him. The likelihood that an unrelated man from the Northern Ireland population would show this combination of DNA characteristics is less than one in one thousand million. The minor component was not identified. The finding of DNA around the mouth hole was consistent with the balaclava being worn. On 22 September 2004 Alan Robert Ferguson DOB 23 February 1986 pleaded guilty at Belfast Crown Court to possession of balaclava masks on a date unknown between 31 January 2003 and 9 May 2003 in circumstances which gave rise to a reasonable suspicion that the possession was for a purpose connected with the commission, preparation and or instigation of an act of terrorism contrary to section 57(1) of the Terrorism Act 2000. Alan Robert Ferguson is the son of the third defendant Susan Ferguson.

[29] On 2 June 2003 an experiment was carried out at the barbed wire fence in the corner of the field to gauge the changes in the appearance of fresh blood when it is exposed to air. Blood was donated by a detective and placed on two areas of the fence and post. This was then systematically photographed at regular intervals by Mr Truesdale. This confirmed that over

time fresh blood loses its red shiny appearance and gradually turns a dull red/brown colour. This experiment confirmed the observations of witnesses that the blood found on the barbed wire fence changed its appearance over time due to oxidisation.

[30] On 13 August 2003 D/Constable Kew went to 7, Church Hill, Holywood (the home of Lorraine Warnock nee Young) and there seized the blue Ford Fiesta FLX 4336. The vehicle was conveyed to Strandtown Police Station on a low loader. On 14 August 2003 Mr Mahood SOCO examined the vehicle and removed from the driver's footwell the floor mat (Exhibit 61), which was conveyed to the Forensic Science Laboratory.

[31] Dr A Ruffel BSc PhD is a Fellow of the Geology Society and a lecturer in geology at Queen's University, Belfast. On 21 October 2003 he visited numbers 60 and 50 Ballyrobert Road and walked the route to Sunnybrook Farm in the company of some of the police officer involved in the investigation. He looked at many matters including the soil, loose sediment, organic matters, the looseness of the ground, the bare rock and the buildings in the area. In short he conducted a geological survey of the area the purpose of which was to see if there was material that could be transferable to or from a suspect. On 27 November 2003 he attended the Forensic Science Laboratory where he examined the car mat Exhibit 61. The upper surface had a white to cream dirty covering of material and particles of the same were embedded in the tread. He took four separate samples from the mat. He described the samples he took as most likely to be gypsum or anhydrite mixed with some dark possibly organic matter and an oily residue. On 9 December 2003 he returned to number 50 Ballyrobert Road (the home of Mr Geddis) and there carried out an examination in the "yardway" behind the white gate and to the side of the dwelling. On this occasion he notice oil that presumably had leaked from the oil tank. He made a transect from the gate along the length of the "yard" and at one metre intervals took twelve samples from the top surface of the ground. He then took nine samples across the "yard". On 19 April 2004 he went to a B & Q store and obtained samples of two plasterboards Gyprock and Blue Hawk. He then proceeded to prepare samples for specialist analysis. These were labelled -

AR/G3 (soil, one metre from gate, Geddis's yard, Ballyrobert Road),[Exhibit 66];

AR/G1 (Plasterboard from Geddis's yard, 7.6 metres from the gate Ballyrobert Road) [Exhibit 67];

AR/G2 (plasterboard from Geddis's yard, 7 metres from gate, Ballyrobert Road) [Exhibit 68];

ARPlas1 (Blue Hawk u/c plaster B&Q, Boucher Road) [Exhibit 69];

AR/JWM4 (brushings of a car mat front offside re JWM4 FLZ 4336) [Exhibit 70];

AR/JWM4-1 (attached debris front offside JWM4 FLZ 4336) [Exhibit 71];

AR/Plas2 (Gyprock Plaster B&Q, Boucher Road) [Exhibit 72].

[32] On 30 April he packed these items and took them to England where on 4 May 2004 he handed them over to Dr Duncan Pirrie BSc PhD FGS. Dr Pirrie is a reader in geology at the University of Exeter with wide experience in the analysis of geological materials. On 13 May 2004 Dr Pirrie handed the samples to Dr Matthew Power BSc PhD FGS, who on 14 May 2004 travelled with the samples to Brisbane in Australia. There they were taken to the Brisbane Laboratory of Intellection Pty and examined using an automated scanning electron microscope linked with energy dispersive X-ray spectrometers. This automated scanning system is known as Quemscan and is the result of corroborative research by Dr Pirrie, Dr Power and a Dr Butcher at Intellection Pty in Brisbane. It produces more spectra than a manually operated ordinary electron microscope and does so automatically and more reliably. Its principal use is in the mining industry for the analysis of mineral product but has been used to assist in criminal investigations. Dr Power has been employed as a professional geologist since 1997 and has over 10 years experience of scanning electron microscopy. In Brisbane he prepared the samples for examination by embedding them in a block of resin and then subjecting them to the automated scanning process producing more than 350,000 X-ray spectra from which 21 particles were identified. The data generated was interpreted by Dr Pirrie who gave evidence about the results.

[33] Dr Pirrie was asked to compare the mineralogical composition of the exhibits recovered from the front off-side floor mat of the Ford Fiesta with the three samples taken from Geddis's yard and to compare one of the exhibits from Geddis's yard with the samples of gypsum from B&Q to test the variability in that type of material. Geological material at the earth's surface is made up of naturally occurring mineral grains, that is small fragments of rock within which there may be organic material and man made materials for example concrete, slag and industrial waste. The geologist can identify these materials and characterise them according to their chemistry and mineralogy. Dr Pirrie identified various minerals present in the samples, their abundance and co-occurrence as well as major and minor phases present as between various exhibits. He was able to highlight these with the use of table [Exhibits 73 to 79] and electronically produced false coloured tables [Exhibits 90 to 97] showing the presence and abundance of the various minerals identified in both major and minor phases as well as trace phases. He compared AR/G3 (soil, one metre from gate, Geddis's yard, Ballyrobert Road), [Exhibit 66] with AR/JWM4-1 (attached debris front offside JWM4 FLZ 4336) [Exhibit 71]. He found that while the relative abundance of different minerals in the two samples varied, the same mineral types co-occurred in both and there were several particles that co-occurred which were texturally and mineralogically quite similar.

[34] He found that AR/JWM4 (brushings of a car mat front offside re JWM4 FLZ 4336) [Exhibit 70] was made up of a white particulate material comprising the mineral gypsum, a plaster product. He assumed this was a localised patch of plasterboard on the floor mat. He compared that with AR/G1 (Plasterboard from Geddis's yard, 7.6 metres from the gate Ballyrobert Road) [Exhibit 67], AR/G2 (plasterboard from Geddis's yard, 7 metres from gate, Ballyrobert Road) [Exhibit 68] and the two samples from B&Q Exhibits 69 and 71. He found subtle variations in the mineralogy, make-up and texture of the different plaster samples. He found that the sample from the floor mat, AR/JWM4 (brushings of a car mat front offside re JWM4 FLZ 4336) [Exhibit 70] was directly comparable with the sample from Geddis's yard AR/G1 (Plasterboard from Geddis's yard, 7.6 metres from the gate Ballyrobert Road) [Exhibit 67]. He also found that Exhibit 70 was different from the samples from B&Q that he examined.

