

**Neutral Citation No: [2019] NICC 8**

**Ref: 2019NICC8**

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

**Delivered: 08/02/2019**

**IN THE CROWN COURT OF NORTHERN IRELAND  
SITTING AT BELFAST**

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**REGINA**

**V**

**SEAN McVEIGH**  
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**HHJ FOWLER QC**

[1] The accused Sean McVeigh is charged with attempted murder and possession of explosives with intent to endanger life. This case arises out of the planting of an under vehicle improvised explosive device (“UVIED”) under the car of two serving police officers parked in the driveway of their home at Glenrandel, Eglinton on 18 June 2015 at or about 02:41.

[2] It is important when sitting as a judge alone and at the outset of this judgment to remind myself of the relevant law and the legal principles that I must apply when deciding whether the Crown has proved its case against the defendant in respect of each of the counts he faces. These can be articulated as follows:

- (i) The burden of proof lies on the Crown to establish the defendant’s guilt.
- (ii) Before the court can convict the defendant of either count on the Bill of Indictment the prosecution must prove the defendant is guilty beyond reasonable doubt. I remind myself that proof beyond reasonable doubt is proof that leaves the court firmly convinced of the defendant’s guilt. Where I refer to being satisfied of any given fact or matter this is to be regarded as satisfied to the criminal standard of beyond all reasonable doubt. I have paid specific regard to Direction 2.1 as set out in the present Crown Court Bench Book.
- (iii) The court must decide the case only on the evidence established before the court and must give separate consideration to each of the two counts on the Bill of Indictment and return a separate verdict in respect of each count.

- (iv) The prosecution case depends on circumstantial evidence rather than direct evidence. In the present case the prosecution rely upon evidence of various circumstances relating to events leading up to, at the time of, and subsequent to the planting of the UVIED. The prosecution has submitted that when all these circumstances are taken together, they establish an overwhelming case against the defendant with the only conclusion to be drawn from the evidence is that the defendant committed the offences as alleged. I remind myself of the standard direction to juries in relation to circumstantial evidence as comprehensively set out in Direction 4.1 of the Crown Court Bench Book. That it is not necessary for the evidence to provide an answer to all of the questions raised in a case. It would be an unusual case in which a court could say that it knew everything there was to know about the case. It is not necessary that each fact upon which the prosecution relies taken individually proves the defendant is guilty. The court must decide whether all of the evidence has proved the case against him. In R v Exall [1866] 4 F & F 922 at 928 Pollock CB observed:

“What the jury has to consider in each case is, what is the fair inference to be drawn from all the circumstances before them, and whether they believe the account given by the prisoner is, under the circumstances, reasonable and probable or otherwise ... Thus it is that all the circumstances must be considered together. It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link breaks, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of.”

- (v) I further remind myself that it is essential that circumstantial evidence be examined with great care for a number of reasons. First of all, such evidence can be fabricated. Secondly, to see whether or not there exists one or more circumstances which are not merely neutral in character but 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 to 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. As Lowry LCJ stated in R v McGreevy [1972] NI 125 at 134:

“... a judge ought to point out the circumstances which tend to establish innocence and more especially circumstances which are inconsistent with guilt ...

- (vi) I further remind myself of the questions a court should have at the forefront of its mind in a circumstantial case as set out by Higgins LJ in *R v Jones* [2007] NICA 28 para. 33. First, I must consider all the evidence; secondly, I must guard against distorting the facts or the significance of the facts to fit a certain proposition; thirdly, I must be satisfied that no explanation other than guilt is reasonably compatible with the circumstances and fourthly, I must remember that any facts proved that is inconsistent with the conclusion is more important than all the other facts put together. That if there is evidence proved which undermines the prosecution case that the perpetrator was the accused then that is more potent than all the other circumstances.
- (vii) In the present case the prosecution say that the defendant committed the offence together with others and as part of a joint enterprise in that he at least intentionally encouraged or assisted in the planting of an UVIED in order to kill a police officer. It has to be borne in mind that each participant in a plan to commit a crime may play a different role but if that are acting together as part of a joint plan they are each guilty of it. If looking at the case of the defendant the tribunal of fact is sure that he committed the offence on his own or that he intentionally encouraged others to commit the offence he is guilty.
- (viii) This case also involves expert evidence. I remind myself of the usual direction given to a jury when approaching expert evidence. A witness called as an expert witness is entitled to express an opinion in respect of their findings and the matters put to them. The tribunal of fact is entitled to and no doubt would wish to have regard to this evidence and to the opinion expressed by the expert when coming to its conclusions about that aspect of the case. However, having given the matter careful consideration the tribunal of fact does not have to accept the evidence of the expert and does not have to act upon it. Indeed, it does not have to accept even the unchallenged evidence of an expert. Where two or more experts have given conflicting evidence it is for the tribunal of fact to decide which evidence and whose opinion it accepts, if any. It must remember that the expert evidence relates only to part of the case and while it may be of assistance it must reach its verdict only after the totality of the evidence is considered.

### **Circumstances surrounding the planting of the UVIED**

[3] In the early hours of Thursday, 18 June, 2015 AB and BB, both serving police officers, were in bed asleep at their home in Glenrandel, Eglinton. Shortly before 02:45, AB for no obvious reason she can recall woke from her sleep and decided to look out her bedroom window where her husband, BB's car was parked. His car was

parked in the driveway of their home just outside their bedroom window. On looking out the window AB observed a male person crouching down low at the side of her husband's car appearing to be working underneath the car. She described this male as skinny and aged as far as she could determine to be possibly in his early 20's. On seeing this she hammered hard on the window causing the male to look up and then 'legging it' out of the driveway turning right to where a dark coloured car was parked up with its lights on.

