

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

MARK HADDOCK, DARREN STUART MOORE, ALEXANDER
THOMAS WOOD, JASON LOUGHLIN AND WILLIAM LOUGHLIN

WEATHERUP J

The charges.

[1] This trial commenced against the five defendants charged as follows:-

(1) On the first count against Alexander Thomas Wood, Jason Loughlin and William Loughlin of conspiracy to assault occasioning actual bodily harm contrary to Section 47 of the Offences Against The Persons Act 1861 and Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) 1983, that between 18 September and 21 December 2002 they conspired with each other to assault Trevor Gowdy thereby occasioning him actual bodily harm.

(2) On the second count against Mark Haddock and Darren Stuart Moore of attempted murder contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and common law, that on 20 December 2002 they attempted to murder Trevor Gowdy.

(3) On the third count against Mark Haddock and Darren Stuart Moore of false imprisonment contrary to common law, that on 20 December 2002 they assaulted Trevor Gowdy and unlawfully and injuriously imprisoned him and detained him against his will.

(4) On the fourth count against Mark Haddock and Darren Stuart Moore of arson contrary to Article 3(1) and (3) of the Criminal Damage (Northern Ireland) Order 1977, that on 20 December 2002 without lawful excuse they destroyed by fire a Vauxhall Cavalier vehicle belonging to Trevor Gowdy intending to destroy such property or being reckless as to whether such property would be destroyed.

[2] The proceedings against a sixth defendant, David (also known as Reggie) Hugh Millar who had been charged with Mark Haddock and Darren Stuart Moore on the first, second and third counts were stayed by Order of Mr Justice Hart prior to the commencement of the trial.

[3] In the course of the trial the proceedings against Alexander Thomas Wood, Jason Loughlin and William Loughlin resulted in a directed verdict of not guilty on the first count.

[4] In the course of the trial the proceedings against Darren Stuart Moore on the second, third and fourth counts were stayed.

[5] Accordingly the trial continued against Haddock alone on the second, third and fourth counts of attempted murder, false imprisonment and arson. I will not set out the various rulings made in the course of the trial as they are available in the recordings and transcript of the proceedings. It is not intended to set out every detail and argument that arose during the hearing, however I have been mindful of all those matters in preparing this judgment. When I state that I am satisfied of any matter I intend to convey that I am satisfied beyond reasonable doubt.

Outline of the prosecution and defence.

[6] The prosecution case against the defendants concerned events occurring on 19 and 20 December 2002. On 19 December 2002 Trevor Gowdy was in the Ballyboe Inn, Ballyclare, where he had verbal exchanges with two men in the bar. On leaving the bar a short time later Gowdy was confronted by a number of men whom the prosecution alleged to be the defendants Wood, Jason Loughlin and William Loughlin. Gowdy appears to have got the better of this confrontation and two of those who confronted him were knocked to the ground.

[7] It was the prosecution case against the defendants that as a result of the events in Ballyclare on 19 December 2002 Moore and Millar went to Gowdy's house in Ballyclare on 20 December 2002 where Gowdy was told that Haddock wanted to meet him at a club in Monkstown. Gowdy drove his own vehicle to Monkstown followed in another vehicle by Moore and Millar. On arrival outside the club in Monkstown Gowdy was attacked by Haddock,

Moore, Millar and a fourth man. Gowdy was seriously injured and left at the scene by the attackers who drove off in his vehicle. The vehicle was later found nearby having been burnt out.

[8] In interviews with the police the general position of each of the defendants was as follows. Wood, Jason Loughlin and William Loughlin admitted their presence at the Ballyboe Inn, Ballyclare, on 19 December 2002 but denied any conspiracy to assault Gowdy. Millar and Moore denied being present at Gowdy's house or at the club in Monkstown on 20 December 2002. Haddock admitted being present outside the club at Monkstown on 20 December 2002 but denied involvement in any attack on Gowdy and stated that he had assisted Gowdy who had been attacked by others. The case having been concluded against the other four defendants as outlined above the remaining issues concern Haddock.

The injuries sustained by Trevor Gowdy.

[9] Gowdy was admitted to the Accident and Emergency Department of the Royal Victoria Hospital Belfast on 20 December 2002. His self history was that he had been hit on the head with a hatchet. On examination of his abdomen there was a small wound at the left ilial fossa consistent with a blow with a sharp object. He had a compound fracture of the right leg. He had a wound to the right posterior shoulder consistent with a blow by a sharp object. He had an open skull fracture with multiple scalp wounds. His blood pressure was low and his pulse normal. No stab wound was noted in the right leg, the right knee, the right thigh or the left arm. Gowdy was admitted to the neurological unit on 20 December 2002 under the care of Mr Choudhari, Consultant Neurosurgeon. His condition was described as life-threatening. An operation was carried out that evening and he was detained until 2 January 2003. Gowdy was reviewed at outpatients on 3 April 2003 when he was noted to be doing well.

[10] Prior to the operation on 20 December 2002 Gowdy's Glasgow Coma Scale was assessed at 13/15 indicating that Gowdy was slightly confused. Post operation Mr Choudhari stated that he would have expected the GCS to be 13/15 and later on 21 December it was recorded as 14/15 and on 22 December 15/15. Mr Choudhari's assessment of the hospital notes indicated to him that there appeared to have been a major impact on the brain and that in three to four days Gowdy would have been able to answer simple questions but that it may have been more difficult for him to answer other questions correctly. He noted that after brain injury most patients hardly remember events and graphically he stated that many patients meeting Mr Choudhari again after some months will declare that they have not seen him before.

Trevor Gowdy's disclosures in hospital.

[11] On 20 December 2002 Gowdy was taken to the Royal Victoria Hospital, Belfast, and Detective Constables Taylor and Duff were sent to the hospital. Gowdy's partner, Joy, was present along with Gowdy's mother. At 6.30 pm Detective Constable Duff reported to the inquiry team that Gowdy had told Joy that four men had dragged him from his car and beaten him unconscious and that he did not recognise them. At 11.15 pm Detective Constable Taylor reported to the same effect. Neither Detective Constable Duff nor Detective Constable Taylor could remember obtaining this information or reporting the information and neither had a note book entry to that effect. However, Superintendent Blain had kept a record of the reports from Detective Constables Duff and Taylor. Superintendent Blain also had a record that police had spoken to Gowdy's mother who had reported a red car calling at the house on the day of the incident.

[12] At 6.30 pm and again at 7.00 pm on 20 December 2002 Superintendent Blain received information from Special Branch. As a result the police inquiry team received five names of those alleged to have been involved in the incident with Gowdy. One was believed to be the name of the occupier of premises at Mount Vernon Gardens, Belfast, where those involved were believed to have returned after the event. The other four were believed to have been involved in the assault of Gowdy and three of those names were Haddock, Moore and Millar. During the evening of 20 December 2002 a search was carried out at the premises at Mount Vernon Gardens and clearance was given for the arrest of the five suspects. Haddock and Moore were arrested on the afternoon of 21 December 2002. Haddock was interviewed in the evening of 21 December 2002 and made no response to questioning other than to declare that he was not injured, that the police information was completely wrong and that the police should make inquiries as to the time at which the events were alleged to have happened.