[35] When he combined those two findings he concluded that the mineralogy of the debris from the floor mat (that is AR/JWM4 - 1 Exhibit 71 and AR/JWM 4 Exhibit 70) match two different components present in Geddis's yard namely AR/G3 Exhibit 66 and AR/G1 Exhibit 67. His formal conclusions were -

1. When combined together, the mineralogy of the debris from the floormat and the mineralogy of the material recovered by brushing the floormat match the two different components present in Geddis's yard, Ballyrobert road, Belfast - soil sample AR/G3 [Exhibit 66] and plaster sample AR/G1 [Exhibit 67]. This suggests that the occupant(s) of the front offside footwell of motor vehicle FLZ 4336 had either been present in Geddis's yard, Ballyrobert Road, Belfast or some other place which had exactly the same mineralogical signature in both the soils and the plaster products present. These materials were probably transferred to the footwell floormat from the footwear or clothing of the person entering the vehicle.
2. Taken together, these data suggest a strong link between motor vehicle FLZ 4336 and Geddis's yard, Ballyrobert Road, Belfast, through the probable transfer of particles from that yard to the front offside footwell floormat.

[36] Dr Pirrie was rigorously cross-examined by Mr McDonald QC about his findings but defended his interpretation of the results and his conclusions thereon. He accepted that these comparisons do not have the precision of DNA analysis and that ideally he would like to have seen more samples. Nonetheless he was surprised that the one sample of soil available showed considerable similarity to the samples with which it was compared. He would have requested the loose material, which was in the exhibit bag in

which the floor mat was retained, to have been forwarded for examination if he had been aware of its existence.

[37] Dr Emily Sarah Hodgkinson BA PhD is a Higher Scientific Officer employed by the British Geological Survey since 2000 as an Environmental Mineralogist.

[38] She was called on behalf of the defence having been provided with the data extracted from the Quemscan examination of the samples, the exhibits and the conclusions drawn by Dr Pirrie from them. She expressed herself as content with the data that was produced from the Quemscan analysis, but disagreed with the interpretation made by Dr Pirrie in some of the cases. Dr Hodgkinson was provided with the same samples but only after they had been prepared by Dr Power for the Quemscan analysis. This preparation required the application of a water based lubricant and the embedding of the samples in resin. Thus the samples were not available for strontium isotope analysis which she thought would have been useful. However any recrystallisation that resulted from the use of the water based lubricant still left sufficient material for examination and did not invalidate Dr Pirrie's findings. She examined the samples using the standard Electron Scanning Microscope (SEM) not the QEMSCAN (QEM) system. She accepted that QEMSCAN is a thorough system and rigorously defined. She accepted, broadly speaking, that there are limitations in the extent to which SEM will pick up minerals, but said she would find the major components and most if not all of the minor ones. She said QEM is more likely to pick up a more thorough quantitative assessment of the samples; it is more likely to pick up some of the minor material. But SEM is better in terms of the qualitative data so the two should be used in conjunction. They both supply different types of analysis and different types of data. She found there was nothing in Dr Pirrie's qualitative textural observations that she fundamentally disagreed with, having examined the samples herself. There were a number of observations of minor components made by Dr Pirrie that she did not see and vice versa, as might be expected with such heterogeneous material. She was content indeed "happy " to trust Dr Pirrie's data from QEM. When asked to expand on the scale of probabilities or possibilities relating to these samples she said that given the amount of sampling carried out and the measuring involved it is very difficult to say with a high degree of certainty whether these two samples match or not. There are similarities but there are differences that are quite striking and that cannot be explained easily if the two samples are from the same place.

[39] She found that AR/WM4 exhibit 70 was likely to have come from plaster board. She found it to be completely different to AR/Plas 1 Exhibit 69 and that it lacked many of the minerals found in AR/Plas2 Exhibit 72. She concluded that it was unlikely to come from AR/Plas 2 Exhibit 72.

[40] However she found that AR/JWM 4 Exhibit 70 and AR/G1 Exhibit 67 and AR/G2 Exhibit 68 exhibited many similarities and very few differences. The chief difference were - 1. the presence or absence of small amounts of dolomite and alumino-silicates - however with such small sample sizes she considered these difference may not be sufficient to clearly differentiate the samples; and 2. the overall grain sizes and shapes. AR/JWM4 Exhibit 70 had somewhat smaller less spherical and more irregularly-shaped grains than either AR/G1 Exhibit 67 or AR/G2 Exhibit 68 - this could mean that it has a different origin but it could also mean that it came from the same plasterboard and subsequently underwent some degree of crushing by the action of treading on it.

[41] In summary she found that AR/JWM4 Exhibit 70 appeared far more similar to the plaster specimens from Geddis's yard than it did to the specimens from B&Q Exhibits 69 and 72. In her opinion it may have come from Geddis's yard and been subsequently crushed by treading action. She considered that the plaster specimens alone represented only weak evidence that associated the occupant of the car with Geddis's yard.

[42] She compared AR/JWM4-1 Exhibit 71 (the debris from the car) with the soil specimen from Geddis's yard AR/G3 Exhibit 66. She found many similarities between them, but concluded that the evidence did not demonstrate to her mind that these components can be considered unique to Geddis's yard. She thought it possible that they may be found in other locations. She found what she described as significant differences, namely that AR/JWM 4-1 Exhibit 71 contained grain types not seen in AR/G3 Exhibit 66 and that components in AR/G3 Exhibit 66 did not appear in AR/JWM4-1 Exhibit 71. Therefore she did not find the similarities between specimens AR/JWM4-1 Exhibit 71 and AR/G3 Exhibit 66 sufficient to establish a clear association between the occupant of the car and Geddis's yard.

[43] Dr Hodgkinson thought there were significant omissions from the descriptions of specimens AR/JWM 4-1 Exhibit 71 and AR/G3 Exhibit 66. She said that Dr Pirrie made no reference to siltstone grains which she found to be present in both those exhibits. Furthermore he did not mention any dark organic grains in AR/JWM4-1 Exhibit 71 whereas he observed grains of iron/manganese oxide in association with iron sulphide which she did not see.

She concluded in her report and I quote -

1. "AR/JWM4 [Exhibit 70] exhibits many differences from the B&Q plaster products, and appears to have many similarities to samples of plasterboard taken from Geddis's yard. However, one might expect the same type and make of

plasterboard to exhibit these features where it is found and so I believe that the plaster specimens alone represent only weak evidence associating the material found in vehicle FLZ 4336 with Geddis's yard.

2. Both my own and Dr Pirrie's SEM observations of AR/J|WM4-1 [Exhibit 71] and AR/G3 [Exhibit 66] revealed a number of textural and mineralogical similarities between them. However there are also many significant difference between the two specimens. Most significantly (i) AR/G3 contains various components not seen in AR/JWM4-1 including unusual calcium coronate grains; and (ii) the 'mineralogical' components as assigned by QEMSCAM are present in totally different proportions in these two specimens. Therefore I do not believe that these two specimens can be said to 'match'. In view of this, I do not find the similarities between specimens AR/JWM 4-1 and AR/G3 sufficient to establish a clear association between them."