[4] AB told her husband what she had seen and they contacted police. After reviewing their CCTV camera footage they contacted police again informing them that they believed a bomb had been placed under their car. The initial telephone call was logged by police as being received at 02:43 with a second call at 02:52. They told police to be cautious as they responded to their call. The area where BB's car had been parked was covered by two motion activated CCTV cameras. From these cameras it was established that at 02:41:30 hours a vehicle stopped just past the entrance to the driveway to Glenrandel and that a person is then captured on CCTV placing the UVIED under BB's car at 02:41:54 hours.

#### **Vehicles captured on CCTV in the vicinity of Glenrandel**

[5] The CCTV footage from Glenrandel was seized and copied as exhibit PJC10. This footage showed a dark vehicle coming to a stop outside this address just before the UVIED was placed under BB's car. This CCTV footage together with other CCTV footage and image captures of the suspect vehicles were forwarded to Mr Wooller, a specialist in the analysis, interpretation and enhancement of image evidence particularly in relation to the identification of vehicles captured on CCTV. He was asked to give his opinion as to the identity of the type/model of vehicle recorded on this footage and then compare his findings with images of the suspect vehicles seized by police.

[6] He gave evidence that his standard practice and the practice adopted in this case was to carry out what he referred to as a 'blind analysis'. This is where he undertakes the analysis of the suspect vehicle believed to have been involved in the incident without being given any prior details of the suspected type, make or model of the vehicle from investigating police. To achieve this he requires that any submission to him containing multiple sightings of the vehicle or vehicles suspected to be involved are ranked according to image quality in order that he may consider the poorer quality sightings before viewing any sightings where the suspect vehicle identity may be more readily apparent. This he stated is to avoid 'confirmation bias' the tendency to erroneously identify a suspect vehicle when in prior possession of information or clearer images of the vehicle likely to be involved.

[7] In his analysis of this CCTV he describes it as showing a dark tone vehicle moving from left to right past the end of the driveway to Glenrandel and stopping. The profile of the vehicle is consistent with that of a saloon/notchback/coupe style car. He was of the opinion there was a side rubbing strip/side body moulding which

was angled from the height of the front wheel centre to rear wheel top, and this returned a highlight along its length. He was not able to discern from this imagery whether the highlight was the result of the presence of a light tone insert within a rubbing strip or whether this was a specular reflection from a body moulding. He reported there was a waist mounted tail light and a low mounted rear number plate. He was of the opinion this combination of the overall profile, low mounted rear number plate and a sloping side moulding is relatively uncommon. He was further of the opinion that possible vehicle types that possess such a combination of features include a MK1 Hyundai Coupe, a VW Passat B6/B7 and a VW Passat CC. He could not give any other vehicle type or model which could be consistent with this image. Given the four potential models, albeit three were VW Passat vehicles, he considered that the vehicle could not be definitively identified from this sighting alone. The suspect vehicle in which the defendant was stopped by police was a VW Passat B6.

[8] He also considered CCTV images of a vehicle captured passing Eglinton Primary School travelling towards Glenrandel at 02:40:16 and away from Glenrandel at 02:42:34. He described this vehicle as a dark tone /notchback/coupe vehicle with a low mounted rear number plate. However, given the distance from the CCTV camera and the relatively small size of the images definitive identification was not possible.

[9] He was cross-examined on the basis that he had not followed best practice or even his own stated practice in analysis of the images. That he had received images that clearly identified one of the suspect cars as a VW Passat. That he had failed to ensure this was a proper blind analysis and there was a real risk of confirmation bias in his findings. It was suggested his working notes were inadequate and his work was not peer reviewed or otherwise quality assured.

[10] Irrespective of the cross-examination as to the methodology and approach adopted by Mr Wooller there was no real challenge as to the objective assessment of what he noted in the CCTV footage as features of the vehicle. Mr Wooller did not purport to definitively identify the make of car outside the driveway of Glenrandel but in essence gave two potential alternatives a MK 1 Hyundai Coupe or VW Passat (B6/B7/CC). As it stands alone this evidence does not establish the car seen on the CCTV at the scene was in fact a VW Passat or the suspect VW Passat seized by police. The weight to be attached to this evidence in my view can only be assessed when considered in light of all the other surrounding circumstantial evidence in this case.

### **Police response and observations**

[11] Three police mobile patrols were tasked to attend the scene at 02:46. These were in order of approach to Glenrandel; [1] vehicle GH73 with Constables Shaw (driver) and Rogers on board, [2] GH78 Constables McKane (driver) and Flynn, and [3] GH71 Constables McKenna and Callan (driver).

[12] Constable Shaw was in the vicinity of Bond Street/Clooney Terrace when he received a radio transmission to go to Eglinton. He drove along Limavady Road, to the Caw Roundabout and onto Clooney Carriageway at a reasonable speed with his blue lights and sirens on but held back somewhat as he knew other mobile patrol vehicle were also attending but were further away. As he approached the bridge across the Faughan River he gave evidence that he saw two sets of lights ahead of him coming in the opposite direction heading towards Londonderry. When he first saw the vehicles they were beyond the White Horse roundabout on approach to the Faughan River Bridge. As they passed his vehicle he noted that they were travelling together and at a speed faster than normal. He said he encountered these vehicles approximately 5 minutes after getting the radio transmission to attend the incident. His observer, Constable Rogers, initially made no mention of any such encounter in his note book or first statement of evidence but later in a subsequent statement dated 16 January 2016, claimed that Constable Shaw had mentioned about two cars flying past them but that he missed seeing them and could not recall where they were on the road when Constable Shaw had said that. He gave no rational explanation for failing to include this in his earlier statement.