[13] On 21 December 2002 Detective Constable Taylor was directed back to the Royal Victoria Hospital where he spoke to Gowdy. Gowdy stated that he was unable to identify his assailants or identify those involved in the disturbance at the Ballyboe Inn. This was reported to the inquiry team and Superintendent Blain's record states that Gowdy reported that two males who were unknown, and it was noted that Gowdy was adamant that they were unknown, called at his house to require him to go to the club and at the club he was trailed from the car by at least five men who attacked him with hatchets and hammers and that he, Gowdy, wanted the matter investigated. Later Detective Constable Taylor received a briefing of a threat to Gowdy in the Royal Victoria Hospital and was requested to return to the hospital to

determine if Gowdy required a police guard. Gowdy did require a police guard and one was in place from the afternoon of 21 December 2002.

[14] On 23 December 2002 Detective Constables Taylor and Duff returned to the Royal Victoria Hospital and spoke to Gowdy. Gowdy gave an account that two men had called at his house in a red car. He drove to the club when four to six men pulled him from the car and attempted to take his car keys. He threw the car keys away and one of the men said "Put him in the boot, take him to the quarry." He was attacked with bars and hammers. Detective Constable Duff recorded that the two men had called at Gowdy's house in Ballyclare "mid morning". Gowdy stated that he did not know the men at the Ballyboe or those who called at his house or those who were present at the club.

[15] On 24 December 2002 Detective Constable Duff returned to see Gowdy at the Royal Victoria Hospital. He had been briefed to ascertain from Gowdy whether he required an alarm at the house he shared with his girlfriend. He was concerned for his security and stated that he would make a decision on an alarm after he had spoken to Joy. Gowdy stated to Detective Constable Duff that he may recognise three of the males who had assaulted him.

[16] On 27 December 2002 Detective Constable Duff returned to the Royal Victoria Hospital to see Gowdy. On this occasion Gowdy named his assailants. Detective Constable Duff recorded Gowdy's account as involving Darren Moore and Reggie Millar calling at his house on the morning of the assault and requiring Gowdy to go to the Monkstown social club. Gowdy phoned his friend Stevie who assured him that it would be alright to go to the social club. Gowdy drove to the social club where Millar, Moore and according to the detective's notebook entry "a man he now knows as Mark Haddock" were waiting. Gowdy stated that Haddock hit him with an iron bar, he was asked if he wanted a six pack or his hand cut off, he threw away his keys, he was hit by a hammer and put in the boot of the car, in the boot he telephoned his friend Billy Leeks to tell him what was happening and he heard someone in the car say "Take him to the quarry," Billy Leeks told him he needed to get out of the boot, one of the males in the car realised he was on the phone and the car was stopped, Gowdy tried to get out of the boot and was hit with a hatchet, he grabbed Haddock who shouted "He's got blood on me," he grabbed the hatchet and tried to take it from the person who had it. In a further version of this account prepared by Detective Constable Duff in a "message form" Detective Constable Duff recorded the identification of his assailants as including Millar, Moore "and another male Gowdy believes to be Mark Haddock". Gowdy's account to Detective Constable Duff ended when Gowdy broke down.

[17] On 2 January 2003 Detective Constables Taylor and Duff returned to the Royal Victoria Hospital and spoke to Gowdy. Gowdy repeated his

account of the events of 19 and 20 December 2002 and identified Haddock, Millar and Moore as his assailants.

Events on the morning of 20 December 2002.

[18] At 11.15am on 20 December 2002 Inspector Leckey and Sergeant Caskey had a meeting with Millar and Haddock at Mount Vernon, Belfast in connection with their application for a licence for club premises at Mount Vernon. Inspector Leckey's evidence was that he and Sergeant Caskey left Millar and Haddock at about 12.15pm and walked back to the police station which might have taken 15-30 minutes. His journal entry recorded the return to the station at 1.45pm but he regarded this as a mistake and the entry possibly should have been 12.45pm. Sergeant Caskey did not have a notebook entry about the meeting but he recalled arranging the meeting for 11.15am and believed that they were back at the police station at about 12.15pm. The issue about the time of the return of the two police officers to the police station was of significance in relation to an alibi furnished by Millar but was not of significance in relation to Haddock who admitted his presence at the club in Monkstown at the time Gowdy was assaulted.

The scene around the club in Monkstown.

[19] The ambulance crew received a call to Cloyne Crescent, Monkstown, about 2.15 pm on 20 December 2002. They found Gowdy at the scene and ascertained from him his name and that he lived in Ballyclare. The police arrived at the scene before the ambulance left with Gowdy. There was blood at the scene and a trail of blood leading away from the scene. As it was raining Inspector Connolly and Sergeant Craig obtained plastic beer containers from the club and placed them over the bloodspots. Inspector Connolly entered the club to determine if the CCTV had recorded any of the events that had occurred outside. No recording was available. Inner and outer cordons were established around the scene. Police were assigned to speak to those who were at the scene, those who lived in the houses around the scene and those who were present in the club, to determine if there were any witnesses to the events involving Gowdy. All the inquiries were negative. Police entered the club on the evening of 20 December 2002 to determine if there were indications of a struggle or blood stains in the club but this was negative.

[20] Collette Quinn a Senior Scientific Officer at the Forensic Science Agency attended the scene on the evening of 20 December 2002 and returned on 21 December 2002. She found two main areas of blood distribution. One area was outside the club where blood had been projected onto the gable wall around and above head height with drops of blood leading to a white arched

wall where there were blood smears and drips of blood and blood staining and tissue present on a pillar at the end of the wall. This was said to be characteristic of a head coming into contact with the side of the pillar. Groups of blood and contact smears on the ground then led from the arched wall to an area across the road where Gowdy had been found. In addition there were drops of blood leading from this area along an incline and a path up to the main road. Later DNA analysis of the blood indicated that that found outside the club and in the area where Gowdy had been found was that of Gowdy. The drops of blood leading along the incline and path to the main road were those of Haddock.

[21] Ten samples were analysed from the trail of blood that was attributed to Haddock. There were many other blood spots on that trail. Samples were taken from the start of the incline, the middle of the path and the area adjacent to the main road and all samples were attributable to Haddock. Ms Quinn could not of course dispute that the blood spots on the trail that were not analysed could conceivably have belonged to a person other than Haddock.

The arrest of Haddock.

