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

Delivered:	**27/03/2015**

IN THE CROWN COURT OF NORTHERN IRELAND SITTING AT BELFAST

THE QUEEN

v

KIERAN EDWARD McLAUGHLIN

HORNER J

A. Index

B. Introduction

[1] This case concerns the savage murder of Barry McCrory ("the Deceased") who was shot 4 times at close range with a shotgun in the bedroom of Flat 7 of 4 Shipquay Street, Londonderry on 10 October 2013 at or about 10.00am. It also involves consideration of the subsequent arrest of Kieran Edward McLaughlin ("the Defendant") on 16 October 2013 and the claim, inter alia, that he was in possession of firearms and ammunition with intent to endanger life and was also in possession of an imitation firearm with intent to cause fear or violence.

[2] This trial took place before a judge alone. Some parts of the evidence were agreed and other parts of the evidence were submitted by the Crown without formal

proof but without objection from the defence. Both legal teams are to be congratulated for the way in which they co-operated so as to ensure that the trial ran as efficiently, effectively and fairly as possible. The court should also record with gratitude the submissions it received both orally and in writing from counsel for both parties on a number of difficult factual and legal issues.

[3] On count 1 on the Bill of Indictment the Defendant is charged that on the 10th day of October 2013 contrary to common law he murdered the Deceased. He is also charged that between the 9th day of October 2013 and the 17th day of October 2013 he had in his possession firearms and ammunition, namely a "sawn-off", 12 bore double-barrelled, breech loading, side by side shotgun, marked "F Williams London and Birmingham", a Mauser model 1910, 6.35 x 16mm (SR .25 "ACP") calibre self-loading pistol and magazine, seven 12 bore shotgun cartridges marked "GB, Super Express" and one 12 bore shotgun cartridge marked "Eley", with intent to endanger life or cause serious damage to property or to enable another person to endanger life or cause serious damage to property, contrary to Article 58(1) of the Firearms (Northern Ireland) Order 2004.

[4] On 25 February 2015 he pleaded guilty to count 3, that is of having in his possession the above firearms and ammunition in suspicious circumstances.

[5] He has also been charged under count 4 with having in his possession an imitation firearm, namely a Denix imitation "Walther P 38" pistol with intent by that means to cause another person to believe that unlawful violence will be used against him or her contrary to Article 58(2) of the Firearms (NI) Order 2004. Finally, and in the alternative, he is charged with having without lawful or reasonable excuse in a public place the /said imitation firearm contrary to Article 61(1)(d) of the 2004 Order.

[6] It is important that sitting as a judge alone, I remind myself of a number of principles that I must apply when considering whether the Crown has proved its case against the Defendant in respect of each of the counts with which the Defendant has been charged. These are:

(i) The burden of proof lies on the Crown to establish the Defendant's guilt.

(ii) The prosecution must prove the Defendant is guilty beyond reasonable doubt. Proof beyond reasonable doubt is proof that leaves the court firmly convinced of the Defendant's guilt. This matter is comprehensively set out at Section 2.1 of the Bench Book.

(iii) The court must decide the case on the evidence which has been proved before this court.

(iv) The prosecution rely on circumstantial evidence rather than direct evidence to prove their case. The prosecution has submitted that when all the evidence is taken into account there is an overwhelming case against the Defendant. In R v Exall [1866] 4 F & F 922 at 929 Pollock CB said:

> "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 breaks, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the cord may 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 may raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

(v) It is important however to look at circumstantial evidence with the greatest of care. First of all, such evidence can be fabricated. Secondly, it is important to see whether or not there exists one or more circumstances which are not merely neutral in character but which are inconsistent with any other conclusion than that the Defendant is guilty. This is particularly important because of the tendency of the human mind to look for (and often slightly distort) facts in order to establish a proposition, whereas a single circumstance which is inconsistent with the Defendant's guilt is more important than all the others because it destroys the conclusion of guilt on the part of the Defendant. In R v McGreevy [1972] NI 125 Lowry LCJ said:

> "Therefore we consider that a judge ought to point out the circumstances which tend to establish innocence and more especially circumstances which are inconsistent with guilt …"

In R v Hodge [1838] (2) H Lew CC 227 Alderson B said that the jury must be satisfied -

> "Not only that those circumstances were consistent with his having committed the act but that 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."

(vi) There was limited expert evidence called in this case. While of course a witness called as an expert is entitled to express an opinion in respect of his findings and/or the matters which are put to him, the tribunal of fact is entitled to and would no doubt wish to have regard to that evidence and to the opinion expressed by the expert when coming to its conclusions about that aspect of the case. However there is no obligation on the tribunal of fact to accept the evidence of the expert and nor does it have to act upon it. Indeed, this court does not have to accept even the unchallenged evidence of an expert. In any event, the expert evidence in this case relates only to a small part of the case and the verdict has to be reached after the totality of the evidence is considered.

[7] In this case a number of criticisms were levelled against the police on the basis of inquiries which could have been made but which were not. It is, of course, always easy with hindsight to suggest ways in which an investigation could have been improved. It must have been obvious to everyone in court that the PSNI took immense trouble in carrying out their investigation of the wrongdoing in this particular case. This is not an abuse of process application. The obligation remains throughout on the prosecution to adduce sufficient evidence to prove its case against the Defendant on each of the counts to the requisite standard.

C. <u>The events of 10 October 2013</u>

[8] Ms Elizabeth Timoney had been a tenant at Flat 7, 4 Shipquay Street, Londonderry which was on the third floor. It was one of 9 flats. She had 5 children but she lived on her own. At the beginning of September 2013 she met the Deceased. They formed a relationship and the Deceased would stay overnight from time to time.