[13] In cross-examination he agreed that when he received the radio communication to attend the scene at Glenrandel he was told to be vigilant and report anything suspicious immediately. He agreed he did not make a contemporaneous report of this suspicious vehicle activity to his authorities on seeing what appeared to him to be speeding vehicles driving in convoy. When shown a map of the general area (Defence exhibit 1) he agreed it was approximately 4.2 miles from where he received his first radio message to go to Glenrandel and where he encountered the two cars. He confirmed he did not see blue lights of any other police car behind him as he approached the Faughan River Bridge. It was agreed that the distance from Glenrandel to the point he claimed to see the fleeing cars was approximately 2.3 miles and if the timings on the CCTV at Glenrandel were accurate the fleeing cars had a head start of approximately 4 minutes on his police vehicle yet had only travelled just over 2 miles when they met. He also accepted that his vehicle and other police rendezvoused at a Maxol Filling Station before proceeding to Glenrandel and that his vehicle entered the garage forecourt at 02:54. This filling station being approximately 2 miles from where he claimed to have seen the two speeding cars. He agreed he would have covered the distance from the Faughan Bridge to the Maxol Station in around 2 minutes placing his encounter with the fleeing cars in or about 02:52.

[14] The second police vehicle travelling towards Glenrandel was GH78 driven by Constable McKane. He gave evidence that as his vehicle approached and entered the White Horse Roundabout he saw two vehicles one silver the other dark travelling at speed and in convoy coming from the Eglinton direction entering the White Horse Roundabout in the opposite direction of travel to his vehicle. Despite travelling behind GH73 Constable Shaw's car, he claims to have encountered the fleeing vehicles at a point before the Faughan River Bridge and closer to Eglinton. Constable Flynn who was observer in GH78 along with Constable McKane saw the

two speeding cars on the Londonderry side of the White Horse Roundabout describing one as dark and the other light. Clearly there is inconsistency between the evidence Constables McKane and Flynn and that of Constable Shaw. It would be physically impossible for Constables McKane and Flynn who were some distance behind Constables Shaw and Rodgers to see the same two fleeing cars coming towards them but for those cars to be further away from Londonderry, closer to Eglinton and not even close to crossing the Faughan Bridge.

[15] In cross-examination Constable McKane accepted he had travelled a distance of approximately 6 miles before he met the fleeing cars while the fleeing cars had only covered a distance of approximately 2 miles despite having what appears from the Glenrandel CCTV to be a 4 minute head start on his police vehicle. He also agreed that in his police note book he had earlier described this encounter with the fleeing vehicles at the Caw Roundabout some 3 miles away from the White Horse Roundabout as alleged in evidence. Constable Flynn in her evidence claimed that Constable McKenna, who was in GH71 following behind her vehicle, had made a radio transmission to the effect that he had observed two vehicles and that she had responded by saying they were the same two vehicles she and Constable McKane saw. In cross-examination she accepted no such radio transmission was made by Constable McKenna in the car behind her rather it came from Constable Coulter on the Foyle Bridge.

[16] Constable McKenna who was in the third police vehicle GH71 said he encountered two cars travelling closely together and at high speed on the Gransha Roundabout. These vehicles were negotiating the roundabout at the same time as his vehicle only they were travelling in the opposite direction to him. He said that within a matter of seconds he heard a radio transmission from Constable Coulter indicating that two vehicles had come across the Foyle Bridge from Waterside heading to the cityside. That the vehicles had southern registrations, were travelling at extreme speed and Constable Coulter thought the first car was a dark coloured Volkswagen.

[17] In cross-examination Constable McKenna would not be drawn on what he meant by a few seconds. He indicated that at the time he had been concentrating on getting to Glenrandel, going through what steps and actions he would have to perform when he arrived there and that his perception of time may have been inaccurate. He agreed that when he arrived at the Maxol Filling Station the other two police vehicles were there, that he did not enter the forecourt but continued on the road making his way to Glenrandel effectively his vehicle became the lead police car on approach to Glenrandel. He agreed that the other two police vehicles left the Maxol Filling Station at 02:55 which would have approximated with his time of arrival. He agreed the distance between Gransha Roundabout and the Maxol Filling Station was approximately 4 miles and that according to the police communications log of radio transmissions it appeared that Constable Coulter's transmission concerning the two vehicles on the Foyle Bridge was timed at 02:54 just as he was

close to the Maxol Filling Station. He agreed he could not have travelled from Gransha Roundabout to the Maxol station in a matter of seconds.

[18] Constable Callen the driver of GH71 did not see any vehicle coming towards him as he travelled towards Glenrandel nor did he recall whether Constable McKenna had mentioned seeing vehicles en-route. He agreed in cross-examination that when responding to a call and driving a police car at speed he would pay particular attention to the road and other traffic especially at roundabouts. He saw no other vehicles at any of the roundabouts.

[19] The prosecution contend that the proper inference to be drawn from the evidence of the responding police is that the two speeding cars observed travelling in convoy on the Clooney carriageway were connected to the incident at Glenrandel. That is so despite the inconsistency between police officers as to where precisely along the Clooney carriageway they saw the speeding cars.

[20] The defence suggest that no reliance can be placed upon this evidence to make a connection between the two cars apparently fleeing the scene and the incident at Glenrandel. They argue the location of the sightings are logically inconsistent, the accounts of the officers themselves are inconsistent one with the other and inconsistent with the established radio communication log and ANPR timings. They submit the nature of the evidence is such as to give rise to a clear suspicion that this aspect of the case has been written up after the event to bolster the prosecution case and establish a link between the fleeing cars, the ANPR camera evidence and the incident at Glenrandel.

[21] The weight to be attached and the conclusions reached with regard to this aspect of the evidence will depend on and have to be assessed in the light of all the surrounding circumstances to see whether it is strengthened or reduced. I will return to this aspect of the case later.