[44] Dr Hodgkinson thought the evidence did not support a match for four reasons. Firstly, most of the components defined by QEM are common minerals and many of the others are not clearly identified minerals at all, but element associations eg iron aluminium silicates, whose definition was not given by Dr Pirrie and may be arbitrary. She said the QEM suite of minerals may be arbitrarily assigned and the analysis does not necessarily indicate that the actual components in the two specimens are the same; and secondly, the components were present in different proportions; thirdly that the specimens were not compared to any control specimens from alternative locations; and fourthly that significant difference were observed by both Dr Pirrie and herself and not explained, the most significant of which was the presence of calcium grains in AR/G3 Exhibit 66 which were not found in AR/JWM4-1 Exhibit 71.

[45] In relation to the soil specimens AR/G3 Exhibit 66 and AR/JWM4-1 Exhibit 71 she found there were textural and mineralogical similarities between them. The differences she noted were that AR/JWM4-1 Exhibit 71 contained what may be road asphalt, industrial slags and flyash, and larger proportions of igneous rock fragments. AR/G3 Exhibit 66 contained long curved fibrous calcium carbonate grains, probably shell fragments; siltstones with very little quartz and feldspar; and metamorphic rock fragments. Furthermore the components were present in totally different proportions.

[46] In cross-examination she said her position was that there was some suggested connection between the samples from yard and those from the car but they did not convince her that they were necessarily cogent or sufficient. She said she saw differences and was confused as to why Dr Pirrie was

saying they were similar. She commented that they probably disagreed over "very similar" . She did not find Figure 1 page 12 of Dr Pirrie's report Exhibit 75 which shows the major and minor phases to be completely compelling. When shown Figure 2 page 8 of Dr Pirrie's report Exhibit 73 (the minor /trace phases) she agreed this demonstrated a sophistication that could not be matched by the SEM. She said there are certainly similarities between them, but that does not mean they came from the same site. There were differences in the internal textures of the grains that she examined and the iron sulphides varied in quantity. It was possible that the two samples were from different places.

[47] She was shown Exhibits 90 and 94 (the colour images of AR/JWM4-1 Exhibit 71 and AR/G2 Exhibit 68) she stated that they are similar but disagreed that they were very similar. The differences she noted were that curved grains of pale blue calcite were clearly present in G3 but not there in AR/JWM4-1 Exhibit 71. She was happy to say there are similarities but she did not find them compelling because of the differences present.

[48] Dr Hodgkinson was asked to compare AR/JWM4 Exhibit 70 and AR/G1 Exhibit 67 and whether she agreed that they are very similar in their major/minor phase sampling. She replied "according to that diagram they are far more similar than the other three samples, yes I agree". She was asked if she accepted that is a significant relationship and replied yes she did. She agreed that it was reinforced when one looked at the minor/trace phases of the same exhibit. She said they are far more similar than the other samples. She went on to comment " I say they are very similar and they may well have come from the same origin" and that it was "Sufficient for me to say they are produced in the same manner".

[49] She was shown the colour images of AR/G2 and AR/JWM Exhibits 93 and 91. She replied "there are a lot of similarities between the two" and the " internal texture of the grains I found to be highly similar with no significant differences that I can identify." She said it was extremely likely they were both made of the same type and made of plasterboard. She said she agreed with Dr Pirrie that they are comparable. She agreed that the way such debris would get into a car would be by a person treading on it and then stepping into the vehicle and the shoes coming into in contact with the mat. She accepted that it was legitimate for Dr Pirrie to combine the two findings in reaching his conclusion.

[50] The use of geological evidence in criminal investigations appears to be a recent innovation, but nonetheless cogent for that, whether provided by the prosecution or the defence. The detailed examination of minute mineralogical samples requires an expertise that the ordinary layman does not possess. One could not fail to be impressed by the quality of the expertise displayed by all the geologists, in particular Dr Pirrie and Dr Hodgkinson, albeit in a specialist

subject in which they are engaged on a daily basis. It is clearly an area for expert evidence, but the conclusions to be drawn from it remain a task for the tribunal of fact.

[51] It is important to remember the suggestion being made by the prosecution based on the evidence relating to the suggested escape route. The prosecution suggest that one of the two men was in Geddis's yard as he made his way toward the gate at the bottom of the garden. That his footwear had contact with the material in that yard and picked up some of that material which was later shed elsewhere. Only a small sample of that material was collected by Dr Ruffell, but it included what he deduced to be plasterboard and a soil sample. The floor mat from the driver's footwell of the Ford Fiesta would gather material from the footwear of the driver of that vehicle. Provided the floor mat was not washed frequently an accumulation of material would build up on the floor mat from each occasion a driver entered the vehicle and made a deposit. The driver would be in many different places prior to entering the vehicle and leaving a deposit. Therefore to a layman it is hardly surprising that the floor mat would reveal many different substances of mineralogical significance or otherwise. Therefore the finding of mineralogical material on the samples removed from the floor mat which were not found in the samples taken from Geddis's yard is not of any major significance. Dr Hodgkinson found such differences for example the "slags and flyash" to which she referred. She expressed herself as confused by this. On the other hand the finding of material on the floor mat which resembled material found in Geddis's yard would be of significance. If such material was unique to Geddis's yard or to use Mr McDonald's word "exotic", then it would be of immense significance, almost like a fingerprint. Of course, as Dr Hodgkinson pointed out, many minerals are common and found widespread and in different areas. Plasterboard is a common material with different manufacturers. Although it is mainly gypsum, different products are used to bulk it out. All those factors have to be borne in mind. There was much agreement by Dr Hodgkinson with Dr Pirie's findings. She found AR/JWM4 Exhibit 70 to have likely come from plasterboard and that there were many similarities and few difference between it and AR/G1 and Ar/G2 Exhibits 67 and 68 respectively. She said this represented weak evidence of association. She found many similarities between AR/JWM 4 -1 Exhibit 71 and the soil specimen from the yard AR/G3 Exhibit 66. The difference she found between these exhibits were mainly relating to material recovered from the floor mat and not found in the soil. Taking this into account she found it did not establish a clear association. She reached no conclusion on the combination of the two findings.

[52] I think Dr Hodgkinson was correct when she said the two scanning systems complement one another, though the QEMSCAN provides much more quantitative data faster than the SEM. The difference between her evidence and that of Dr Pirrie was one of degree and relating to the

conclusions to be drawn from those findings. My conclusions based on the evidence of both of Dr Pirrie and Dr Hodgkinson are -

- i. That the plasterboard material found in Geddis's yard is different from the plasterboard samples from B&Q.
- ii. That there are similarities between the plasterboard material recovered from the Ford Fiesta and the plasterboard material recovered from Geddis's yard.
- iii. That there are similarities between the debris recovered from the Ford Fiesta and the soil sample recovered from Geddis's yard.
- iv. That the similarities found in 3 and 4 each show some evidence of association between the Ford Fiesta and Geddis's yard, if the debris was not collected from another site with the same mineralogical material and plaster products present.
- v. That the combination of 3 and 4 increases the probability factor that the source of the debris and plaster products found in the Ford Fiesta was Geddis's yard, though that cannot be with certainty.