[9] On 9 October 2013 Elizabeth Timoney and the Deceased had gone out and returned home just after midnight. They went to bed. At around 10.00am Elizabeth Timoney was awakened by the buzzer of the intercom which is connected to the front door. She thought it might be Breda, one of her children. She got out of bed to release the lock on the front door. She did not access the intercom before doing so. She told the court that it crossed her mind that it might also be the postman with a package as she was not expecting anyone.

[10] Elizabeth Timoney then heard a knock on the door. She opened it to be confronted by a man whose face was partially obscured by what she thought were big goggles and who was wearing dark clothing. He was wearing a "Benny hat" which was pulled down. He backed her into the living-room. He said "Don't speak". She stayed silent. When he reached the living-room from the hall, he ordered her to get down on the floor. She was to lie there prostrate, not moving for the next 10 minutes. She had seen that the man was not tall. The goggles which he was wearing were scratched and well worn. He carried a rucksack on his back. She

did not recognise him. He had a distinctive voice which she described as very mature, big and deep. His accent was County Derry.

[11] She lay on the rug in front of the sofa. She heard the sound of metal clicking. She then heard the intruder say "Where's McCrory?" She told him he was sleeping. She remained prostrate with her face down. She then heard a shout of "Scumbag drug dealer". This was followed by a boom. Then another in quick succession. There was a few seconds delay and then a third boom followed by a fourth boom. She remained lying on the floor for another minute or two. She then rang 999. She was in a state of abject fear.

> "Please help me please help me. A man, a masked man came into my flat there and made me lie on the floor and he went down to the bedroom and I heard shots. I think he may have shot my boyfriend. I am too afraid to go down and look."

[12] She saw her neighbour, Paul Hutton, who had heard the shots. He had come to look and see what the commotion was about. He had also phoned 999. She said to him that her boyfriend had been shot. She was hysterical. She asked him to look into the bedroom. He did so and came out and told her, "there is nothing can be done." The police arrived on the scene very quickly. Sergeant George entered the bedroom alone. There was blood everywhere. The room was in disarray. He saw a body lying on the bed face down. There were no signs of life. He recognised the dead man as Barry McCrory.

[13] A police cordon was placed around the premises. Meanwhile, paramedics and an ambulance had arrived. The ambulance crew were met by Sergeant George and taken into the bedroom. Gerard Horrigan, Emergency Medical Technician noted the Deceased lying face down on the bed. On checking, he found no signs of life. He noted a gaping hole in the back of his head and gunshot wounds to his back.

[14] Crime scene investigators arrived at the scene and they carried out various investigations and took various samples. They checked, inter alia, for fingerprints, DNA, clothing and blood, both in the bedroom, in the flat and on the bannisters of the stairs, because there was a residue of blood there. Photographs were taken of the scene. These revealed the full horror of what had taken place. The Deceased had been shot 4 times at close range. The bedroom was a scene of carnage.

[15] A post-mortem examination was carried out by Dr Bentley, Deputy State Pathologist for Northern Ireland on 11 October 2013. This revealed that prior to his murder the Deceased had been in good health. He was aged 35 years. Dr Bentley noted 4 gunshot wounds. The gun had been fired at close range, probably 1-2 metres away. There was a shotgun wound to the front of the chest which had injured the left lung and some of the organs in the upper part of the abdominal

cavity. There was another shotgun wound to the lower part of the back of the body which caused comminuted fracturing to the back and side of the lower part of the spine. Pellets were lodged within the spine and the spinal canal. There were two gunshot wounds to the back of the head causing extensive fracturing of the skull and very severe damage of the brain. Both of these shotgun wounds would have been rapidly fatal.

[16] The Deceased, a young man, had been shot at close range with a shotgun. It was likely that the first shot struck his chest. The murderer then followed up with shots to his back and to his head. The precise sequence of events cannot be definitively determined. But one thing is certain. This was a cold and callous killing, a brutal murder committed with the maximum degree of savagery upon an innocent and defenceless man. There was no evidence adduced before this court that the Deceased dealt in drugs, which was the apparent motive for this vicious and vile act. But whether he did or did not is wholly irrelevant. No one is entitled to act as judge, jury and executioner. That is the way to anarchy. Make no mistake, this was a despicable, cowardly and foul deed.

[17] Coincidently Sergeant George had been at the Defendant's flat at 60 Elaghmore Park, Galliagh on an unrelated matter when he received word of the shooting. The Defendant was not at home.

[18] Patrick Lynch is a Taxi Driver employed by City Cabs. At approximately 10.40am he was sitting on the taxi rank at William Street in his green Audi 6. A fare got into the car and asked to be taken to Galliagh. He described the man as stocky, wearing safety glasses, a hat and gloves. He subsequently described the safety glasses as goggles. The man had a rucksack which he carried on his back. He did not take it off. He spoke with a local accent. He asked to be taken to the White Chapel, that is St Joseph's Chapel. During the drive, they had a conversation. The man who got into the taxi claimed to have recognised the taxi driver from Rosemount Taxis where he had worked some 15-20 years before. Mr Lynch could not remember his name. Suddenly it came into his head, "Kieran". The passenger passed a sports complex near the Chapel and he made a comment about going to the sports club there as that is for "boys with mental illness". He claimed he was going to a funeral, but Mr Lynch noted that there was no funeral taking place. He drove him right round and left him at the back at the grotto. Mr Lynch observed him walking towards the Parochial House. He specifically noted the netting at the back of the rucksack. He estimates that he left him off sometime shortly before 11.00am. Subsequently he heard on the news that the police were looking for Kieran McLaughlin. This served as a prompt. He thought that he might have worked with Kieran McLaughlin. In response to questioning from Mr McCartney QC for the defence, he accepted that he had worked with a lot of men. It was difficult to remember and he could not be sure some 15-20 years on whether he had or not. He agreed that he picked up people all the time and that he had all sorts of conversations and it was impossible to remember conversations. He said it was hard

to remember what happened 2 years ago given that he would have had approximately 100 conversations per week with passengers. He made no positive identification of the passenger in his taxi as being Kieran McLaughlin.