### **Foyle Bridge Vehicle Check Point**

[22] It is argued by the prosecution that the two cars observed by police speeding from Eglinton were involved in the Glenrandel incident is supported by the actions of these cars at a vehicle check point ("VCP") set up by police on the city side of the Foyle Bridge. It is not disputed that the two suspect vehicles travelled past an ANPR camera on approach to the Foyle Bridge travelling Cityside at 02:53. Police had just set in place or were in the process of setting in place a VCP close to the Boom Hall layby. Their police vehicles were positioned on the city bound lane with their blue lights illuminated. Constable Coulter had just alighted from his vehicle (GH70) when he claims to have heard the sound and observed the lights of cars approaching from the Waterside direction of the Bridge. He stepped into the carriageway with his torch illuminated to stop the cars, he was concerned that the vehicles were travelling towards him at 'really really excessive speed' and he stepped out of the road. He claimed there was no attempt by the vehicles to slow down and he identified the



first vehicle to pass him as a dark coloured Volkswagen saloon with a southern registration and a driver and passenger in the front of the car. He stated the cars were travelling so fast he did not have an opportunity to identify the second vehicle other than it had a southern registration and that it was travelling very close behind the Volkswagen. He gave evidence that he believed the cars went onto the Culmore Road Roundabout and went straight ahead exiting onto to the Madam's Bank Road.

[23] In support of this account there is a contemporaneous radio transmission from Constable Coulter timed at 02:54 and 56 seconds where he says the following: '... for your information two cars come across the Foyle Bridge from Waterside heading to Cityside ah both southern reg vehicles travelling at extreme speed we had just stopped getting ready to set a VCP up, they went past at an extreme speed, both Southern reg vehicles I think the first vehicle was a dark coloured Volkswagen.. over.' When asked which direction they travelled when they came off the bridge he responded: - '... I'm not 100% sure but I believe they went straight on heading up Madam's Bank Road towards Skeoge...' Whereupon, the radio controller indicated he would inform An Garda Siochana ("AGS").

[24] In cross-examination it was put to Constable Coulter that it was not possible to see the route taken by the cars after they had entered the Culmore Road Roundabout. He did not accept this proposition.

[25] Constable McGrattan was on the Foyle Bridge at the VCP and as he was exiting his police vehicle he saw the lights of cars on the outside lane of the bridge approaching the VCP. Once out of the car he said he saw the vehicles approaching at great speed with the second car close behind the first. As they passed him he said he could clearly see the first car was a black coloured VW Passat. He could not say what make or model the second car was only that it was box shaped and angular with the rear number plate being in Republic of Ireland format. He believed the second car was silver in colour. Having had experience of carrying out VCPs on the Foyle Bridge before and being aware of the speed limit on the bridge he was of the view that the cars were travelling in excess of 80 mph. After passing the VCP he said the cars went onto the Culmore Road Roundabout and straight over onto the Madam's Bank Road. He was pressed on this point in cross-examination and it was put to him that it was not possible to see the exit onto the Madam's Bank Road from his described location. In response he stated he was able to determine the vehicles exited onto Madam's Bank Road by virtue of the glare of their headlights on trees either side of the exit road. It was suggested to him that this explanation by him was a recent fabrication on his part and that engineering evidence suggested it was not possible to discern the direction of travel of a vehicle once it had entered the Culmore Road Roundabout from his location.

[26] Constable Thompson who was also present at the VCP heard and observed two vehicles approaching their VCP at speed and went through the VCP without slowing down; indeed it appeared to him that the cars speeded up towards the VCP. He noted the first car was a VW Passat black or dark blue in colour. He said he only

caught a glimpse of the second car and formed the opinion it was a hatch back type vehicle and said he was not sure of the colour of this second car due to the street lighting but that he thought it might be silver but could not be sure. He observed the cars to the Culmore Road Roundabout and then lost sight of them. This it was suggested confirmed the defence engineering evidence of Mr Murphy that from the vantage point of the VCP looking towards the Culmore Road Roundabout, that while it was possible to infer a vehicle was exiting left on to the Culmore Road citywards at the roundabout from its lane position and brake lights relative to the road alignment, it was however, impossible to ascertain whether a vehicle exited onto Madam's Bank Road or Culmore Road in the direction of Moville. This it is suggested contradicts the evidence of Constables Coulter and McGrattan.

[27] The defence suggest that the inconsistency between Constables Coulter and McGrattan who claim to see the two vehicles exit onto Madam's Bank Road and Constables Thompson and Stewart who fail to see the vehicles exit the roundabout, is such that it casts serious doubt on all the officers' evidence as to where they were on the Foyle Bridge and what they saw. This together with the discrepancies in the colour of the vehicles as between officers particularly in light of Mr Murphy's engineering evidence as to how close the police officers must have been to the cars is such as to cast very serious doubts as to the veracity of this evidence as a whole. To such an extent as to suggest this evidence may have been retouched and embroidered rendering it unsafe to rely upon.

[28] The prosecution rejected this contention and say the height of the challenge to this evidence is whether the police were standing where they said they were and saw the cars exit onto the Madam's Bank Road. They point to the contemporaneous radio communication of Constable Coulter at 02:54:56 to rebut any suggestion of recent invention and to the fact two cars are recorded by an ANPR camera at Bridgend travelling in convoy approximately 3.5 minutes later at 02:58:22. The first being a stolen black VW Passat registration number 07-D-7897 and the second a stolen Toyota Corolla Verso 06-WW-1870 with both bearing false number plates.