[22] As noted above Haddock and others were arrested and interviewed by police on 21 December 2002 and all denied involvement in the attack on Gowdy. Haddock and the others were released. Gowdy made a written statement to police on 1 July 2003 implicating the defendants in the events of 19 and 20 December 2002. Haddock was arrested in Holyhead, Wales on 20 August 2003 under Section 41 of the Terrorism Act 2000 and was returned to Antrim Serious Crime Suite the following evening. On the morning of 22 August 2003 an application for extension of detention under the Terrorism Act 2000 was granted by Judge Smyth QC. The evidence of Detective Inspector Fowler on the extension application was noted by the solicitor acting for the police to be to the effect that the extension was required in order that police might put to Haddock the details of Gowdy's statement and the forensic evidence that Haddock's blood had been recovered from the scene, and further, to hold an identification parade.

[23] During interview Haddock agreed that he had been at the scene of the assault but stated that he had arrived while Gowdy was being assaulted by others and that he had intervened to assist Gowdy and had put his arms over him and was knocked to the ground. Haddock stated that the assailants then ran away and Haddock walked to the top of the street to make sure that the assailants had gone away and then he went back to his car. He explained that other persons had arrived at the scene and had phoned for an ambulance and that he then left as he did not want to get involved. In relation to Gowdy having identified Haddock and others as his assailants Haddock stated that

detectives had provided names to a friend of Gowdy and so disputed Gowdy's ability to name any assailants.

[24] Haddock was interviewed by police on 22 August 2003. While Haddock was in an interview room with his solicitor and police a confrontation identification took place when Gowdy was brought into the interview room and identified Haddock as an assailant on 20 December 2002.

[25] Haddock had refused to take part in an identification parade because his photograph had featured in local newspapers and he stated that this would contaminate any identification. The identification officer, Inspector Craig, had completed the standard form report of confrontation which noted Gowdy's response as "Yes that is him. I know it is definitely him." After the part dealing with the identification the form provides that where material has been released to the media the identification officer should ask the witness the following question: "Have you heard/seen any broadcast, published films or photographs relating to the offence for which you are here today?" The reply is recorded as "No".

[26] PACE Code D is the Code of Practice for the identification of persons by police officers. Paragraph 3.28 permits the showing of films and photographs to the public through the national or local media for the purposes of recognition in tracing suspects. Paragraph 3.29 provides that when a broadcast or publication is made a copy of the relevant material released to the media for the purposes of recognising or tracing the suspect, it shall be shown to the suspect or his solicitor before identification procedures are carried out, provided it is practicable and would not unreasonably delay the investigation. Further each witness involved in the procedure shall be asked after they have taken part whether they have seen any broadcast or published films or photographs relating to the offence or any description of the suspect. Annex D deals with confrontation by a witness and paragraph 2 repeats the provision as to viewing by the suspect or his solicitor of material released to the media. Paragraph 7 provides that after the procedure the witness shall be asked whether they have seen any broadcast or published films or photographs of the suspect. Prior to the confrontation, rather than after the confrontation, Inspector Craig asked Gowdy if he had seen any such material. Inspector Craig knew that photographs of Haddock had been published in the media but did not know if they had been released by the police. No material released to the police had been drawn to his attention. No material that had been published in the media was produced to Haddock or his solicitor.

[27] On 22 August 2003 Sergeant Boyce arrested Haddock for the attempted murder of Gowdy and arson and false imprisonment and then charged him with those offences.

The evidence of Trevor Gowdy.

[28] Gowdy gave evidence in two parts. Initially he gave evidence in person and was taken ill during cross examination. The trial continued for a time and then was adjourned for three months awaiting improvements in Gowdy's health. At the end of that period the cross examination of Gowdy resumed by video link.

[29] Gowdy gave evidence in relation to events at the Ballyboe Inn on 19 December 2002 which corresponded in general terms with the case opened by the prosecution. His evidence included the details that when outside the Ballyboe Inn one of the Loughlin brothers had thrown a punch at Gowdy and started a fight and that both Loughlin brothers and Wood had been involved in the assault. Further it was Gowdy's evidence that at the end of the confrontation he had gone home.

[30] Gowdy's evidence was that on 20 December 2002 he was at home at lunchtime when Moore and Millar arrived in a red Peugeot. He had known Millar for 22 or 23 years and had seen him a dozen times in the previous month. Moore told Gowdy that "Trebo Haddock" wanted to see him at the Monkstown club and eventually Gowdy agreed to go there in his red Vauxhall Cavalier. Moore and Millar followed and Gowdy noted that Moore was on his mobile phone a lot of the time during the journey. Gowdy estimated his arrival in the car park at the club at 1.00 pm to 1.30 pm and having locked his car and while walking to the front door of the club Haddock and another man came from behind a wall. Haddock accused Gowdy of hitting two of his men the previous night. It was Gowdy's evidence that Haddock then hit him with a baton or a bar on the forehead. He punched Haddock. He was aware of Moore and Millar coming from his right behind him. Millar hit him on the head with a hatchet. Haddock was shouting that if he had got Gowdy the previous night he would be hanging from a tree. Haddock took Gowdy's car keys and Gowdy was told to get in the boot of the car. The boot was closed and Gowdy, who had a mobile phone, tried to ring a friend but could not get through. Then he tried to phone another friend but there was no reception. He heard a voice inside the car say "We'll leave him where we left McCord." The men in the car became aware that Gowdy was using his mobile phone and then opened the boot to recover the phone. Gowdy fought his way out of the boot. Millar hit with a hatchet. Moore stabbed him with a knife on the right knee, the left torso and the right thigh. Gowdy tried to run away but his leg was broken. Haddock pulled him behind a wall and said "You can die there." Moore drove Gowdy's car away and Haddock walked away. The next thing Gowdy remembered was being in hospital. Gowdy stated that he had met Haddock

and Millar at a party in Ballyclare and had seen them in bars when he was a doorman in Ballyclare.

[31] Gowdy was cross-examined by Counsel for Haddock. It was established that Gowdy had gone to the Ballyboe Inn on 19 December 2002 to meet a Gary Leskees which name was pronounced by Gowdy as "Leeks" and spelt by Gowdy as "Leskees". Gowdy denied any knowledge of a person whose name was pronounced as Billy Leeks or of anyone having the nickname Billy Leeks or that he, Gowdy, had told the police that he had made a telephone call to a Billy Leeks during the events of 20 December 2002.

[32] Further Gowdy was cross-examined about events after the scuffle outside the Ballyboe Inn on 19 December 2002 when he had stated that he had gone home after the event. The video evidence from the CCTV at the Ballyboe Inn established that Gowdy had gone back into the Ballyboe Inn after the scuffle had ended and he was seen leaving the Ballyboe Inn after a short time while other people were leaving. Although it did not appear in the video, it was put to Gowdy that he and a number of other men from the Ballyboe Inn then chased those who had been involved in the earlier confrontation with Gowdy and assaulted them in a nearby car park. Gowdy stated that he had no memory of having returned to the Ballyboe Inn after the scuffle but accepted that he was shown on the CCTV as having done so. He denied that he had recruited other men in the Ballyboe Inn or that he or they had assaulted others in a nearby car park.