[53] David McMurtry gave evidence that the events that occurred between the shots and seeing two men running down Ballyrobert Road happened very quickly. When he emerged from the house he saw a Renault Clio on the Ballymullan Road and it went up that road. He did not get much of a look at the first man he saw. The other was about 6 feet tall and was wearing a light coloured hooded fleece type top. They were running as fast as they could. The following day he made a statement to the police. In that statement he stated -

"I really only saw the back of the first one, I really only got a fleeting glance of him, he may have had dark hair and he had a top on that looked a sort of purple colour, although this may be been the street lights giving this effect. I saw the second man far more clearly and could see his face. I would say he was between 25 and 30 years of age and about 6' tall. He had a round face, with a prominent double chin. I think he was carrying more weight than he should have been for his height. His hair looked to be very light, or he may even have been bald. He wore a light coloured hooded top with the hood down."

[54] Robert Gilmore was called by the prosecution. He was not examined by counsel on behalf of the prosecution but was tendered for cross-examination. During his cross-examination he said he made two statements. The first was dated 10 May 2003 and after it was read to him he agreed that the contents were truthful. In that statement he stated -

"I have an Aunt called Eleanor Anderson who lived with Jim Johnston at 60 Ballyrobert Road, Crawfordsburn. Jim and Eleanor had lived together for about 10-12 years. I would have called Jim my Uncle even though they were not married. For the past three months I lived not far away from Jim and Eleanor in a house which I share with two mates. On Thursday 8 May 2003 between 6.00 pm and 8.00 pm I had been working at a fence at the rear of my house. I had called over to Jim's house to borrow tools and some building materials. It must have been around about 8.00 pm when I was returning a wheelbarrow and tools I had borrowed from Jim's. I was walking towards his house as Jim drove into the drive in his red car. Jim asked me if I got my work done to which I said I did and we passed the time of day talking. After about five minutes I left Him and walked back home and this would have been around about 8.00 pm to 8.10 pm. I got home and took my dog for a walk along the Ulster Way for about half a mile and returned home. During my walk I didn't see anybody or anything out of the ordinary. I got into the house, put my slippers on and made myself a cup of tea. There was a Clint Eastwood film on TV, Joisey Wales which was on TV and me and my mates watched it. The next thing was I heard very loud cracks which to me sounded like gun fire, there was about five cracks first, followed by a one or two second pause and then a series of cracks, about fifteen or so. We all looked at each other, one of my mates opened the front door, I started to put my boots on and I grabbed the house phone which is cordless. My other mate was at the door at this stage and the dog ran out but they tried to grab it. One friend says they are running down the road. At this stage with the phone in my hand and dialling 999 I went to the front door and walked forward to the wall at the road side, I could see as I walked from the front door of my house towards the wall, two figures coming from my right from the direction of Jim and Eleanor's house. The operator asked which service and I said Police at which time these two figures were directly in front of me. The first one had removed a woollen type head wear from his head. He had dark short cropped hair like a crew cut but very short. He was well built, like a body builder or a gym fanatic. He was wearing a

dark sports type top with possibly some sort of white stripe or piping on the arm or at the top of the arm. This male had the woolly hat in his left hand and in his right hand he had a semi-automatic pistol. I would have put him at around 35 years of age roughly, his face was round and hard looking. The second one pulled a woollen head ware off his head just after the first one, he had a completely shaven head but possibly could have been very close crop fair hair, he appeared to be smaller in height than the first one and his build was smaller, he had a light coloured sports type top on, it could have been white or cream or even grey, he had his woolly hat in his left hand and I couldn't say if he was carrying anything in his right hand, he appeared to have a double chin or a lot of flesh around his throat area and I noticed his ears looked odd in that they were rounded. The two of them looked straight at me at the time I said "Police" to the operator. I would have been about the width of the road away from them which would be 20 to 30 feet away. The two of them ran on down the road at a jogging pace and I seen them run into the driveway of a neighbour called Mr Geddis. I ran back in doors and got a baseball bat and the mate grabbed a torch. I headed out to go to Mr Geddis' place and my mate handed me the torch. At this time I didn't know what was happening. I was aware that Jim had received death threats and I didn't know if Jim was being chased by these two fellas or what. I was concerned about him so that's why I headed out to see what was going on. I shone the torch about Mr Geddis' garden and field and shouted out for Jim but I got no response. At some stage while searching about Jordon, Eleanor's son appeared, he was in tears and looking for Jim. I told him to go back to his front gate. I went back onto the road and down towards the Ulster Way and I saw a red Taxi. I asked the driver who I recall wore glasses, did he see anything, he said he had saw somebody running. I can't remember if he said one or two people. One of my mates jumped into the taxi and went up to Eleanor's house. I searched about a bit and then went up to Eleanor and saw the police were there. At this stage we still didn't know where Jim was and one of the police officers borrowed my torch. I went in the house to see Eleanor who was hysterical. After a

while I was standing at the front door and one police officer called another officer over at which point Jim's body was found lying against his trailer. Police officer tried to give him medical aid until the ambulance arrived which they did eventually. Of the two males I saw running down the road, the first one I have described resemble a photo in a Sunday Newspaper which Him showed me some months ago. He pointed this fella was called X and that he posed a danger to him which I took to be a danger to Jim's life, as I have said he had a number of threats against him. The first fella to me was the fella in the paper called X, I don't know his first name and I don't know him myself and as far as I am aware I have never met him. I am prepared to do an identification parade and I believe I would recognise these two males again if I saw them."

[55] On the afternoon of 11 May 2003 Robert Gilmore attended the Serious Crime Suite at Antrim Police Station. At 1430 Inspector Conroy assumed the role of identification officer in a confrontation identification procedure and at 1540 spoke to a male person in custody. He explained the procedure to the male person. Then he informed him of the first description given by a witness which was - " well built not unlike a body builder or gym fanatic, very short black hair like a crew cut, black training type top, 30s". At 1559 the male person was taken to an interview room with his solicitor. At 1606 Inspector Conroy spoke to Robert Gilmore and explained the procedure stating " I am now going to show you a person and I am going to ask you if it is the person whom you saw on 8 May 2003 at 1040 approximately and if you cannot make a positive identification you should say so". Robert Gilmore in a statement dated 11 May 2003 stated:

"At 1606 I was spoken to by Inspector Conroy. The Inspector informed me he was going to show me a person who had been arrested and he was going to ask me was this the same person I saw running on the Ballyrobert road with a gun and a hat on the night of the murder. The Inspector then read from a form. I was then taken into an interview room. Inside the room were two men at a table. The Inspector asked me if this was the man who I saw running down the road the night of the murder. I looked directly at the man sitting on the right hand side of the table and I stated 'Definitely one hundred per cent and nodded at the man I was identifying."