### **ANPR Camera Evidence**

[29] Evidence established that the suspect VW Passat was stolen on 12 June, 2015 and the Toyota Verso on 8 June, 2015, less that two weeks before the incident in Glenrandel. False number plates had been applied to both vehicles, the original number for the VW Passat was 08-D-29778 and the Toyota Verso 08-D-61630. Analysis of ANPR cameras prior to the incident at Glenrandel establishes that prior to 18 June 2015 there was no evidence of either car being recorded on ANPR cameras in Northern Ireland either under their true or false registration plates. It is not until just half an hour before the bomb is planted in Glenrandel, on 18 June, 2015 at 02:09:33 the black VW Passat registration number 07-D-7897 is first recorded at Drumahoe closely followed by a Toyota Verso registration number 06-WW-1870. Both vehicles are again captured in convoy crossing back and forth across the Foyle Bridge. First crossing to the Cityside with the VW Passat first and then the Toyota

Verso at 02:15:08 and 02:15:11 respectively. They then cross back over the Foyle Bridge in the same order travelling to the Waterside at 02:22:46 and 02:22:49. At this point they are captured on ANPR travelling again in convoy east towards Eglinton at Maydown on the Clooney Road at 02:24:52 and 02:24:55. After the incident at Glenrandel the Toyota is captured by ANPR at Maydown at 02:52:07 this time travelling west away from Eglinton. It is suggested by the prosecution that the ANPR at Maydown simply did not capture the VW Passat on its return journey west. Support of this proposition is to be found in the fact that both cars are captured travelling West in convoy at Foyle Bridge heading Cityward at 02:53:43 and 02:53:46 and again in Bridgend at Blackthorn Amusements at 02:58:22.

[30] Police vehicles attending to the scene at Glenrandel are also captured on ANPR cameras. The evidence derived from the ANPR cameras assists in the weight to be attached to the purported observations of police concerning two fleeing cars coming from the direction of Eglinton and of police on the Foyle Bridge.

[31] The evidence of Detective Sergeant Hanna established that the first police vehicle en route to Glenrandel was GH73 (registration number RFZ6899) with Constables Shaw and Rogers on board. This vehicle passed the Maydown ANPR travelling east towards Eglinton at 02:50:44. The second police vehicle GH78 (registration number JFZ5247) with Constables McKane and Flynn on board passed the Maydown ANPR camera travelling east at 02:51:04. The Toyota Verso 06-WW-1870 coming in the opposite direction travelling west cityward was captured by the Maydown ANPR camera at 02:52:07, this was 1 minute 23 seconds after GH73 and 1 minute 3 seconds after GH78. As already noted the VW Passat 07-D-7897 was not captured on the Maydown ANPR camera. It is clear from this evidence, GH73 and GH78 would have met the Toyota Verso on this stretch of road but could not have encountered the Toyota Verso or VW Passat as far east as the Whitehorse Roundabout a distance of 1.8 miles east of the Maydown ANPR camera. In relation to GH71 (Constables McKenna and Callan) it passed Maydown ANPR camera going east at 02:52:21 just 14 seconds after the Toyota Verso went through the same ANPR camera going west and the vehicles would have passed just to the west of the Maydown roundabout.

[32] The prosecution case is that it is proper to conclude from the ANPR evidence that the speeding cars travelling in convoy and encountered by police responding to the incident at Glenrandel were the suspect VW Passat and the Toyota Verso rather than any other cars travelling west on the Clooney carriageway at this time.

[33] The defence argue that even if the court were to conclude the officers did see suspicious vehicle activity as alleged it would be entirely unsafe to conclude that these observed vehicles were one and the same vehicles caught on the ANPR cameras or CCTV at Glenrandel.

[34] The prosecution refute this and argue that any other cars encountered on the Clooney carriageway can be discounted as the two fleeing vehicles by a number of distinguishing features, specifically:

- (a) vehicle type;
- (b) whether driving in convoy;
- (c) their speed;
- (d) whether stolen; and
- (e) the behaviour of the suspect cars on Foyle Bridge.

[35] Of the ten other vehicles passing through the Maydown ANPR camera between the time of the incident and 03:00, one was an ambulance and one passed through the ANPR camera less than one minute after the incident and would have had to cover a distance of 2 miles from the incident and the camera. Another three of the vehicles which made their way to and from Eglinton in and about the material time and captured on the Maydown ANPR were:

- (i) A Mercedes Vito van/people carrier (black) R439SUT - out towards Eglinton at 02:26:25 and back at 02:46:45;
- (ii) A silver VW Passat BV54VWK - out towards Eglinton at 02:31:27 and back at 02:46:59;
- (iii) A grey VW Passat AXZ2933 - out towards Eglinton at 02:30:46 and back at 02:54:13.

These three vehicle were identified as taxis, none stolen vehicles and their journeys consistent with taxi fares.

[36] Prior to the time of the incident at Glenrandel the VW Passat and Toyota Verso are captured on ANPR cameras at Drumahoe, Foyle Bridge (twice) and Maydown travelling in convoy, with only between 3-5 seconds between the two cars. On their return back over the Foyle Bridge the ANPR camera captures them again in convoy 3 seconds apart. Only one other pair of vehicles gave the appearance of travelling in convoy, silver VW Passat BV54VWK (already identified as a taxi) and a red Vauxhall Corsa VKZ7872 which passed through the Maydown ANPR camera 4 seconds apart. However, the silver VW Passat taxi continued over the Foyle Bridge whereas there is no evidence that the Corsa followed it. There is no evidence the Corsa was a stolen vehicle.

[37] The Mercedes Vito van/people carrier passed through the Maydown ANPR camera 14 seconds before the silver VW Passat. Neither appears in convoy nor are they stolen.