D. CCTV

[19] The police were able to obtain CCTV coverage from various locations in the city centre. From this footage they were able to trace the steps of the man who carried out this vile murder. At 10.18 am the assailant crossed the Abercorn Road from the direction of Maureen Avenue and walked down Abercorn Road. He then crossed the junction with Bennett Street. He walked from Carlisle Road through Ferry Quay Gate crossing Ferry Quay Street and then down Market Street. He had reached the Bentley Bar at 10.24 am walking towards Market Street. He then walked along Market Street in the direction of the Richmond Centre. From Market Street he entered the shopping centre and then walked up Shipquay Street towards 4 Shipquay Street. He can be seen walking in a purposeful manner. He is wearing a hat and safety glasses. This hat, which appears to bear the Berghaus trademark, is pulled well down. He has on a dark jacket. He has a rucksack on his back. He appears very much to be a man on a mission. At 10.28 am he can be seen urgently activating the buzzer of the intercom until Elizabeth Timoney takes the fatal decision to admit him. Once in the flat complex, he climbs the stairs until he can be seen standing outside the flat, putting on his gloves. The door opens and he goes in. Just over 13 minutes later he is back out on Shipquay Street. He can be seen walking along the Diamond onto Butcher Street. He then goes through Butcher Gate and onto Waterloo Street. He then turns left onto William Street and walks down Waterloo Street. He can then be seen along William Street walking towards the City Cab office. At 10.45 am he gets into a taxi. The taxi drives along Francis Street onto Northland Road. At 10.55am the taxi enters St Joseph's Chapel grounds and drives towards the rear of the Chapel. At 10.56 am the taxi parks in the car park in front of the Chapel.

[20] The court was shown other footage which was relevant. On the night before the murder a hooded man wearing a dark jacket can be seen urgently activating the intercom of the flats at 4 Shipquay Street seeking admission. As far as can be determined, within the limitations of CCTV, this looks like an earlier attempt by the murderer to gain access to Flat 7. Subsequently the police obtained CCTV footage at the Lidl store taken some three days before the murder. The Defendant appears to be wearing a jacket with similar markings to that worn by the killer shown on the CCTV footage entering 4 Shipquay Street and ascending the stairs to Flat 7 on 10 October 2013.

[21] The Defendant suffered a fracture of the tibia and fibula of his right leg on 11 July 2013. On the video taken of him subsequently at the custody suite at Strand

Road Police Station, Londonderry on 19 October 2013, 9 days after the murder, he is shown as walking with a heavy and obvious limp.

[22] Mr Anley is the owner and Principal Analyst of Anley Consulting. He trained with the Intelligence Corps and qualified as an Imagery Analyst. He told the court that he had given evidence in respect of facial comparison in numerous criminal cases including the Crown Courts in England and Wales. Under cross-examination he accepted that his role in the military was identifying buildings and that he was not involved in facial mapping. He was involved in facial recognition for many years after he had gone into private practice. He also accepted that he had no academic qualifications. I am satisfied from all his evidence that he has the necessary expertise and qualifications to be permitted to express an expert opinion. His evidence was measured and he did not try, the court concluded, to embellish. He candidly accepted that due to the quality of the CCTV footage, his contribution must be limited. He was confident that it was impossible to eliminate the Defendant as being the person shown on the CCTV entering Flat 7, number 4 Shipquay Street on 10 October 2013. By the same token he could only provide limited assistance as to his identification. He concluded that there was moderate support that the man shown in the CCTV footage was the Defendant. The court has viewed the relevant footage on a number of occasions and confirms it is impossible to say definitively whether the person shown on the CCTV is the Defendant. It is possible to conclude that there is a resemblance. More importantly it is not possible to exclude the Defendant as being the person shown on the CCTV footage. Again the limitations imposed by the quality of the CCTV footage, and the staccato nature of the picture make it impossible to determine definitively whether the murderer was limping as he made his way to 4 Shipquay Street, Londonderry. It appears unlikely that he was, but the quality of the coverage is such that it is difficult to be sure.

[23] Constable Greene gave evidence of having stopped the Defendant in November 2012 about some other unrelated matter and noted he was wearing safety glasses and a black flying type hat with flaps covering his ears and tied under his chin. The court notes that there was agreed evidence from Constables Moore and Austin who had viewed CCTV footage taken from the Lidl store on 26 September 2013 and 7 October 2013 and who had both identified the Defendant from that footage. No police officer, including Constable Greene, gave evidence that they were able to identify the Defendant from the CCTV footage of 10 October 2013 as being the person who entered Flat 7 Shipquay Street just before 10 am.

E. Search for the Defendant

[24] After the murder there followed what can only be described as a manhunt. The Defendant succeeded in evading capture for a number of days. His house at 60 Elaghmore Park, Galliagh was searched. The following items were recovered, which included black balaclavas, black gloves, black hats, a black stocking mask, safety goggles and a receipt from Lidl for the purchase of a rucksack.