[56] A voluntary observer maintains a climate station site on behalf of the Meteorological Office, about one mile from the Crawfordsburn area of the Ballyrobert Road. In addition to the personal observations he makes from time to time each day, the observer has various instruments to measure rainfall, its amount, intensity and duration, the temperature both maximum and minimum temperatures, as well humidity and wind speed. The instruments are read at 0900 each day and the observer watches the weather during waking hours. Times are recorded as GMT whatever the time of year. Rainfall is measured between 0901 on a day and 0857 the next day. Between 12 March and 20 April 2003 the weather was generally fairly dry with about one tenth of the normal rainfall. From 24 April the weather became unsettled and wet, with a series of weather fronts crossing the province. Between 24 April and 9 May 2003 there was 56 mm of rain in the Crawfordsburn area, which is about twice the long term average. Between 28 April and 5 May 2003 it was showery with sunny spells some of the rain being continuous. Tuesday 6 May the weather was recorded as - clear and sunny before 0900 and thereafter mainly sunny am becoming cloudy in the afternoon, light intermittent rain between 1830 and 2010. Wednesday 7 May - clear and sunny morning to 0900 with cirrus and cirrocumulus cloud; mainly sunny am including cloud; cloudy afternoon; light intermittent rain; becoming windy; broken cloud at night; rain measured as a trace. Thursday 8 May - before 0900 clear and sunny with increasing cumulus cloud; mainly sunny day but with occasional light rain showers. Friday 9 May - clear and sunny increasing cloud before 0900 morning and sunny periods thereafter; a shower of moderate intensity (that is enough to wet the ground and vegetation) , at 12 noon for 20 minutes, after which it was clear again and clear that night. For practical purposes 7 and 8 May 2003 were dry in the Crawfordsburn area. Between 0901 on 8 May and 0857 on 9 May .1mm of rain fell in .1 of an hour commencing at 1220 GMT . Between 0857 on 9 May and 0851 on 10 May .9mm of rain fell in .3 of an hour commencing at 1200 GMT, that is 1300 BST.

[57] The defendant gave evidence. He denied any involvement in the shooting of Mr Johnston. He said he had no idea how his blood came to be on the barbed wire and post. If he had been asked if it was possible that he had ever been there he would have said it was possible but he did not remember being there. He said there was no possibility that he was one of the two men seen on Ballyrobert Road. He had never been a body builder or gym fanatic and never had two chins. At the time of his arrest he was 38 or 39 years of age. There was nothing about his appearance that would suggest he was just into his 20s. He said he had read the depositions in the case and in particular the statement of Robert Gilmore. He knows personally the man Robert Gilmore identified. He also knew of Alan Ferguson but did not know him personally. After leaving school at 16 years of age he took up bricklaying and worked mainly in that occupation until he stopped in 2000. His brother owned the Ford Fiesta. He had the use of it as his brother was a long distance lorry driver who was often away. His use of it had been for 4 or 5 months prior to

his arrest. His brother would drive it sometimes. When he was arrested it was at his parent's home in Portadown. He became aware the following day that his house had been searched on Sunday 11 May and that the police were looking for him. He denied any knowledge of the latex gloves. He could not say what areas he visited with his nephew or the dates he had taken him out. He recalled the examination by Dr Kapur. He told him he was a drinking man and that he got into the odd scuffle. He said he would give the same answers now as he gave then. He denied that he had injured himself on barbed wire and had no necessity to seek medical treatment for the injuries. He described frequently sustaining cuts and bruises when working as a bricklayer.

[58] In cross-examination he said he had told Dr Kapur the truth. He said he had not worked as a bricklayer between 2000 and May 2003. He had no occasion to be on a building in that time. He said he was driving the Ford Fiesta on 8 May 2003 and on Monday 11 May, but he did not drive it again until 23 May, when he had it at 7 Oaktree Mews. He said he had been using the car since January 2003 to look after his nephew. He claimed he was not doing anything in particular between 11 and 23 May and that between those dates he was at 40, Ulsterville Park, though on Tuesday or Wednesday (19 or 20 May) he had gone to stay at 7, Oaktree Mews. He denied he was out of the country during that period but was in Drogheda on Sunday 11 May returning on Monday 12 May. He had taken the black holdall and clothing to number 7. He was going to stay there for a few days and then move on. He claimed he carried his passport all the time, as it was the only identification he had. He said he was not back in the Holywood area from 8 May 2003. He was unable to say when he last was involved in a fight or who he fought with. He could not remember where or when he got the injuries shown in the photographs but he had them for several weeks when he was arrested. He could not recall when he first noticed them. He said as far as he could remember he sustained the injury to his wrist (shown in photograph 3) when moving bricks at the back of 40, Ulsterville Park. He was not 100% sure. He did not know when this was, possibly April/ May 2003. He was familiar with Crawfordsburn and the Ballyrobert Road from the period when he lived in Bangor. He took his nephew to the sea front in Holywood or Bangor or to Seapark in Holywood. He could not remember ever being in Helen's Bay or along Clandeboye Avenue. He had no reason to be in the corner of the field where the blood was found and it was a great mystery to him how his blood came to be there. It was suggested that injuring himself on barbed wire was something he would never forget and he disagreed with that suggestion. He said if it was not significant he would not remember it. He had no recall of ever being at that location or ever having contact with the barbed wire fence. He said it was purely a coincidence that his blood was found there. He said he did not have a mobile phone on 8 May and it could have been the following week that his sister Lorraine bought him his last mobile phone. He said his brother Albert gave him a mobile phone on Monday 11 May and told him to keep in touch with him and the rest of the family. He then added that Albert

told him that Lorraine had bought the mobile. He said she always bought his mobile phones. He also said he bought a mobile phone in Dublin and then corrected this to Drogheda. On 11 May he had 2 mobile phones.

[59] He confirmed that his case remained as he told the detectives in the first interview that he was in his sister Lorraine's home all afternoon and evening of 8 May 2003. He confirmed also that he was the sole person to drive the Ford Fiesta in the 4 or 5 weeks prior to 8 May. He stated that he drove it in the early hours of 9 May until some time in the following week. He did not have a mobile at that time so he made no mobile phone calls and his sister's mobile was switched off after she came home. There were no telephone calls to the house and no visitors came during the time they were there. He left in the early hours as he had an arrangement to meet a man named Willis. The two of them met up and "went on a bender for a few days". There was a party at the home of Willis on the Saturday (10 May). The defendant stated that he sustained none of the injuries there, so he must have sustained them on 8 May or before 8 May. He did not classify them as injuries, they were just marks. So when the FMO asked if he had any injuries he replied no. He could not remember where he had been fighting or where or with whom. On Monday 12 May he saw his brother Albert between 4 and 5 pm when his brother gave him the Siemens 55 mobile phone that was found in 7 Oaktree Mews.

[60] The case against the defendant Robert Young depends 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.”

[61] In R v Meehan & Ors (unreported Belfast Crown Court) Carswell J as he then was referred to circumstantial evidence in that case on which the prosecution relied as “ a multi-stranded skein of facts”. In the appeal from that decision the Court of Appeal rejected the contention that the court must scrutinise each individual piece of evidence and reject those of insufficient weight. At p.31 Hutton LCJ 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.