[33] Further Gowdy was cross-examined about different versions of the events of 20 December 2002 that he had given to police in the hospital where he was confined in the days after the event. Those accounts were said to be inconsistent with later written statements made by Gowdy to police and with his evidence to the Court. Gowdy stated that he had no recollection of accounts given by him to police in the hospital. In addition he was cross-examined about an account of his injuries given to Mr Swain, a surgeon in the hospital. This account involved Gowdy stating that his injuries had arisen because he had refused to surrender his car to a number of men who were involved in the hijacking of his car. Gowdy agreed that he had given this account to Mr Swain and stated that he had not given a true account because of fear and the absence of a police guard at the hospital. In the event Gowdy did have a police guard on the day that he gave his account to Mr Swain but stated in evidence that at the time he was unaware of the presence of a police guard.

[34] In cross-examination Gowdy stated that his memory had not been so good since the incident but he had some memory of the events of 20 December 2002 and he also had flashbacks. He had flashbacks of the faces of Moore and Haddock and of being in the boot of the car and of the noise of the hatchet hitting his head and of Moore on the phone while they were

driving to Monkstown. Before that cross-examination was completed Gowdy was taken ill and was unable to continue. No cross-examination was undertaken on behalf of the other defendants. Later, when Haddock was the only remaining defendant, Gowdy, was able to continue his evidence by video link and was further cross examined by Counsel for Haddock.

[35] At the conclusion of the three month adjournment period arising from Gowdy's ill health the prosecution applied for special measures under the Criminal Evidence (Northern Ireland) Order 1999 whereby Gowdy would resume his evidence by videolink. I acceded to that application.

[36] The cross-examination of Gowdy resumed. He was asked about the different versions he had given of the phone calls made from the boot of the car on 20 December 2002. In his earlier evidence he had stated that he had rung a friend and could not get through and he had then rung another friend and there was no reception as the call was breaking up. He named the first friend as John Allen, since deceased, and the second friend as Gary Leeks. He was asked about his account to DC Duff in the hospital where he referred to a call being made to Billy Leeks when Gowdy had said that they had had a conversation that involved Billy Leeks telling Gowdy that he must get out of the boot or he would be dead. Gowdy repeated that he did not know a Billy Leeks and that perhaps the police had got the name wrong. He accepted that he may have caught bits and pieces of conversation with Leeks although he had earlier said that there was no conversation. He was asked about the version of events recited in his statement to police of 1 July 2003 when he had referred to the first phone call to John Allen but had not referred to the second phone call. Gowdy denied that he had lied in the account he had given to DC Duff.

[37] Gowdy was cross-examined as to whether he had told the police he wanted no contact made with Leeks. While at first Gowdy professed no recollection of this he eventually accepted that it was something he must have said to police. While it was rejected by Gowdy that he had made this request because police contact with Leeks would have undermined Gowdy's version of events, Gowdy contended that any attempt to keep Leeks out of the account was to prevent him being intimidated by the UVF.

[38] Gowdy was questioned about his identification of Haddock as an assailant. Gowdy said that he met Haddock at a party in Ballyclare on one occasion and had later seen him in bars in Ballyclare on two occasions when Gowdy was working as a doorman. The Ballyclare party was said to have been in 1996 or 1997 in Alan Cowan's flat at Rashee Park in Ballyclare. Gowdy remembered those present as including Alan Cowan, Gary Cowan and Malcolm McKenzie and it was Malcolm who had invited Gowdy to the party. Haddock came in with Alan Cowan and was Gowdy was introduced to Haddock. Gowdy left the party 5 to 10 minutes later. Gowdy was not sure

if Millar was at that party although Gowdy had made a statement that he met Haddock and Millar at a party.

[39] Gowdy stated that he had been a doorman at the nightclub a Kilwaughter Hotel for one or two years before 1996 and that he had worked a total of about 10 nights. He had also worked as a doorman in The Grange Public House in Ballyclare over a period of 6 years and had worked perhaps 50 to 100 times. Further he had worked as a doorman in the Sportsmans Inn in Ballyclare for about one year where he worked a total of about 20 times. In addition he had been the head doorman at the Ballyboe Inn prior to November 2002. Gowdy had seen Millar at the Kilwaughter Hotel and had seen Haddock on two occasions either at the Sportsmans Inn or the Ballyboe Inn.

Evidence of Bad Character.

[40] The prosecution applied for the admission of evidence of bad character against Haddock under the Criminal Justice (Evidence)(Northern Ireland) Order 2004. The bad character evidence comprised Haddock's criminal record of convictions from 1987 that included four offences of violence. I found that the "gateway" was open under Article 6(1) (g) which provides that evidence of the defendant's bad character is admissible if the defendant has made an attack on another person's character. Haddock had made an attack on the character of Gowdy by alleging that Gowdy was giving false evidence. The prosecution sought to rely on the convictions in relation to Haddock's credibility only and not in relation to propensity to violence. The defence applied for the exclusion of the bad character evidence under Article 6(3) of the 2004 Order on the ground 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. I rejected that application and bad character evidence in respect of criminal convictions from 1994 was admitted, going to Haddock's credibility only.

Application for a direction

[41] At the conclusion of the prosecution case Counsel for Haddock applied for a direction of no case to answer. Counsel relied on the second limb of R v Galbraith 73 CAR 124 which indicates that a direction should be given where "there is some evidence but it is of a tenuous character, for example, because of inherent weaknesses or vagueness or because it is inconsistent with other evidence." The Galbraith approach provides that the case against a defendant should continue where -

“...the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty,” per Lord Lane CJ at page 127.

[42] Following the above approach and taking account of the totality of the evidence the application was dismissed.

Evidence for the Defence.

[43] Counsel for the Haddock informed the Court that Haddock did not intend to give evidence. Enquiry was made of Counsel in the terms of the Practice Direction issued by the Lord Chief Justice dated 11 April 1997 as follows –

“Have you advised your client that the stage has now been reached at which he may give evidence and if he chooses not to do so, having been sworn, without good cause refuses to answer any question, the court may draw such inferences as appear proper from his failure to do so?”

Counsel for Haddock replied that the accused had been so advised and did not intend to give evidence.

[44] The defence called Alan Cowan who had lived at an address in Ballyclare for 19 years and knew Gowdy. Cowan denied that he had lived in Rashee Park, or that he had been there at a party with Gowdy, or that he knew Haddock. On cross-examination of Cowan it emerged that his uncle, Wesley Cowan, lived in a flat in Rashee Park and that Alan Cowan had stayed in his flat on occasions, and further that Malcolm McKenzie was a son of Wesley Cowan and that Malcolm had lived in the flat for a time.