[25] On Wednesday 16 October 2013 at approximately 40 minutes after midnight the net began to close in on the Defendant. Constable Jenkins, who was driving a police Landrover, and who was accompanied by acting Sergeant Crutchley and Constable Butcher was in the process of checking the Rossnagalliagh estate. He saw a Volkswagen Passat pull out of a cul-de-sac adjacent to 26 Rossnagalliagh Park. This car belonged to Megan Timoney and her partner Debbie McLaughlin, the daughter of the Defendant. The suspicion of Constable Jenkins was aroused because the car had no lights on and it emerged at speed. Constable Jenkins immediately gave chase but the car seemed to disappear into thin air. However a careful search revealed that the car had gone off-road but in doing so had left a fresh set of tyre marks on the grass to the left of the exit leading across the field to the back of Bracken Park.

[26] A report was then received of a man who had been seen acting suspiciously in a garden at 46 Rossnagalliagh Park which is in the vicinity. Sergeant Crutchley with the assistance of a dog and its handler traced the path of the car to the rear of Ederowen Park. A short time later Constable Jenkins located a Honda Escort HHZ 4696. This car belonged to Mr Owen Boyle. James Joseph Boyle had borrowed this car earlier from him. He had gone to the house of Ciara McLaughlin, his ex-girlfriend, and the daughter of the Defendant. She lived at 22 Ederowen Park. He left the keys to the Honda on the draining board in the kitchen. The car was locked when he left in a white van with Conal McLaughlin, his son. When he returned to collect the car that evening, the car had gone.

[27] At 2.00am on 16 October Detective Constable Hendron was carrying out duties as an air observer from an aerial platform in relation to the search for the Defendant. As the search centred on Fern Park, he observed an unusual heat source lying under the rear of a parked vehicle in the driveway of 58 Fern Park. He also detected movement which suggested it might be a person. Immediately he directed uniformed personnel to the location of the heat source.

[28] The police closed in on 58 Fern Park. The Volkswagen Passat, which had gone off road, was seen parked close to the gate. As they approached the car they could see the lower legs and feet of someone lying on the ground under the Passat. Despite challenging the person under the car to come out, he remained there motionless and unresponsive. A short time later, specialist firearm officers arrived and they moved forward and detained the individual, who was subsequently identified as the Defendant, Kieran McLaughlin. He had the handle of a large knife sticking out of the back of his trousers. Lying beside him on the ground was a Luger type imitation pistol. The following additional items were also recovered from the Defendant, namely:

(a) A yellow handled knife.
(b) One red pocket style knife.

(c) Three lighters.
(d) One pair of glasses with a key to a Honda car.
(e) A black balaclava.
(f) A viewing aid or night vision which was on his belt.
(g) A money bag containing £900 cash.
(h) Newspaper clippings relating to the murder of Barry McCrory and the ensuing search for the Defendant.

[29] The stolen Honda was located close by at Moss Park. The key on the sunglasses in the Defendant's possession was found to activate the car's ignition system and locking system. Many items were found in the car, which included:

(a) A sawn-off shotgun which had been stolen from Thomas McCamphill on 18 May 2010 when three masked men had entered his home in the Republic of Ireland, put a gun against his jaw and forced him to open his gun safe. They stole two of his shotguns, one of which was found in the Honda car. This was located in the front passenger side foot-well "kind of underneath the front seat".

(b) A Mauser pistol which was beside the shotgun.

(c) Ammunition in the form of cartridges.

(d) A Berghaus hat.

(e) A black balaclava.

F. Forensic Evidence

[30] Higher Crime Scene Investigator, William Robinson, examined the flat at Shipquay Street and its environs for evidence, especially for fingerprints and DNA traces that might have been left by the murderer. As previously noted there had been some criticism during the trial of the investigation and complaints made that other tests might have been carried out. The court could find no unfairness to the Defendant in the way in which this investigation was carried out. Significantly, despite a thorough investigation there was no fingerprint or DNA evidence linking the Defendant with Flat 7, number 4 Shipquay Street where the Deceased was murdered or the access leading to the flat. Nor was there any evidence linking the Defendant or his possessions to the Deceased. No blood or DNA of the Deceased had been detected on the Defendant or his possessions.

[31] The pellets recovered from the murder victim revealed that he had been shot with a shotgun. It was not possible to say if the shotgun used to carry out the savage murder of the Deceased was sawn-off, short-barrelled or a long-barrelled weapon which had been broken down and reassembled by the murderer. It is not possible

on the basis of any scientific evidence to point to the sawn-off shotgun recovered from the Honda as being the murder weapon. Certainly no evidence was adduced before this court of any blood or DNA being recovered from this shotgun which belonged to the Deceased. However, it cannot be positively excluded as the murder weapon. The size of the lead shot was consistent with a number 3 size shot. The cartridges recovered from the Honda on the other hand were number 4 size shot and number 5 size shot.

[32] There was no blood or DNA of the victim recovered from any of the items of clothing taken from the Defendant's property or from any of the cars which the Defendant had driven or travelled in as a passenger. There was no DNA or fingerprints recovered from the taxi belonging to Mr Lynch which had been used by the murderer immediately after the crime. There was however evidence of traces of the Defendant's DNA on the left back strap of the rucksack which was found in the Honda. There was no evidence in the rucksack of the presence of any blood, and more particularly blood transferred from the murder weapon. There was no blood of the Deceased on the sawn-off shotgun. No DNA material was obtained linking the Defendant to the Mauser pistol. It was not possible to resolve the mixed profile of the contributing profiles and the Defendant could not be excluded as being a contributor. The blood on the bannister outside the flat did not belong to the Deceased or the Defendant but to two other unknown males.