[38] The defence raised as a reasonable possibility that a silver Astra van ANZ 6841 and a grey VW Passat AXZ 2933 (another identified taxi) may have been the speeding cars in convoy proximate to the White Horse roundabout. However, it has to be noted they were captured 45 seconds apart and can hardly be said to have been travelling in convoy that distance apart. Neither vehicle was stolen.

[39] Of the ten cars identified on the Clooney carriageway between 02:41 and 03:00 only the suspect VW Passat and Toyota Verso were stolen. Two vehicles remain unidentified due to incomplete registration numbers while none of the other vehicles have ever been recorded or reported stolen.

[40] In terms of the relative speed of the suspect VW Passat and Toyota Verso when travelling towards Eglinton and returning from Eglinton, I am satisfied that they travel significantly faster on the return journey from Eglinton after the incident has occurred. Travelling towards Eglinton at 02:22 the suspect VW Passat and Toyota Verso between the Foyle Bridge ANPR and the Maydown ANPR travel at an average speed of 42.9mph. This is significantly slower than GH78 and GH71 who responding to the incident travel the same distance at average speeds of 55.7 68.4mph respectively. Yet on return, after the incident has occurred, the Toyota Verso travels the same distance only this time between Maydown and Foyle Bridge ANPR cameras at an increased speed of on average 54.5mph. A speed which was 30% faster than any of the other vehicles that passed between those two ANPR cameras at the material time between 02:41 and 03:00. While the suspect VW Passat was not captured on the Maydown ANPR camera on the way back from Eglinton I am satisfied the evidence of the police officers at the Foyle Bridge VCP supports the case the suspect VW Passat was travelling at speed while the Foyle Bridge ANPR confirms they were in convoy just before entering the bridge.

### **Evidence of Michael Lynch**

[41] The defence argue that the best that the 'Eglinton sightings' by police can offer in terms of evidence is that there were vehicles travelling at speed coming from the direction of the incident that night along the Clooney carriageway. However, they maintain that these vehicles observed by police speeding away from Eglinton were not the two suspect vehicles captured on the ANPR camera at Foyle Bridge. They suggest the hearsay evidence of Michael Lynch noted by Constable Shaw at Glenrandel on the night of the incident is of particular significance and has the potential to point away from the suspect cars being those encountered by police fleeing the scene westwards on Clooney carriageway. Such evidence has to be scrutinised carefully and anxiously for the reasons I have identified earlier in paragraph [2] of this judgment.

[42] Constable Shaw was travelling in police vehicle GH73 which initially was the first of the three police vehicles that approached Eglinton. However, just before Eglinton GH73 pulled into a Maxol Filling Station to wait while the other two police vehicles caught up. Police vehicle GH78 also pulled into the Maxol Station. The third police vehicle travelling along the Clooney carriageway did not enter the Maxol Station but continued on into Eglinton without stopping thus becoming the first in the line of police vehicles heading towards Eglinton. GH78 pulled in behind GH71 with GH73 now at the rear of the police vehicles heading into Eglinton. This order also appears from the communication recording which has GH71 being the first vehicle to confirm arrival at the entrance to Glenrandel. GH78 shortly thereafter is recorded as confirming that they had walked into the estate (Glenrandel). Subsequently, GH73 (Constable Shaw) is recorded making a radio transmission as follows:-

“73                   Uniform from 73 driver.

Uniform            Yeah 73 driver go ahead.

73                    Roger, I took details off a pedestrian walking up the Woodvale Road there if you want to note that on the log for me please.

Uniform            Right go ahead.

73                    Roger, the young fella was in the town centre there XXX DOB XXX Roger so far.

Uniform            Yes Roger.

73                    Roger, his address is XXX and I’ve a telephone number for him here its XXX did you receive.

Uniform            Yeah Roger, can you just confirm he’s a witness just walking up the road did he actually see anything.

73                    Roger, he was walking up the road there he says a couple of cars travelling at speed (inaudible) anything further about them but just anyone wants to make further enquiries with him there I’ve his number and details over.

Uniform            Yeah, yeah Roger, thank you.”

No mention was made in this radio transmission of the vehicles leaving the area.

[43] Constable Shaw also made a notebook entry concerning this encounter with Michael Lynch in the following terms:

‘... On route driving up Woodvale Road I saw a lone male walking up Woodvale Road country bound on the left hand side. As I pulled into Glenrandel, I remained at the entrance and spoke to this male when he got as far as Glenrandel. He identified himself as Michael Lynch. He was wearing a dark jacket open at the front, light T-shirt underneath, blue jeans and black canvas trousers. I enquired with him if he had seen anything or anyone in the area within the last 10 minutes. He said he had seen two cars but couldn’t describe them. He told me that they had driven past him but had headed country-bound. I could smell alcohol off Mr Lynch but he appeared lucid. He said the cars were travelling at speed...’

Again in this notebook entry there is no mention of the vehicles leaving the area at speed.

[44] The defence argue that a Command and Control Log gives some indication of the inaudible section of the radio transmission by Constable Shaw. The Log note of Constable Shaw’s radio transmission is as follows:-

“Message from GH73: I have noted a male who was walking up Woodvale Road, Michael Lynch DOB XXX 075XXXX. He states he saw two cars leave the area at speed.”

From this note the court is asked to infer that the vehicles observed were seen leaving the area in the direction of Claudy and therefore raises the reasonable possibility that the cars seen speeding on Clooney carriageway and Foyle Bridge may have had nothing to do with the Glenrandel incident at all. There are a number of difficulties with this proposition. First, the Log note is simply a brief summary of the radio transmission and not a verbatim recording. Secondly, the radio communications recording indicates Mr Lynch was walking along Woodvale Road, country-bound on the left side of the road. It is known from Constable Shaw’s evidence that Mr Lynch was close to Eglinton Primary School and walking towards but had not yet reached Glenrandel. Accordingly, any vehicles responding to the scene at Glenrandel would pass him presumably at speed and heading countrywards. Thirdly, Mr Lynch made a statement to police the following morning explaining that he had been out at Sugar nightclub in Derry and had been dropped off by a taxi in Eglinton to allow him to eat a carryout meal he had bought. He described walking down Woodvale Road in the direction of Glenrandel when;-

‘... a large dark coloured car flew past me at speed. I think this car may have turned left into Glenrandel as I don’t remember seeing it go on up the hill countrywards. I think the car I seen was an unmarked police car.’