[45] The defence also called Colin McCalmont who had been bar manager at The Grange Bar Ballyclare. He knew Gowdy but denied that Gowdy had worked as a doorman at The Grange although he agreed that Gowdy had been a doorman at the Ballyboe Inn. While agreeing that men may be drafted in as doormen when others are unavailable McCalmont denied that Gowdy had ever been drafted in as a doorman. McCalmont named the regular doormen at The Grange Bar from 1996 as including Adrian Graham,

Crawford McLaughlin and Sam Christie. He confirmed that The Grange Bar accountants were Brian Glenn Accountants of Ballyclare and that they received a weekly record of all those employed and how much the staff were paid. By agreement a statement of Brian Glenn was admitted in evidence which stated that he had been managing the accounts of The Grange for over 20 years and that accountancy records were available back to September 2002. He confirmed that spreadsheets were produced to his firm showing cash expenditure on the door staff each week. The names Sam Christie, Adrian Graham, Crawford McLaughlin and Trevor Gowdy were not on the payroll and were not known to Brian Glenn as employees throughout the 20 years that he had been managing the accounts for The Grange.

[46] Rebuttal evidence was admitted from Sergeant Nicholson, a police officer serving in Ballyclare. He stated that the Friday and Saturday night policing policy in Ballyclare was to control the area of the Square in the centre of Ballyclare from a police presence outside the Grange Bar and that he had been a member of the constant police patrols in that area on those nights for 10 years. He stated that he knew Gowdy as a doorman at The Grange and at the Ballyboe and that he had seen him working at both locations during his police duties. Sergeant Nicholson knew other doormen at The Grange and the names included Sam Christie. He denied that what he had seen was Gowdy working as doorman at the Ballyboe rather than The Grange.

[47] Further the defence called Robert Kerr who was the head doorman at Kilwaughter House from February 1994, when the disco was introduced, to November 1997 when the disco closed. He stated that Gowdy had not been employed as a doorman. Kerr did not know Gowdy and while he agreed that extra doorman might be brought in if the regular doormen were unavailable he would have asked about them to make sure that they were reliable and would have known if Gowdy had been engaged.

Trevor Gowdy's credibility.

[48] It is contended on behalf of Haddock that Gowdy had limited credibility and was unworthy of belief.

:the account of events at the Ballyboe Inn.

[49] It was Gowdy's evidence that after the events he described outside the Ballyboe Inn he left the scene and went home. In cross-examination he denied that he had gone back into the bar and recruited a number of people including Gary Leeks, who had all left the bar together and chased the earlier attackers to a nearby carpark. The prosecution had shown video evidence of events at the Ballyboe Inn from CCTV. The first tape of 19 December 2002 showed the entrance to the Ballyboe Inn between 2326.57 hours and 2328.10

hours with Gowdy arriving and going into the Bar. The second tape of 20 December 2002 showed events between 0105.00 hours and 0106.01 hours and concerned the confrontation between Gowdy and the others outside the bar. The defence then showed video evidence from external and internal cameras at the Ballyboe Inn. The external camera on 20 December 2002 showed events outside the bar between 0106.40 hours and 0106.50 hours that involved Gowdy returning and going back into the bar. The internal camera for 20 December 2002 showed events inside the bar between 0106.49 hours and 0107.16 hours. This involved Gowdy inside the bar and then leaving with Gary Leeks and another man with a pool cue. The external camera was then shown between 0107.06 hours and 0107.24 hours and involved Gowdy and others leaving the bar and moving out of camera shot with the crowd outside watching where Gowdy had gone.

[50] Gowdy's evidence was that he had no recollection of the above events at the Ballyboe Inn, and he accepted the video evidence although he could not reasonably have done otherwise. I am unable to accept that Gowdy believed that he had gone home after the events that he had described and had not remembered that he had returned to the bar and then left with others. I conclude that his evidence was dishonest in this respect. He attempted to conceal the aggressive aspect of his involvement in the incident. It was a foolish dishonesty because he was aware that the video tapes were available although he was not aware that the defence had prepared an edited version of later events at the Ballyboe Inn. Accordingly I approach Gowdy's evidence with caution in the knowledge that he was dishonest in his evidence to the Court in respect of the events at the end of the evening at the Ballyboe Inn.

:the account given in the hospital.

[51] Gowdy gave different versions of events while he was in hospital. The first account to his girlfriend was reported to police and was to the effect that he had been dragged from his car and assaulted and that he did not recognise his assailants. Later Gowdy told police of incidents at the Ballyboe Inn, at his home and at the club but stated that he did not recognise any of those involved. It was Christmas Eve before Gowdy stated that he might recognise three of his assailants and not until the next visit of police on December 27 that Gowdy gave his account naming Haddock, Millar and Moore. Gowdy's evidence was that he had no recollection of giving these varied accounts to his girlfriend and to the police.

[52] It was in the course of Gowdy's stay in hospital on 22 December that he gave his account to Mr Swain concerning the hijacking of his car. Gowdy did remember giving this account to Mr Swain. Indeed he agreed that he had seen a written version of his account completed by Mr Swain in his medical records. His explanation for what he stated was a false account of events was that he was scared and had no police protection. Towards the end of his

resumed cross-examination he stated that he had given this version of events to Mr Swain because he scared of the UVF. I am satisfied that Gowdy was mistaken about the absence of police protection in the hospital when he spoke to Mr Swain on 22 December 2002.

[53] I am satisfied that Gowdy was afraid of further reprisals from persons he believed to be Loyalist paramilitaries or to have connections with Loyalist paramilitaries. On 21 December 2002 DC Taylor received a briefing of a threat to Gowdy in the hospital. DC Taylor went to the hospital to speak to Gowdy about a police guard and inevitably it was made known to Gowdy the police believed that there were risks to his safety. Gowdy asked for a police guard. On Christmas Eve DC Duff attended Gowdy at the hospital to ascertain if he required an alarm fitted at his home. Inevitably this conveyed to Gowdy that the police believed that there were reasons for concern about the safety of those at Gowdy's home. Gowdy agreed to talk to his girlfriend about the matter. I am satisfied that Gowdy believed that he was under threat.

[54] I accept Dr Choudhari's evidence about Gowdy's head injury involving some initial confusion and limited ability to answer questions and about longer term recall of the initial treatment period after the injury. Hospital notes indicated times at which Gowdy was alert and lucid. However I am satisfied that Gowdy experienced some initial confusion in the days after the assault. Further I am satisfied that Gowdy believed he was under threat and in the light of the information conveyed by the police he had good grounds for such belief. I am satisfied that Gowdy did not remember his conversations with his girlfriend and the police in the days immediately after the assault. He did remember the conversation with Mr Swain on 22 December, which recollection may well have been triggered by his access to his medical records. The fears that operated on Gowdy's mind in his conversation with Mr Swain would also have operated during his early conversations with the police in hospital. I am satisfied that in those early conversations Gowdy refrained from naming assailants by reason of concerns for the personal safety of himself and others.