[33] Ms Ann Macleod-Irwin, a Senior Scientific Officer in the Forensic Science, carried out tests to see if there was any cartridge discharge residue ("CDR") which is left when a gun is fired. Inside the rucksack she found 8 deposits consisting of lead, antimony, barium and aluminium, 3 deposits consisting of barium and aluminium, 5 deposits of antimony and barium, 11 deposits of lead, antimony and tin, 12 deposits of lead and barium, 3 deposits of lead and antimony and two deposits of antimony and tin on the inside surface. All the deposits contain iron and 2 4 Dinitrotoluene. Swabs taken from the barrels of the shotgun had deposits of lead, antimony, barium (some with aluminium, barium and aluminium, lead and barium and lead and antimony). They all contained iron and 2 4 Dinitrotoluene.

[34] These findings provided strong support for the proposition that the rucksack had been used to carry and conceal the shotgun as the pistol was not the source of the 2 4 Dinitrotoluene. The rucksack found in the Honda carried a serial number. An identical serial number was found upon a receipt from Lidl in the living room of the Defendant's house. It is asserted by the prosecution that it is reasonable to infer that it was this rucksack that was used by the murderer to conceal the shotgun used to kill the Deceased. However there is an absence of any forensic evidence linking the shotgun or the rucksack to Flat 7 or to the Deceased.

G. Interviews

[35] Once apprehended, the Defendant was interviewed by Detective Constable Young over the next 2 days. It was recognised at the start that the Defendant was a vulnerable person. He had the assistance of someone specially appointed under the appropriate Adult Scheme to protect his interests. His solicitor, Mr Greg McCartney was also present throughout the interviews. It is appropriate to record that the Defendant does have a history of moderate depression.

[36] The interviews themselves are singularly unenlightening. The Defendant claimed not to be able to remember what he was doing on 10 October 2013 and had an apparent mental blank about the next 6 days. No explanation has been offered as to why the Defendant's memory could be so defective. No medical explanation has been provided for this temporary amnesia.

[37] Information obtained from the interviews included:

(i) The Defendant walked his dog habitually in the morning.

(ii) He kept pigeons and worried about the possibility of cats entering the loft and going on a killing spree.

(iii) He did not know the Deceased or anything about him apart from what he had read in the papers, including the Derry Journal.

(iv) His daughter, Debbie lives with Megan Timoney and Debbie looks after the 2 children while Megan works.

(v) He had met Elizabeth Timoney on a couple of occasions but he would not have known her.

(vi) He was worried about the SAS and drones in the sky. He was fearful of being attacked and shot by the SAS. He was prepared to defend himself.

(vii) He thought that the proper acronym for the police was "PNSI".

(viii) He could not remember whether he had any guns with him in the last 6 days.

(ix) He knew nothing about the annotation on the article of the Derry Journal. This included a reference to "cleaner" and to "PNSI".

(x) He bought his clothes and equipment at Lidl and "places like that". He could not remember purchasing a rucksack there for £9.99 although the receipt in his possession strongly suggested that he had.

(xi) He refused to answer any questions about the Honda HHZ 4696 to which he had the keys. Nor would he answer any questions about the loaded sawn-off shotgun, the Mauser handgun, the ammunition and clothing that were found in that car. He simply said "no comment".

(xii) He used goggles/safety glasses found at his home for work and this included strimming.

[38] The Defendant's claim that he had no memory of the last 6 days was simply incredible. It was clear to the court that in the absence of any rational explanation for his temporary amnesia, he was using his alleged inability to remember as a way of avoiding answering difficult questions. The court drew the inference that the Defendant had information relevant to the police investigation which he did not want to reveal to the investigating officer.

[39] The case was made that when answering questions during one of the interviews the Defendant inadvertently admitted that he was present in the flat on the morning of the murder. It was put to the Defendant about whether Megan Timoney's mother was in the flat on the morning of the murder. The Defendant said, "Naw, she couldn't have been". Again he said, "Naw, I can't recall seeing her there or any other".

[40] The court does not accept that this was an admission, never mind an unequivocal admission of his presence in the flat where the murder had taken place. Firstly, the Defendant said that Elizabeth Timoney could not have been at Flat 7. This is a follow-up to his claim that he had met her in Strabane. Secondly, he then specifically denies being at the flat. Thirdly, he says that he cannot "recall seeing her then, or any other"(sic) seems to relate to his earlier answer that he might have met her in Strabane. His answers are not clear. At best, they are ambiguous. Certainly, the court did not gain the impression when the interviews were read out that the Defendant was admitting being at the flat on the morning of the murder or at all.

H. No case to answer

[41] At the end of the prosecution case, the Defendant's counsel made an application that there was no case for the Defendant to answer. All counsel were agreed on what were the correct legal principles.

[42] In R v Galbraith [1980] 2 All ER 1060 Lord Lane CG said as follows:

> "How then should a judge approach the submission of no case?

(1) If there is no evidence that the crime has been committed by the Defendant, then there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of its inherent weakness or vagueness or because it is inconsistent with some other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where in one possible view of the facts there is evidence from which a jury could possibly come to the conclusion that the Defendant is guilty, then the judge should allow the matter to be tried by the jury … . There will of course, as is always in this branch of law, be the borderline cases. They can safely be left to the discretion of the judge."