[62] In any case that depends, as this case does, on circumstantial evidence it is imperative to consider the nature of the evidence and to scrutinise it with care. As Carswell J said in R v Meehan & Others:

“It has to be evaluated with the correct amount of circumspection. Where it points in one direction only, it can be a highly convincing method of proof. It is necessary, however, to beware of the possibility that it may be laying a false trail. It is incumbent upon the Crown to establish that the evidence points beyond reasonable doubt to one conclusion only, and in the process to rule out all other reasonably tenable possibilities which may be consistent with the evidence.”

[63] The approach to circumstantial evidence was considered in R v McGreevy 1973 1 AER 503, an appeal from this jurisdiction to the House of Lords. At p 508 Lord Morris referred to the summing up of Alderson B to a jury at Liverpool Assizes and said :

“He told them that the case was 'made up of circumstances entirely and that before they could find the prisoner guilty they must be satisfied -'not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person.’

He also pointed out to the jury, to quote from the report, the prones of the human mind to look for (and often slightly to distort) the facts in order to establish a proposition while forgetting that a single circumstance which is inconsistent with such a conclusion is of more importance than all the rest inasmuch as it destroyed the hypothesis of guilt.”

Later at p 509c he said:

“In Plomp v The Queen. Dixon CJ referred to -

‘the rule that you cannot be satisfied beyond reasonable doubt on circumstantial evidence unless no other explanation than guilt is reasonably compatible with the circumstances’.”

He cited the following words:

“In the inculcation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed.”

[64] Thus in a case that depends on circumstantial evidence a court or jury should have at the forefront of its mind four matters. Firstly, it must consider all the evidence; secondly, it must guard against distorting the facts or the significance of the facts to fit a certain proposition; thirdly, it must be satisfied that no explanation other than guilt is reasonably compatible with the circumstances and fourthly, it must remember that any fact proved that is inconsistent with the conclusion is more important than all the other facts put together.

[65] I find the following matters have been established or may reasonably be inferred. Around 1030 pm on 8 May 2003 James Johnston left his house to close the solid wooden gates. He was 5 feet 7 inches in height but of heavy muscular build though slightly obese and weighed 103kg (approximately 16 stone). He would have been a formidable person to challenge. He was confronted by at least 2 men who had with them at least two handguns. Mr Johnston probably tried to get away from them by moving towards the trailer, but was shot and, after he had collapsed to the ground, he was shot a further five times. It is clear from the number of weapons used and the number of shots discharged, that those who confronted him and who were acting in concert, intended to kill him. Two of the men, still acting in concert, made their way westwards along the Ballyrobert Road. There are other routes away from number 60 – eastwards into Crawfordsburn, northward along the road to Helen’s Bay and up Ballymullan Road on which shortly after was seen a Renault Clio motor vehicle. The two men who came along Ballyrobert Road probably intended to go down Clandeboye Avenue in the direction of Sunnybrook Farm to a vehicle parked in that area. They were confronted by Robert Gilmore who was wearing body armour and who uttered the word ‘police’. They were probably panicked into thinking he was a police officer and ran into number 50 instead. One of them according to Robert Gilmore’s statement removed a woollen type head wear from his head and held it in his left hand while he had a semi automatic pistol in his right hand. The other one according to the same statement was wearing a light coloured sports type top and pulled a woollen head wear off his head. The two men made their way through number 50, one probably going through the gate on the left of the drive leading into the garden, while the other went down the right hand side of the house stepping on the bonnet of the Mercedes motor vehicle and probably climbing over the gate. One balaclava was discarded on the other side of the gate and the other to the right of the five-barred gate leading into the field. They left footprints in the mud there and at the other side of that field after they had crossed it. In that field they abandoned the .45 Taurus pistol. They went through the wooded area until they reached Clandeboye Avenue. However that was a metal pathway and more exposed so they moved along the side of it for a distance until they reached the other five-barred gate where in the foliage on the other side of it they abandoned the woollen gloves and the surgical gloves. They passed through another wooded area and across a stream where the hooded top was abandoned in the stream. Thus they had abandoned a number of items of an incriminating nature. In abandoning items like surgical gloves it is unlikely they would wish to retain something as incriminating as a firearm. It is a reasonable inference that these two men were discarding all incriminating material that they had with them. Only one firearm was recovered. This area was well searched. It is therefore a reasonable possibility from those circumstances, that the other gun was removed from the scene by a person who made good his escape by one of the other routes and may well have not been alone. After crossing the stream the men made their way up the steep bank and then up the hill to the thick gorse

and hedge through which they gained access to a further field. They crossed this field to the point P and Q where one of them cut himself on the barbed wire leaving blood on the wire and the fence posts. They then made their way down the side of that field probably to a waiting vehicle and drove or were driven away along the lane to the Craigdarragh Road. The person who left his blood on the barbed wire fence was the defendant Robert Young. He has no explanation for the presence of his blood at that location. It is clear from the evidence of the meteorological observer, the scenes of crime officers, the forensic scientist and the experiment carried out with the police officer's blood on the barbed wire fence, that the blood found at point P and Q was recently deposited there and that it was reasonably fresh when first observed and that it changed colour as time passed with oxidisation. The defendant usually travelled to Holywood to care for his nephew several times a week. Over the next two and a half weeks he did not do so. He seems to have made himself scarce. He was not living at home. He was aware the police were looking for him, but did not contact them. He was moving around with a holdall and fresh clothes along with a substantial sum of money in cash. He had his passport with him. His explanation that he always carried it with him as this was the only identification he had was not credible. He was eventually detained at an address not his own. He was covered in minor injuries consistent with scrambling over rough terrain and through thick and sharp vegetation. He also had a long laceration to his right wrist consistent with contact with a sharp object. Whatever views the doctor formed about those injuries initially, the photographs of them in Exhibit 29 are, to a layman, consistent with injuries sustained in the way I have described. His evidence that he sustained these injuries in fights or when drunk or when moving bricks was neither credible nor consistent with or evident from the photographs. He is a man who enjoyed the use of at least one or more mobile phones at any time. His evidence that he spent the evening and night of 8 May with his sister until the early hours without a mobile phone or such a phone switched on and without contact with the outside world throughout that evening did not raise in my mind the reasonable possibility that it was the truth. On the date in question and on subsequent days he was driving a Ford Fiesta motor vehicle from which was removed a floor mat. This mat had on it material which was similar to plasterboard found in Geddis's yard albeit some time later. It also had on it material similar to the soil sample removed from Geddis's yard. These findings show separately an association between the Ford Fiesta and Geddis's yard. The combination of two separate pieces of material found on the floor mat similar to that found in Geddis's yard strengthens that association. Coincidentally, the car from which the floor mat was removed was driven by the person whose blood was deposited on the unplanned escape route. The DNA of Alan Ferguson and another person were found on the mouth hole of the balaclava Exhibit 56. The forensic scientist said this was consistent with the DNA being deposited when the balaclava was worn. There is no evidence as to when or in what circumstances that might have been. Alan Ferguson was born on 23 February

1986 and on 8 May 2003 would have been 17 years and three months. The descriptions given by Robert Gilmore and David McMurtry and the identification of a man as one of the two men by Robert Gilmore at a confrontation identification, do not undermine the clear evidence of the defendant's blood found recently deposited on the barbed wire along the escape route. It is not a reasonable possibility in the circumstances that the blood was deposited recently and innocently at what was a significant point on the escape route to the land. Why would the defendant be at that location at that time, that is the night of the 8 May and innocently. There is no evidence that he was there innocently. The position of the blood in relation to the escape route provides in combination very strong evidence of the defendant's association with the route and therefore his involvement. It was suggested that the men may have separated and the dog followed one trail. There is no evidence to show there were two trails. The evidence of Constable Kincaid about Otto's movements and reactions points positively towards his following one strong trail. The more obvious place to separate might be Clandeboye Avenue, but the dog picked no trail on it other than the one he followed to the gate. Constable Kincaid brought him back along Clandeboye Avenue from Sunnybrook Farm and he did so without fussing until he got to the gate. The likelihood is that the men remained together. Even if they did separate the dog was following the trail of one who left his blood along that route.