:the identification of Haddock.

[55] Gowdy's identification of Haddock was based on recognition. He claimed to have met Haddock at a party at Alan Cowan's flat in Ballyclare and to have seen him later on two occasions in bars in Ballyclare. Alan Cowan denied that any meeting of Gowdy and Haddock had taken place. Cowan failed to disclose, until it was drawn out in cross examination, the connections he had with a flat to which I am satisfied Gowdy was referring when he described where the party had been held. I am satisfied that Cowan was prepared to present a misleading version of events. I reject his denials of

Gowdy and Haddock being at the flat in Ballyclare. I accept Gowdy's evidence of having met Haddock at the Ballyclare flat.

[56] Colin McCalmont, the bar manager at the Grange, denied that Gowdy had been a doorman at the Grange. He named some of the doormen. It was his evidence that the names of doormen were given to the accountant. The agreed evidence of the accountant in relation to the doormen did not include the name of Gowdy, nor did it include the names given by McCalmont. Thus the evidence of McCalmont's as to the names of those working as doormen and their names being in the accountant's records was not reliable. Further Sgt Nicholson gave evidence confirming the presence of Gowdy as a doorman at the Grange and I accept his evidence. I accept Gowdy's evidence that he worked as a doorman at the Grange.

[57] Robert Kerr, the head doorman at Kilwaughter House, denied that Gowdy was a doorman at those premises. I accept the honesty of Kerr's evidence that Gowdy had not worked there. However Gowdy's work was said to have involved some 10 nights over a period of a year or two and some 10 years previously. Kerr could not be expected to remember every doorman. While this employment was relevant to Gowdy's knowledge of Miller rather than Haddock, it was relevant to Gowdy's credibility. I accept Gowdy's evidence that he worked as a doorman at Kilwaughter House.

[58] Gowdy identified Haddock in a confrontation at the police station. Identifying material had been published in the media. It was not established that the material had been released by the police but it is assumed that that was the case. I am satisfied that Gowdy had not seen that material and that the existence of the published material did not affect the recognition identification of Haddock carried out by Gowdy. I am satisfied that Gowdy had met Haddock and had seen him on other occasions prior to 20 December 2002.

[59] The defence questioned the contacts between the police and Gowdy. The contention was that police provided the names of the accused to Gowdy and that he had no knowledge of the accused. The evidence of hospital contacts has been referred to above. Of particular note is the manner in which Gowdy is reported as having involved Haddock on 27 December when he first gave to police the description of events that formed the basis of his evidence. While Gowdy had no recollection of this conversation it was recorded in notes made by DC Duff. The evidence of DC Duff was that he was tasked to visit Gowdy at hospital on the morning of 27 December for a welfare visit and not the purposes of obtaining a further account of events. However Gowdy gave an account in which DC Duff asked questions as the account proceeded until Gowdy became upset and was unable to continue. DC Duff made notes after his conversation with Gowdy and then completed a further account of the conversation in a message form. Gowdy identified

Moore and Millar as having called at his house and stated that he had gone to school with Moore. When he got to the club the note states that a man "he now knows" as Haddock was waiting and that Haddock hit him with an iron bar. On the other hand the message form states that when he got to the club another male "Gowdy believes to be Mark Haddock" was waiting and further that he "believes" he was hit by Haddock with an iron bar. DC Duff's evidence was that Gowdy had used the expression "he now knows" the man as Haddock. In his police statement DC Duff included the phrase that Gowdy "believes" the man to be Haddock, being the version that appears on the message form.

[60] The defence questioned the expression "he now knows" as implying that Haddock had been identified to Gowdy or that the name has been mentioned to Gowdy so that he then purported to make an identification of someone that he did not actually recognise. DC Duff knew of the arrest of Haddock and the others at the time of his communications with Gowdy but denied that he would have given the names to Gowdy unless those arrested had been charged. Similarly DC Taylor who visited Gowdy in hospital after Haddock and the others had been arrested denied providing the names to Gowdy. Both officers agreed that family members, namely Gowdy's mother and girlfriend who were present at the hospital, would have been kept informed of developments in the investigation,. I accept that DC Duff and DC Taylor did not give the names of the arrested persons to the family but they were not aware of what information may have been given to the family members by other police officers. It cannot be excluded as a possibility that other police officers mentioned the name of Haddock to the family as being one of those arrested for the assault and that Gowdy's girlfriend or mother mentioned Haddock's name while visiting Gowdy in hospital. In so stating I do not import any improper motive on the part of any police officer if the names were mentioned as part of the process of keeping the family informed of the progress of the investigation.

[61] DC Duff has not recorded his conversation with Gowdy in a consistent manner and he otherwise had a limited recollection of his contacts with Gowdy, relying largely on his notebook and having no recollection at all of some events in which he was involved, such as the reports that reached DCI Blain, that are not included in his notebook but are recorded elsewhere. Gowdy stated that to him knowing and believing were the same thing and he may have used both words in referring to Haddock. I find that DC Duff did not have any recollection of the details of his conversations with Gowdy and relied on his notes. I do not find that Gowdy used the words that he "now knows" the man to be Haddock but it is possible that he did so. If he did so it may have been presented to DC Duff in that manner as a reflection of his earlier denials that he knew his assailants. In any event I am satisfied that Gowdy was purporting to identify the person he knew to be Haddock and not relying on a name supplied by another.

[62] As to contacts with the interviewing officers, DC Burns had had contacts with Gowdy before and after the interviews of Haddock on 22 August 2003. In the previous week he had met Gowdy in a restaurant in Belfast with DI Templeton and DC McDonald. Gowdy was then in the witness protection scheme and DC McDonald was looking after him full time. DC Burns was seconded to the inquiry in July 2003 and spoke to Gowdy about the incident. The second meeting was in a hotel some days after the interview of Haddock and again Gowdy was with DC McDonald and was leaving for the airport when they met. DC Burns later placed the first meeting with Gowdy at 17 July 2003. The other interviewing officer was DC Bond who had met Gowdy briefly in 2003 or 2004 while Gowdy was in protective custody and again in 2005 at Musgrave Street Police Station where they spoke in passing. DC McDonald was involved in the inquiry from June to October 2003. He met Gowdy in June 2003 and then on 1 July 2003 when Gowdy made his police statement. There were telephone contacts between that date and 17 July 2003 mainly in relation to administrative matters. Then Gowdy made a second statement to DC McDonald on 17 July 2003 outlining events by reference to photographs and plans. DC McDonald then stayed with Gowdy in a hotel for a period until he was transferred to the witness protection unit and moved to England. DC McDonald then visited Gowdy on one occasion when he was in England to keep him up to date with the investigation. I am satisfied that there was no impropriety in the contacts between police and Gowdy involving police officers coaching Gowdy to identify persons as having been involved in the attack and that Gowdy's identification was based on his own version of events. The issue remains as to whether that identification was accurate and reliable

: attempts to secure the non involvement of other parties.