[43] This was applied by the Court of Appeal in R v Courtney [2007] NICA 6 in the context of a non-jury trial. It said at paragraph 14:

"The proper approach of a Judge or Magistrate sitting without a jury does not, therefore involve, the application of a different test from that of the second limb of Galbraith. The exercise that the Judge must engage in is the same, suitably adjusted to reflect the fact that he is a tribunal of fact. It is important to note that a Judge should not ask himself the question at the close of the prosecution Do I have a reasonable doubt? The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict.

> Where evidence of the offence charged has been given, the Judge could only reach that conclusion where the evidence was so weak or so discredited that it would not conceivably support a guilty verdict."

As the Crown submitted the proper approach is at the end of the prosecution case to look at all the circumstantial evidence in the round and ask the question whether when looking at all that evidence and treating it with appropriate care and scrutiny there is a case in which a properly directed jury could convict: see R v P [2008] 2 Cr App R 6.

[44] The court could not conclude that there were no circumstances on which a jury could convict. There was strong circumstantial evidence against the Defendant which included CCTV, his failure of memory, the rucksack containing the sawn-off shotgun in the car of which he had control, the DNA on one of the straps of the rucksack, the purchase of a similar rucksack by the Defendant, the connection between the rucksack and the shotgun, the Berghaus hat worn by the assailant and the Defendant's possession of a similar one, his possession of a jacket similar to that of the jacket worn by the murderer and the recollection of Mr Lynch that the person to whom he gave a lift was called "Kieran". This circumstantial evidence combined together to make a strong case. It is possible that a jury could discount the evidence of Elizabeth Timoney that the person to whom she opened the door was not the Defendant on the basis that she had limited opportunity to view a face that was partially obscured and that the viewing took place in highly charged circumstances. However the test is not whether the judge of fact considers that there is a reasonable doubt but whether there are no circumstances in which there could be a conviction for murder taking the evidence at its reasonable height. The Defendant has failed to persuade the court that in the circumstances of this particular case, the test has been met. Therefore the court ruled that the hearing should continue.

I. The murder

[45] Blackstone's Criminal Practice states at B1.1:

> "The definition of murder is when a (person) … unlawfully killeth … any reasonable creature in rerum natura under the Queen's peace with malice aforethought … (derived from Cooke's Institutes, 3 Co Inst 47)".

[46] There can be absolutely no doubt that the person who carried out the killing of the Deceased on 10 October 2013 was guilty of murder. The only issue for this court is whether it was the Defendant who pulled the trigger of the shotgun 4 times on 10 October 2013 when standing a yard or two away from the Deceased.

[47] The murder has all the appearances of being meticulously planned. The murderer seems to have anticipated CCTV cameras and his appearance is no doubt designed to make identification difficult. On the CCTV at Flat 7, he seems to be shown going out of sight of the camera to put on his gloves. The inference is that he would not want to have allowed the camera to see inside his rucksack and identify the murder weapon as he removed his gloves. The empty cartridges were gathered up after the killing and taken away from the scene by the murderer, presumably to hamper police inquiries. By any measure, this was a clinically executed murder.

[48] The overwhelming evidence is that the person who entered Mr Lynch's taxi at William Street wearing safety glasses/goggles, gloves, hat and was carrying a rucksack on his back was the murderer. This was the man whom the taxi driver connected with the name "Kieran" having worked with him some 15-20 years before. Mr Lynch drove him to White Chapel, close to where the Defendant lives at 60 Elaghmore Park, Galliagh. Mr Lynch recalled that he had a local accent and he made a comment which identified him with "us boys with mental illness". The Defendant, it is agreed, had a history of moderate depression. In cross-examination Mr Lynch agreed that the Defendant might possibly be described as small and fat. He agreed that it was difficult to remember back all those years given the busy job he performed. As the court has recorded, he was not involved in any formal or informal identification of the Defendant.

[49] The evidence of Sergeant Breen and Sergeant George who had gone to the Defendant's house at Elaghmore Park on 10 October 2013 between 10.30am and 10.35am establishes that when the killing was taking place the Defendant was not at his home.

[50] It is clear from both the interviews which the Defendant had with the police and the press cuttings which were found on him including the one from the Derry Journal that he knew he was the subject of a police manhunt. Despite that knowledge he did not hand himself in but deliberately sought to evade the police. Further the annotation on the press cutting found in the Defendant's possession when he was arrested of "PNSI" leads to the reasonable inference it was the Defendant, though, who had made them, given that he had the press cuttings in his possession and that he referred to the "PNSI" during his police interviews. The use of the word "cleaner" which had been written on the press cutting in apparent reference to himself is consistent with the Crown claim that he was someone who was bent on removing the stain of drug dealing from the community. The murderer did call the Deceased "a scumbag drug dealer" before firing on him.

[51] Before the murder the Defendant purchased a rucksack from Lidl which in all respects bears a striking similarity to the one used by the murderer on the 10th day of October. Of course, as the Defendant's counsel pointed out, this is a standard issue model and it is impossible to know how many of these rucksacks are in

circulation throughout Northern Ireland. The same point can be made with equal force in respect of the Berghaus hat and the jacket.