[45] The defence suggest that Mr Lynch may well appear to have had second thoughts about being involved in this case. That his absence from the trial and the authorities inability to locate him is supportive of this view. However, the content of his subsequent written statement to police is consistent to the extent that at least two unmarked police cars passed him heading country-bound, responding to an emergency incident and turned into the entrance of Glenrandel.

[46] I am satisfied beyond reasonable doubt the police encountered both the VW Passat 07-D-7897 and the Toyota Verso 06-WW-1870 travelling at speed and in convoy along the Clooney carriageway coming from the direction of Eglinton but not at the locations claimed by police witnesses. It was clear from the evidence of police that they knew they were responding to a real and serious terrorist incident and were focused on rehearsing in their minds the safety and protective protocols they would have to deploy on arrival at the scene. I am further satisfied from the evidence in the case that the Clooney carriageway, particularly at night and when travelling at considerable speed, appears very similar throughout its length and the opportunity to mistake roundabouts is considerable. I do not consider the police officers have retouched or embellished their evidence to bolster a link between the ANPR capture of the suspect car registration numbers and the incident at Glenrandel.

[47] I am also satisfied to the required standard that the two suspect cars, VW Passat 07-D-7897 and the Toyota Verso 06-WW-1870, seen speeding along Clooney carriageway and captured on the Foyle Bridge ANPR, are the same two cars which accelerated through the VCP on the Foyle Bridge without stopping. Given the evidence of police at the VCP and the contemporaneous radio communications log I am satisfied a VCP had just been put in place on the Foyle Bridge and that the two suspect cars deliberately chose to speed up on approach to the VCP and evade police. Whether or not police actually saw or believed they saw the cars make their way over the Culmore Roundabout on to Madam’s Bank Road, it is evident from the communications log, police on the night were not 100% sure where the vehicles went but when asked reported back they believed the cars travelled on to the Madam’s Bank Road and AGS were informed accordingly. In any event the vehicles appear to have in fact travelled along the Madam’s Bank Road and were captured by an APNR camera at Blackthorn Amusements, travelling in convoy and in the same order observed on the Foyle Bridge, approximately 3.5 minutes later.

[48] I am further satisfied, having carefully considered the evidence in relation to Michael Lynch, that it does not point away from or undermine the proposition that the suspect vehicles, seen fleeing along Clooney carriageway, across Foyle Bridge



and into the Republic of Ireland at Bridgend, were involved in the incident at Glenrandel.

### **Route taken by suspect vehicles in Republic of Ireland**

[49] Once in the Republic of Ireland the suspect VW Passat and Toyota Verso are captured on Blackthorn Amusements ANPR camera at 02:58:22 and 02:58:24 respectively. The suspect cars are travelling in the same order (VW Passat the lead car) and in convoy (2 seconds apart) as captured on the Foyle Bridge ANPR. It is not contradicted that the suspect vehicles travelled in convoy to Lifford and are captured on CCTV cameras en route at the Credit Union in Newtowncunningham, the Rossgier Inn, Daly's Service station just outside Lifford and various CCTV cameras in Lifford itself before they eventually stopped in the car park at Slevin's Pharmacy, Lifford adjacent to premises known as Martin's Tyres.

[50] Once in Slevin's Car Park a person is captured on CCTV exiting the front passenger door of the Passat and making their way over to the driver's side of the Toyota. As the Passat appears to be turning this individual begins to make their way towards Martin's Tyres then stops and returns back towards the Passat and picks something up from the ground which it appears they have dropped. Once they have picked this up they continue to make their way towards Martin's Tyres. CCTV footage from Martin's Tyres shows this individual making their way across Bridge Street moving in the direction of the river. At this stage what appears to be a reflection can be discerned towards the lower central bottom portion of the back of the individual clothing. This did not appear to be an artefact contained within the CCTV footage. I am satisfied this is consistent with a reflective strip to the bottom of the coat seized from the defendant on his arrest. Approximately two minutes later an individual can be seen on the CCTV making their way back along Bridge Street in the direction of Slevin's car park.

[51] While this is taking place on Bridge Street the driver of the Toyota gets out and goes round to the passenger side of the Toyota where they are joined by another person who has made their way from the direction of the Passat. Both these persons are then seen to move in the direction of the Passat and the lights of the Toyota flash as if the car is being locked. Approximately 1 minute and 30 seconds later the Passat leaves the car park and turns left on to Bridge Street heading in the direction of the person who has been seen making their way to the car park along Bridge Street. The Passat is then seen again approximately 30 seconds later travelling in the opposite direction along Bridge Street heading towards Killygordon. The prosecution say what is observed is consistent with the driver in the Toyota exiting and locking that vehicle and getting into the Passat which then exits the car park and picks up the person who has made their way towards the river and then returns back along Bridge Street towards the car park. The prosecution say this is a reasonable inference to be drawn from the fact there are few cars and even fewer people in and around this area of Lifford at this time of the morning. The fact the driver of the Toyota gets into the Passat is further strengthened by the fact the Toyota is discovered by AGS

still parked in the car park days later virtually out of petrol giving the appearance that it had to be abandoned there for that reason.