[63] On his initial contacts with his girlfriend in hospital Gowdy gave a different account of events to that which he later gave to police. I accept that Gowdy had no recollection of his initial description of events to his girlfriend. However I am satisfied that because of what he believed to be the background of those involved he did not want her to know the nature of what had occurred.

[64] I am satisfied that although Gowdy overcame his initial reluctance to name his assailants to the police he continued to take steps to avoid the involvement of other persons. I am satisfied as stated above that Gowdy could not remember all of the accounts he gave while he was in hospital. Further I am satisfied as stated above that while in hospital Gowdy was concerned about the personal safety of himself and others so that initially he did not reveal what he knew about the incident and when assured on personal safety grounds he gave largely the account that was later provided in his police statement and evidence. In addition I am satisfied that even

when he did give his account on 27 December 2002 he sought to avoid involving others on personal safety grounds and this continued in his police statements and his evidence.

[65] Gowdy used his mobile phone while he was locked in the boot of his car. On 27 December 2002 he reported that he had spoken to Billy Leeks by mobile phone. In a statement to police of 1 July 2003 he stated that he had tried to ring a friend at work but could not get through. In his evidence he repeated that account and added that he had then phoned another friend but there had been no reception. In cross-examination he stated that the first friend was a John Allen who was now deceased and the second friend was Gary Leeks. Gowdy denied in evidence that he had phoned Billy Leeks and maintained throughout that he did not know anyone of that name. Gowdy's account indicates that the men in the car became aware that he was using his mobile phone and this could only have been because they could hear Gowdy speaking. This suggests that he did at least get through on a call and tried to make himself heard by the person he was calling, although it may be the case that he was unable to have a conversation because of the reception. While Gowdy denied knowledge of a person known as Billy Leeks and while Counsel for the prosecution accepted that there was a person known by that name to the police, the prosecution agreed that it was not the person's true name.

[66] The defence contended in relation to Billy Leeks that Gowdy attempted to conceal his involvement in order to prevent any contact with Billy Leeks which, the defence contended, would have permitted the police or the defence to expose Gowdy's description of events as untrue. The prosecution had sent a letter to the defence indicating that Gowdy had not wanted any contact with Billy Leeks. Gowdy stated that he had no recollection of any such request but accepted that if the letter was written in those terms the request must have been made. The defence indicated that they wished to speak to the person described as Billy Leeks. The prosecution prepared a letter to Billy Leeks inviting him to contact the defence solicitor. The police were unable to trace Billy Leeks although Inspector Boyce gave evidence that he knew the identity of the person described as Billy Leeks. Towards the end of the trial Inspector Boyce was recalled and his evidence was that he had traced the person described as Billy Leeks and had delivered to him the letter from the Public Prosecution Service and had spoken to that person about the trial of Haddock. However the person described as Billy Leeks informed Inspector Boyce that he did not wish to be involved.

[67] I am satisfied that Gowdy knew the identity of the person being referred to even though he did not know him by the name Billy Leeks. That person may have been one of those to whom Gowdy made a phone call from the boot of the car. I am satisfied that the accounts of phone contacts from the boot of the car are an example of Gowdy not wishing to involve others.

[68] Similarly with Gowdy's friend Stevie. Gowdy made a telephone call to Stevie from his home on the morning of 20 December 2002. Gowdy did not refer to this contact in his statement to police or in his direct evidence, but accepted in cross-examination that he had made this contact.

[69] I am satisfied that the reluctance to involve others arose from a wish to protect those persons. In some instances Gowdy did accept the involvement of others when their role was put to him although it seemed clear that he would not have wished them to be identified. In the case of Billy Leeks I have rejected his denials of knowledge of the person concerned. In the above instances I am satisfied that Gowdy's reasons for his actions were what he considered to be the protection of the identities of those concerned in the interests of their personal safety. While that may be regarded as less culpable than his dishonesty in relation to events at the Ballyboe Inn it nevertheless reinforces the need for caution in relation to Gowdy's evidence.

:flashbacks.

[70] Counsel for Haddock disputed the nature of Gowdy's purported recollection of events before and during the assault. Gowdy stated that he had flashbacks about the events in December 2002. He remembered some parts of the incidents and other parts he could not remember and there were flashbacks. For example he stated that he could remember Moore being at his house and Haddock talking to him and he could not remember driving from his home to the club. He got flashbacks of Moore at his house; of Haddock's face; of being in the boot of the car; of the noise of the hatchet hitting his head and of Moore on the phone as seen through his rear view mirror. The flashbacks of the faces of Moore and Haddock he attributed to their having been only a few feet away from him when they spoke to him; the flashbacks of being in the boot of the car he attributed to it having been dark; the flashbacks of the noise of the hatchet hitting his head he described as an immediate reaction to hearing a sudden noise. Gowdy accepted that it was difficult to distinguish between actual memory and what he was describing as a flashback. No other evidence was given on the nature of this phenomenon. I understand from Gowdy's evidence that what he described represented vivid visual or audio responses. I am satisfied that what Gowdy described as flashbacks associated with the events do not detract from his description of the events, although the issue remains as to whether that description is accurate and reliable.

:inconsistencies.

[71] The accounts given by Gowdy to police were not consistent in their content. For example on 21 December he described being trailed out of his car on arrival at the club and at least five men were involved and hammers were

used. On 23 December he described being set upon at the club by four to six men and that he had thrown away his car keys and again that hammers were involved. On 22 December Gowdy gave his hijacking account to Mr Swain. Although it is Gowdy's evidence that he did not remember these conversations with the police I am satisfied as stated above that at times he was not identifying his assailants or seeking to give a full account of events because of concerns about reprisals. In addition at this early stage he would have been experiencing some confusion as a result of his injuries. Further there was inconsistency between his account of his injuries and those found on examination. Given the fact of a serious attack, whatever the circumstances, I find it not in the least surprising that the description of wounds inflicted is inaccurate.

[72] Counsel for Haddock contrasted Gowdy's police statement with other accounts given by Gowdy of the events of 19 and 20 December 2002. Included in the account of events of 20 December 2002 there was a reference to Moore and Millar arriving at Gowdy's house and he then going to the Monkstown Club in his own motor vehicle followed by Moore and Millar; outside the Monkstown club were Haddock and another man and Haddock accused Gowdy of hitting two of his men and struck him on the forehead with a baton or crowbar and Millar struck him on the head with a hatchet; Gowdy kept his hands up to protect himself against Haddock striking him with the baton; Haddock took Gowdy's car keys and Moore reversed the car over and opened the boot; Gowdy was put in the boot and he tried to ring a friend on his mobile phone but could not get through; they reopened the boot to get the mobile phone Millar hit Gowdy on the head with the hatchet and Haddock hit him on the head with the baton and Millar struck his right leg with the hatchet and Moore stabbed him on the right arm, right leg, hip and back with a knife and the fourth man repeatedly punched and kicked him; when Gowdy got away from the group he collapsed and Haddock dragged him behind a wall; Gowdy saw Moore drive off in his car; Gowdy had known Moore from school days and had met Millar and Haddock at a party in Ballyclare 6 or 7 years before and had met them over the years during his time as a doorman at various bars. The details of Gowdy's police statement are not identical to his other accounts when he gave this version of events. I am satisfied that there are differences of detail that might arise from the descriptions of such events at different times that do not invalidate the essential account. I am satisfied that the inconsistencies do not undermine Gowdy's evidence as to the events at his house and the club.