[66] The onus is on the prosecution to prove its case. There is no onus on the defendant to prove his innocence or any fact from which his innocence may be inferred. The standard of proof for conviction of any criminal offence is proof beyond reasonable doubt. The combination of the factors which I have mentioned prove beyond reasonable doubt that the defendant Robert Young was one of the two men challenged outside number 50 Ballyrobert Road as they made their escape from number 60 after Mr Johnston had been shot. These factors are not consistent with any other rational conclusion nor was one suggested other than that the circumstances were insufficiently strong and could not satisfy the tribunal of fact of guilt beyond a reasonable doubt. Robert Young is therefore guilty of the murder of James Johnston as alleged in count 1 of the indictment. It was submitted by Mr McDonald that the finding of the blood on its own could not support guilt beyond reasonable doubt. I doubt very much whether that be so in the circumstances of this case. However I do not need to state a final conclusion on that point as there were sufficient other circumstances combined with the presence of the blood to satisfy the test for conviction.

[67] On 24 May 2003 D/Sergeant Gill and D/Constable Allen spoke to Lorraine Young and recorded a witness statement from her, Exhibit 39. In that statement she said -

"I am Lorraine Young, previously Lorraine Warnock and am the sister of Robert Young DOB 13.9.63. I have three children, Kyle 11 yrs, Ashley 7 yrs and Regan 4yrs. Regan is physically disabled with a hand deformity. As a result of being a single parent, with a disabled child, Robert is registered as the main carer, other than myself, and gets paid invalid care allowance (ICA) for a minimum of thirty hours per week. I would rely heavily on Robert for child care. Regan attends McArthur Nursery, Susan Street with my sister Charlene's child, Dale 3 yrs. Charlene my sister is a registered child minder and also looks after Regan. Kyle goes to his grandmothers after school and Ashley remains at an after school club until I pick her up. Charlene would generally collect Regan from Nursery and take him back to her house. It is only when Charlene is an excess number of children, that Robert would collect Regan from Charlene and looks after him until I get home from work, and he has a key for my house. On Friday 9th May, I heard that "Johnty" was shot dead and immediately was concerned about my whole family's well being, given the fact we had received death threats when Stephen Warnock was killed. I didn't know "Johnty" full name and had met him some ten years ago, but have had no contact since that time. It was just so high profile that "Johnty" was alleged to have been involved in Stephens murder and obviously his death may bring trouble to my family's door given my connection to George Warnock who I have been separated from for 4 1/2 years and have legally reverted back to my maiden name Young. As a result of hearing about the murder on the Friday I am very aware of what myself and my family were doing on the previous day, the Thursday the murder happened. I had arranged for Robert to collect Regan from Charlene's on that Thursday at the normal time, which usually between 1 pm and 1.30 pm. I would have left for work as normal at about 8.40 am approx. I would be home from work between 5.30 and 6.00 pm depending on picking up Ashley. Kyle is still at school in Portadown and stays with my mother. When I returned home, as far as I can remember, Robert was in the house with Regan. I cooked dinner Robert, Ashley, Regan and myself. The rest of the evening would be a normal night, watching telly and

chatting and having a drink. The kids would generally be in bed for about 8.30 pm, but as usual they would be up & down and usually are sleeping after 9.30 pm or so. Robert would normally have a few beers and if he had a drink I would normally have a bottle of white wine. If I'm on my own, I wouldn't drink at all. We chatted, the TV was on in the background but I wasn't watching anything in particular. I would get on very well with Robert and would usually moan about work and other things. No-one called at the house, as I'm only in this house about 4 months and don't really have any callers yet. Neither Robert or I left the house. I don't recall getting any phone calls to the house, on this evening. I generally turn off my mobile when I come home from work as it is a firm's phone and I don't want any work related calls, so as far as I can remember, that evening would have been no different. Robert, as far as I am aware has a mobile phone, he has had many, and always loses them, but that night he didn't have his phone with him, as he would often forget to bring it with him. I vaguely remember him saying he wished he had brought it with him as he wanted to ring a mate, but the number was in his phone. I remember asking him if he wanted to stay that night, but he said he had arrangements made for the following day and as he didn't have his mate's number, he couldn't change the arrangement. We both stayed up to about between 1 am and 2.00 am. I can't remember exactly. Robert then went to go home and I saw him out and locked the door and went to bed. Robert usually uses my brother Albert's car, which is a small blue car, I think it is a fiesta, I don't know the registration. Sometimes Robert would use a car seat for Regan, other days he doesn't. I have two car seats, Charlene has two car seats as far as I am aware, maybe more as she child minds. I don't insist that Robert uses a car seat, I should but I don't. I would normally go to my mums on Saturdays, and I was definitely down at my mums that Saturday after the murder but I didn't see Robert that day. As a result of what happened, my whole family kept a low profile. As a result Robert didn't help me with Regan since, I wouldn't let him, in case something happened. I haven't seen Robert since that Thursday that he was with me. I have spoken to him by phone

briefly on a few occasions just to tell him to keep safe. I phone my mother to get his number and ring him, each time."

[68] On 25 May 2003 around lunchtime she was arrested and later interviewed by the same two officers in Strandtown Police Station. A portion of the statement in which she stated that her brother, the defendant, was with her from she returned home from work until he left to go home at 0100, was read over to her. She replied - " that's the statement I've made and that's the statement. I've nothing further else to say and that's it". The following exchange took place -

"Police - You're saying Robert was with you from you returned home from work until he left to go home at 1.00am and therefore in your opinion it's impossible for him to have been involved -

Lorraine Young - Yes.

Police - in any way whatsoever with the murder of Mr Johnston.

Lorraine Young - That's right.

Police - Because he was shot at twenty to eleven and he was with you to one o'clock.

Lorraine Young - That's right."

It was pointed out to her that the defendant's blood had been found at the scene in the field and she was asked how he could be in two places at the one time to which she replied "I stand by my statement". In a second interview later that evening she maintained her position saying " That is my statement and I've give a full account" and "That is my statement and I'll stand by it".