[52] The Defendant is connected through his DNA to the strap of the rucksack as having used it. The forensic evidence has identified deposits of lead, antimony barium, aluminium and tin on the inside surface of the rucksack. All these deposits contain iron and 2 4 Dinitrotoluene. The Defendant had a receipt for the purchase of a similar type rucksack at Lidl a few weeks before, save that an identifying mark in the area of the mesh pocket had been cut away. The prosecution say that this was deliberate and designed to mislead if the rucksack was captured on CCTV. The swabs taken from the barrels of the sawn-off shotgun found in the Honda car to which the Defendant had the keys had deposits of lead, antimony, barium and iron and also of 2 4 Dinitrotoluene. As previously recorded according to Ms Ann McLeod-Irwin this provides strong support for the conclusion that there had been contact between the rucksack and the shotgun. The strong inference is that the shotgun had at some time been concealed in the rucksack. It is the prosecution's case that it was the sawn-off shotgun stored in the rucksack which was used to carry out the murder of the Deceased.

[53] The defence make a number of different points:

(i) There is not a shred of evidence that the sawn-off shotgun recovered from the Defendant and which the Defendant by pleading guilty to count 3 has admitted was in his possession, was used in connection with the murder of the Deceased. Indeed, it is their submission that if it had been used then given the close range at which it was fired, and the blood generated, as evidenced from the photographs of the scene of the murder, there would be some residue left on the shotgun. No evidence has been adduced of any blood of the Deceased being on the shotgun recovered from the Defendant or on his rucksack in which it is suggested the shotgun was concealed. It is common case that there was no trace of blood or DNA of the Deceased detected on any item in the possession of the Defendant or which had been in the possession of the Defendant.

(ii) Sawn-off shotguns are weapons of choice for many of the criminal fraternity and are widely used to commit crimes in Northern Ireland according to the police. They are commonly available.

(iii) However, the prosecution cannot say whether the gun used to murder the Deceased was a sawn-off shotgun, a short barrelled shotgun or a long barrelled shotgun which was broken down and reassembled immediately prior to the attack.

(iv) The cartridges used by the killer were size 3; the cartridges found beside the Defendant were size 4 and 5.

(v) The police found goggles, safety glasses, a dark jacket and a Berghaus hat with the Defendant's belongings. These were all similar to the items which were worn by the assailant on 10 October. It is true, as the defence points out, that these are common items and in general circulation. They are in no way unique. The Defendant had been observed by the police wearing safety goggles in the past.

[54] In addition the prosecution rely on the fact that the CCTV coverage of 10 October 2013 shows someone who is of a similar build to the Defendant, who bears a facial resemblance to the Defendant and of whom it can be said with some confidence that there does not appear to be any marked dissimilarities. The defence make the case that CCTV footage has its own limitations including lack of definition and resolution. Mr Anley, the expert who gave evidence on behalf of the prosecution, agreed that there were obvious limitations with the imagery produced by CCTV. As the court has noted, the police did use other CCTV footage from Lidl to make what was an agreed identification of the Defendant by two police officers who knew him. This exercise was not repeated with the footage of 10 October 2013 to the court's knowledge. Having viewed these images a number of times, the court does not find this to be surprising. It is not possible to say with any certainty solely from the CCTV coverage that the person wearing goggles who makes his way to Flat 7 Shipquay Street is the Defendant. The defence point out that the Defendant had an obvious limp which could be seen on video footage some days after the murder when he entered the custody suite. It is agreed that he had fractured his tibia and fibula some weeks before. The point is made that the assailant did not walk with a limp on the CCTV footage. Again it was not possible to reach a definite conclusion on this issue because the CCTV coverage is necessarily jerky. Again this reflects the limitation of the material available, no matter how often the images are viewed.

[55] There is a strong circumstantial case against the Defendant. The prosecution say that that is further reinforced by the Defendant's failure to give sworn testimony. It is of course the right of the Defendant not to give evidence. He is entitled not to give evidence and to remain silent and require the prosecution to prove its case to the requisite standard, that is beyond reasonable doubt. However, following the passing of the Criminal Evidence (Northern Ireland) Order 1988, it is provided under Article 4(4) that the court may draw appropriate inferences if a Defendant refuses to testify. Two matters arise. Firstly, the Defendant has not given evidence to undermine, contradict or explain the evidence put before the court by the prosecution. Secondly, as the court made clear to the Defendant after the prosecution case closed, the court can draw such inferences as appear proper from his failure to give sworn testimony. The court has to decide whether in all the circumstances is it proper to hold the Defendant's failure to give evidence against him in deciding whether he is guilty. It is only fair to point out that the circumstances of the Defendant's arrest, his possession of the key to the Honda car which contained the firearms, namely the sawn-off shotgun and the revolver, placed

him in a very difficult position. He has pleaded guilty to possession of a firearm in suspicious circumstances. He is unlikely to have been keen to have those suspicious circumstances explored under oath when he also faced a more serious alternative charge of possession of a firearm and ammunition with intent. There is therefore a reasonable explanation for the Defendant not giving sworn testimony which does not give rise to any inference that he committed the murder. In the circumstances the court does not draw any inference against him from his failure to give sworn testimony on the charge of murder.

[56] It must be acknowledged that there is no direct evidence that the Defendant was ever in Flat 7 and particularly on 10 October 2013. Despite a thorough investigation, no empirical evidence has been produced that would establish a link between the Defendant and Flat 7 whether on 10 October 2013 or at all. If the Defendant did visit Flat 7 on 10 October 2013, he did so without leaving a trace and without any trace of the Deceased being deposited on the Defendant or any of his clothes or possessions including what the court has been invited to conclude is the murder weapon, that is the sawn-off shotgun and the rucksack in which it is claimed the shotgun was concealed. As the photographs of the scene taken shortly after the murder demonstrate, this was a very bloody affair. It has been established that the blood on the bannisters relates to 2 different adult males. In the circumstances it might reasonably be expected that some blood would have been deposited on the murderer, his clothes, the murder weapon and/or any equipment the murderer was carrying.