Conclusion.

[73] Having assessed Gowdy's evidence with caution in the light of his shortcomings and all of the other evidence, I am satisfied with Gowdy's identification of Haddock and with his account in evidence of the involvement

of Haddock in the events at the Cloyne Club on 20 December 2002. On the basis of his account I am satisfied that the events at Gowdy's house and at the club were part of a prearranged plan that involved two men going to Gowdy's house in order to secure his attendance at the club where Haddock and another were waiting. The four men then attacked Gowdy and attempted to remove him from the scene in his motor vehicle. I am satisfied with Gowdy's account of the verbal statements of the men at his house and at the club. On the basis of those statements I am satisfied that the plan had been prepared in response to Gowdy's involvement in the events at the Ballyboe Inn the previous evening and that Haddock was in command of the three other men. I am satisfied that Haddock was present with and was in command of the other three persons acting in concert and together they subjected Gowdy to a severe beating, that Haddock struck Gowdy with an implement, that the four men left the scene and that Gowdy's car was removed from the scene and destroyed.

[74] Haddock's case to police was that he was present at the scene of the assault but that he was assisting Gowdy and that he was not a party to the attack on Gowdy. I am satisfied with Gowdy's description of events involving Haddock confronting him about the events of the previous evening and striking him with an implement outside the club and with his further evidence as to events at the club. I am satisfied that Haddock was not assisting Gowdy and that he was a party to the attack on Gowdy.

[75] Evidence of bad character in the form of criminal convictions from 1994 was admitted against the defendant under Article 6(1)(g) of the Criminal Justice (Evidence) (NI) Order 2004. This evidence was admitted on the issue of the defendant's credibility only. I attach no weight to the defendant's previous convictions in rejecting the defendant's account to police that he was assisting Gowdy and not participating in the attack.

[76] Further Mr Cinamond QC for Haddock confirmed that Haddock had been advised that if he chose not to give evidence the court may draw such inferences as appear proper from his failure to do so. Haddock did not give evidence but I have drawn no adverse inferences from that failure in rejecting Haddock's contention to police that he was assisting Gowdy and not participating in the attack.

[77] Haddock is charged with attempted murder. Article 3(1) of the Criminal Attempts and Conspiracy (NI) Order 1983 provides that a person is guilty of attempting to commit an offence if with the requisite intent he "does an act which is more than merely preparatory to the commission of the offence." On a charge of attempted murder the requisite intent is an intention to kill. Accordingly the offence of attempted murder requires the coincidence of the intent to kill with such acts as are more than merely preparatory to the actual offence.

[78] I am satisfied that the acts committed against Gowdy at the club involved the disabling of Gowdy at that location for the purpose of removing him from the scene in the motor vehicle. Once removed from the scene to whatever destination had been agreed, further injury and possibly death may have been intended. That would have amounted to kidnapping for the purpose of later execution, and if that was the intention it was thwarted by the actions of Gowdy in resisting his removal from the club so effectively. However the details of the plan after removal from the scene are a matter of speculation. It is a question of fact and degree as to whether the actions of a defendant have gone beyond the stage of preparation and become an attempt. I find that the actions outside the Cloyne Club were merely preparatory to the commission of any offence that might have been planned to take place elsewhere.

[79] The prosecution contended that Haddock had an intention to kill Gowdy. The intention was to kill Gowdy at another location, or alternatively, when Gowdy thwarted the efforts to remove him from outside the club, an intention to kill Gowdy at the scene of the initial attack. I cannot be satisfied on the evidence available that there was an intention to kill Gowdy at another location, and in any event I have rejected the contention that the acts of Haddock at the club went beyond preparatory acts so as to amount to an attempt. On the alternative contention that there was an intention to kill Gowdy at the club, I accept Gowdy's evidence that Haddock stated that he was leaving Gowdy to die at the scene. However I have not been satisfied that there was an intention to kill Gowdy in the attack on him outside the club. The evidence indicates the intention to remove Gowdy from the club and that part of the plan failed through Gowdy's resistance. I cannot be satisfied on the evidence available that the requisite intent was then formed at the club or that there was any coincidence of requisite intent and acts amounting to an attempt. I find Haddock not guilty of attempted murder.

[80] On a charge of attempted murder a defendant may be convicted of causing grievous bodily harm with intent to do so. Grievous bodily harm means really serious harm and it is beyond question that the injuries sustained by Gowdy constituted really serious harm. I am satisfied that Haddock caused that harm in that he and the other three persons acted in concert to attack Gowdy. Further I am satisfied that Haddock intended that Gowdy should sustain such harm.

[81] Further Haddock is charged with false imprisonment. False imprisonment consists in the unlawful and intentional or reckless restraint of a victim's freedom of movement from a particular place - R v Rahman (1985) 81 Cr App R 349. I am satisfied that when Gowdy was disabled outside the club Haddock and the three others acted in concert to place Gowdy in the boot of his motor vehicle and he was restrained there without his consent. I

am satisfied that these actions involved the unlawful and intentional restraint of Gowdy's movement.

[82] Further Haddock is charged with arson, namely the burning of Gowdy's Vauxhall Cavalier. Under article 3(1) of the Criminal Damage (NI) Order 1977 a person who without lawful excuse destroys or damages any property belonging to another, intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged, shall be guilty of an offence. Under article 3(3) of the 1977 Order such an offence committed by destroying or damaging property by fire shall be charged as arson. I am satisfied that Gowdy's Vauxhall Cavalier was driven away from the scene by one of the assailants other than Haddock. I am not satisfied that Haddock was in Gowdy's car when it was finally driven away. I am satisfied that Haddock was party to the removal of Gowdy's motor vehicle in that he and the three other assailants acted in concert in having it removed by one or more of the four persons present and intentionally destroying any forensic link to their earlier presence in the vehicle. I am satisfied that these actions involved the intentional destruction by fire, without lawful excuse, of the property of Gowdy.

[83] On the second count of attempted murder I find the defendant Mark Haddock not guilty but guilty of causing grievous bodily harm with intent. On the third count of false imprisonment I find the defendant Mark Haddock guilty. On the fourth count of arson I find the defendant Mark Haddock guilty.