[69] In his closing submission on behalf of Lorraine Young Mr Irvine, who with Mr Harvey QC appeared on her behalf, accepted that her case stood or fell with the against her brother. If he was in the attack on Mr Johnston and was at the scene he could not have been with Lorraine Young at her home from the time she returned home from work until 0100 on 9 May 2003. Therefore if he is guilty she is guilty of doing an act which had a tendency to pervert the course of public justice by making a statement purporting to allege that the defendant Robert Young was not involved in the murder of James Johnston at Crawfordsburn on 8 May 2003. She is therefore guilty of the offence as charged in count 2 of the indictment.

[70] On 27 June 2003 the home of Susan Ferguson at 39, West Link, Hollywood, was searched. Her son Alan Ferguson resided there also. Constable Reilly saw a jar sitting on top of a fridge/freezer. He removed the contents among which was a magazine for a pistol. This was later seized by a Scenes of Crime Officer Jacqueline Boyd and given identification mark JB4 [

Exhibit 114]. This was a pistol magazine for a Bruni type blank firing replica pistol that had been modified to accommodate bulleted cartridges and is a component part of a firearm and therefore a firearm under the Firearms (NI) Order 1981. D/Constable Caddell spoke to Mrs Ferguson and asked her to account for it and she replied that she had "no knowledge". He also asked her to account for a wooden box which was found and she made the same reply. A number of LVF flags and other "paramilitary paraphernalia" were found in bedrooms not occupied by Susan Ferguson. Alan Ferguson was also present. He was arrested on 26 September 2003 and questioned about the balaclavas that were found. On 21 May 2004 the defendant Susan Ferguson was interviewed about the magazine found in her house the previous June. She stated that "one of the kids brought it in and she took it off them and just put it into the thing out of the way, the teapot". . She thought it was a day or two before the search, which was on 27 June 2003. It was not one of her children but a neighbour's child who brought it in from West Green. The child had it in her mouth. Susan Ferguson later she said she had set it down and then put it in the teapot. She told the police "I did not know what it was at the time". Later she said it was "like a cartridge thing" but she only knew what it was when she was told by a police officer. She had no experience of firearms. Then she said " I was actually going to wait and ask somebody did they know what it was." She said she might have asked her cousin who was in the Army. Later she said - " I knew it was a cartridge. Didn't know it was anything to do with a firearm. 'Cos I'd never seen a gun before". She agreed that she thought it was part of a gun and that it should not be lying about on the streets. She did not phone the police about it as she did not think it was anything important. Later she said "I knew it was a cartridge thing, it held something, but I didn't know". Later she indicated she knew it was empty.

[71] On 9 May 2003 Scenes of Crime Officer Lorna Baxter went to the scene at the Ballyrobert Road and there recovered various items which she delivered to the Forensic Science Laboratory. One of these items was marked PM5 [Exhibit 49]. This was the magazine containing 5 rounds of ammunition found at the entrance gate to number 60 Ballyrobert Road. At the Laboratory this items was swabbed to detect and recover DNA. First the base and edge of the magazine was swabbed. Then the bullets were removed from the housing and the base of each bullet was swabbed. The swabbing was carried out using cotton buds wetted in solution. Two were used for the bullets and two for the magazine and each after use was placed in separate containers. The four containers were then submitted to the DNA department for further analysis. For this purpose the 4 cotton buds were pulled together to give a combined DNA profile. This profile was of a female. Fifteen DNA characteristics out of a possible twenty were detected. The same fifteen characteristics also occurred in the reference sample from Susan Ferguson. The likelihood that an unrelated woman from the Northern Ireland population would show this combination of DNA characteristics is less than one in one hundred million. As the 4 cotton buds were combined the forensic scientist was unable to say

whether the DNA was detected on the magazine or on all of the bullets or on one of the bullets or on all of the items or only on some of them. DNA is obtained from cellular material deposited on the item. This could be by touching or talking over and DNA transferred from sweat, blood or saliva. Susan Ferguson was interviewed about this magazine. She said the only part of a firearm she had ever handled was JB4 [Exhibit 114]. She was shown PM5 [Exhibit 49] and denied that she had ever handled it and maintained that denial through several interviews. It was suggested by Mr Cinnamon QC who with Mr Gibson appeared on behalf of Susan Ferguson, that the DNA could have found its way onto Exhibit 49 either through being talked over or by accidentally touching when rummaging through clothing in a drawer. There is no evidence that this was how it came to be there. They are speculative possibilities. But they ignore the evidence that the DNA was obtained either from the base of the bullets or from the base of the magazine. The most probable explanation for DNA on those locations would be by direct contact. Therefore I conclude that Susan Ferguson was in direct contact with the base of the magazine or the base of the bullets, which together form Exhibit 49, sometime prior to 1040pm on 8 May 2003. Counts 3 and 4 allege possession of the pistol magazine Exhibit 49 with intent or in suspicious circumstances between 1 January 2003 and 9 May 2003. While I am satisfied she handled one or the other I cannot on the evidence adduced find beyond reasonable doubt that it was the magazine, though the probability must be that it was both. Susan Ferguson did not give evidence and the court can draw an inference from that if appropriate. However the issue between the prosecution and defence relating to count 3 and 4 is such that any inference drawn by the court would not promote one item over the other. It is difficult to envisage why someone would have contact with the base of a magazine or bullets except through the act of loading the bullets into the magazine. Her denials when questioned about JB4 Exhibit 114 that she had ever handled any part of a firearm before the date of her interview were therefore not credible. I am satisfied that she knew what a pistol magazine was on and prior to 27 June 2003 as she had handled either a magazine or bullets, but probably both prior to 9 May 2003. Two female neighbours of Susan Ferguson gave evidence. One said she was walking along the path towards Susan Ferguson's house when she heard child calling for Susan Ferguson to come. She saw a three year old child with something sticking out of her mouth. Susan Ferguson walked over to the child and removed it and then took the child to the bathroom. She did not know what the object was or when this happened though she thought it was June or around summer time. The other neighbour said she recalled an incident with a child in June 2003, though it could have been any time. She was in the kitchen of Susan Ferguson's house making tea. They heard the commotion outside and Susan Ferguson went outside and returned with a child and took her to the bathroom. This neighbour saw something thrown on top of the fridge. She did not know what it was.

[72] Susan Ferguson told the police she took the magazine from a child. There is some support for the account that she took something from a child one afternoon. It is evident she put the magazine out of the way and later put it in the jar. She did not contact the police. She had the magazine in her possession having the necessary knowledge, control and assent. She was aware of her son's sympathies and those of his friends. She probably thought it belonged to him or them. I have no doubt she knew what it was. In effect she told the detectives who interviewed that she knew what it was. She had previously handled the magazine PM5 Exhibit 49; she was able to tell the detectives that it was empty and knew to ask her cousin in the army about it. She put it in the jar rather than contact the police. The evidence adduced by the prosecution has established beyond reasonable doubt that she had it in her possession under such circumstances as to give rise to a reasonable suspicion that she did not have it in her possession for a lawful object. She is therefore guilty of Count 5 in the indictment but not guilty of Counts 3 or 4.

CERTIFIED A TRUE COPY OF
THE JUDGMENT DELIVERED
AT BELFAST CROWN COURT
ON 9 JUNE 2005