[57] Elizabeth Timoney was called for the prosecution. She had met the Defendant at least a couple of times, albeit briefly. The Defendant was someone who was of interest to her. He was the father of her daughter's partner. She had heard him speak before, although they did not have a conversation in any meaningful sense. She had a head on view of the man who forced his way into her flat on 10 October 2013. He was close to her. He had one hand on her shoulder, his face was partially obscured by goggles which covered his nose and eyes and which were scratched and well-worn and he was wearing a "Benny hat" which was pulled down. But he did have a distinctive voice – very mature, big and deep. He had a County Derry accent. She was interviewed shortly after the murder had taken place. She was and remains adamant that she did not recognise the person who entered her flat or his voice. She said under oath:

> "I didn't know the man in the flat. I cannot identify the man as Kieran McLaughlin. He was a stranger."

This was powerful evidence. No one who heard her evidence could have been in any doubt that Elizabeth Timoney was saying two things. Firstly, she did not know the murderer. He was a stranger to her. Secondly, whoever he was, he was not Kieran McLaughlin. Mrs Timoney's inability to make any connection between the cold hearted murderer and the man she had met at her daughter's house goes to the

heart of this case. Her evidence was that the murderer was a stranger, someone she had never met before. She did not suggest that there was any possibility that the Defendant and the murderer could have been one and the same. Her evidence went further and seemed to reject the possibility of this stranger who had entered the flat being Kieran McLaughlin. This evidence does raise a reasonable doubt about whether the Defendant was the murderer. That doubt is not quietened by the complete absence of any objective evidence linking either the Defendant with Flat 7 or the Deceased. In those circumstances, it is simply not possible for the court to be satisfied beyond reasonable doubt that the Defendant and the murderer are one and the same person. As a consequence the court must conclude that the charge of murder made against the Defendant has not been proven to the requisite standard. The Crown has not discharged the heavy burden of proof placed upon it to prove beyond reasonable doubt the Defendant committed the murder of the Deceased.

J. Possession of the firearms and imitation firearms

[58] There can be no doubt that the Defendant had possession of both the sawn-off shotgun and the Mauser pistol. They were in the Honda car. The Defendant had the keys of that car. It was locked. He exercised effective control of both the shotgun, the cartridges and the handgun. Indeed, by pleading guilty to the third count he has admitted possession in suspicious circumstances, but denied that he had any intent to endanger life. The prosecution, without challenge from the defence, set out three propositions, firstly that it is unnecessary to prove an immediate and unconditional intention to endanger life: see R v Bentham [1973] QB 357. Secondly, it is sufficient if the intent is that the firearm or ammunition should be used in a manner which endangered life as and when the occasion requires: see Archbold 24-38A. Thirdly "intent" means to do something as and when the occasion arises. The presence of a loaded weapon, a further weapon, ammunition, knives, masks and other paraphernalia are all sufficient to establish intent. I accept these submissions.

[59] The court is satisfied beyond reasonable doubt that there was an intent on the part of the Defendant to endanger life for the following reasons:

(i) The shotgun was loaded.

(ii) The Defendant in interviews made it clear that he believed that he was under threat from the SAS and drones and was prepared to defend himself against those threats. This explanation is incredible. The Defendant knew from the newspaper articles that he had seen that he was being sought by the police. The arsenal of weapons which he had, was designed, it can be inferred, to permit him to prevent his lawful apprehension. This inference is further supported by his refusal to give evidence. Why he ultimately changed his mind and capitulated cannot be known. The most likely explanation is that it was a failure of nerve and that he appreciated that any armed response would almost certainly result in his death or serious injury.

(iii) The loaded shotgun was found with other items which the Defendant was in possession of, namely knives, masks and other items, all consistent with someone who was intent on deadly violence.

(iv) The Defendant has failed to give any evidence or to offer any explanation for his possession of a loaded sawn-off shotgun, a pistol and ammunition.

Accordingly, on count 2 the court is satisfied beyond reasonable doubt that the Defendant is guilty as charged.

[60] The court is satisfied that the Defendant had in his possession an imitation firearm, namely a Denix imitation 'Walther P38' pistol. The imitation firearm was beside the Defendant when he was hiding under the car hoping to evade capture. He had physical control of it and it is a reasonable inference that he had placed it there. He has chosen to give no explanation of how it came to be there. In the light of his possession of other items which will have caused fear, such as knives and real firearms and his failure to give an adequate explanation whether during the interview or in the witness box, the inescapable conclusion, indeed, the only conclusion, is that the Defendant possessed the imitation firearm with intent to cause others to believe that unlawful violence would be used against them. Certainly that intention was realised as there is no doubt that those police officers who were tasked to arrest the Defendant were fearful for their own personal safety believing the Defendant to have possession of a "real" handgun. The court concludes on the evidence that this is exactly what the Defendant intended. Significantly, the first police officers arriving on the scene would not approach the Defendant until the armed response unit had arrived. They were quite naturally fearful for their own safety. Again, I draw an inference against the Defendant for his failure both to provide an explanation for his possession of the imitation hand gun and to give evidence on this issue. Accordingly, on count 4, the court finds the Defendant guilty as charged.

K. Conclusion

[61] Accordingly, in light of the foregoing, the court finds the Defendant not guilty on count 1. The court finds the Defendant guilty on count 2 and again on count 4.