[52] The defence say that from the CCTV evidence it is not possible to say how many persons were in the suspect vehicles. Whether one or more of the persons in the suspect vehicles left and did not return and may have been wearing a jacket similar to that seized from the defendant. Alternatively, the reasonable possibility cannot be excluded that the defendant was not in the suspect car at Clooney carriageway or Glenrandel but was picked up later and was not involved in the incident in Glenrandel either as planting the bomb or of being any part of such an enterprise. That such a reasonable possibility is fortified by the absence of his DNA on gloves subsequently found close to the scene of his arrest.

### **Stop and arrest at Killygordon**

[53] At 03:04 Garda Lavelle in the communications room in Letterkenny informed officers of the Regional Armed Response Unit that two suspect vehicles believed to have been involved in planting an explosive device under a police officer's car in Londonderry were last seen heading in the direction of Bridgend, Co. Donegal. The suspect vehicles were identified as a VW Passat 07-D-7879 and Toyota 06-WW-1870. Later that morning at around 03:46 Garda Prunty and Garda Murphy were making their way towards Lifford, they had just passed through Killygordon and were in the townland of Kiltown when they met the suspect VW Passat making its way towards them travelling in the opposite direction. They turned their police vehicle, switched on the blue lights and went in pursuit of the suspect car. By the time they turned their vehicle the suspect car was out of sight. It appears Garda Prunty at this stage telephoned Garda Lavelle in communications informing him he was pursuing the suspect VW Passat and required back up. He was pressed on this point in cross-examination why he would chose to telephone rather than radio Garda Lavelle. He explained that he had no pocket radio to use and he wanted to get through to Garda Lavelle quickly and the car radio is used for the whole division and it was quicker to use a mobile phone. It was suggested the mobile phone was used so that there would be no recording of the conversation; its use was bizarre and casts doubt on whether there was any pursuit at all. Garda Prunty responded by claiming he did not know whether his call to Garda Lavelle would be recorded or not and he wanted to inform communication of his sighting and get back-up quickly.

[54] In any event, as they drove back into Killygordon police again saw the VW Passat as it approached a red traffic light at a junction. They put on their siren and observed the Passat increase in speed, overtake a stationary car at the traffic lights and go through the red light on the wrong side of the road at speed. Police followed them out of Killygordon for approximately a mile increasing in speed, police were able to see someone in the back of the car turning around in their direction and eventually the Passat slowed down and stopped. As police approached the car the driver's door opened. Garda Sergeant Murphy went to the driver's side of the car and Garda Prunty to the passenger side. Given the earlier briefing by Garda Lavelle

police approached the car with their firearms drawn and the passengers were informed they were stopped under section 30 of the Offences Against the State Act 1939. As police got closer to the car they observed the passengers had their hands raised. The rear seat passenger Sean Farrell was taken to the rear of the car handcuffed and placed face down on the road. Likewise the front seat passenger Sean McVeigh and the driver Ciaran Maguire were taken to the rear of the car, handcuffed and placed on the road face down. When asked who they were and where they were coming from they gave no reply to AGS. On being searched none of the three detained men had any identification on them. Garda Prunty confirmed he searched Sean McVeigh and indicated that it was a cursory search as he described it a 'pat down search'.

[55] It is of significance that when the suspect Passat is stopped by armed AGS the defendant Sean McVeigh was seated in the front passenger seat, Ciaran Maguire was the driver and Sean Farrell the rear seat passenger. Sean Farrell was in possession of the ignition key to the Toyota Verso abandoned in Slevin's car park. Sean McVeigh the front seat passenger of the Passat was wearing a coat with distinctive reflective strips consistent with the coat worn by the person who planted the bomb at Glenrandel. This is a matter I will return to later.

#### **Actions of AGS on arrest of suspects**

[56] On stopping the suspect car and detaining the occupants, Garda Prunty made it very clear he was concerned that the report he had initially received referred to two cars being involved in a terrorist incident and it was foremost in his mind that the other suspect car might arrive on the scene at any time. He was very conscious that there were only two Garda with three detained persons and they were still awaiting backup to arrive. They were concerned that there might be guns and/or explosives in the car. Garda Prunty said he opened the boot and had a glance into it. In cross-examination he conceded he was not wearing gloves or a forensic suit as this was a spontaneous incident and he did not have time. When asked did he search the vehicle he said yes by glancing into it. He said they did not have the resources at this time to do a prolonged search. He was asked if Garda Sergeant Murphy was inside the car and he said he saw him looking into the car. Garda Sergeant Murphy confirmed he carried out a brief search of the car by a brief look into it and under the seats to see if there were any firearms or explosives in it. He confirmed in cross-examination his body was in the car with his feet outside on the road as he did a cursory search. He confirmed he was not wearing gloves or a forensic suit when dealing with the suspects and they did not routinely have with them protective suits to place on the suspects.

[57] It is evident this was a dynamic and fast moving tense situation for Garda Prunty and Murphy. In my view they took all appropriate steps to arrest the suspects and maintain the integrity of the arrest scene consonant with the exigencies of the situation. I am satisfied their intrusion into the car was minimal and limited to a cursory search to exclude the presence of firearms and explosives. The search of

the defendants was equally cursory and limited to a 'pat down search' as described. Both officers denied having direct contact with explosives in the past at crime scenes or the arrest of persons suspected of explosives offences. Their role as armed response officers did not bring them into such direct or indirect contact with explosives or persons associated with explosives. It was indicated by them their role is to give armed support to those carrying out searches or arrests in such cases and not to become intimately involved in the scenes or with arrested suspects. They indicated that arrested persons and non-armed response officers did not travel in RSU police vehicles due to the fact they routinely carried firearms.

[58] The defence argue that there was a general lack of control and management of the stop scene and in particular contact with the VW Passat and suspects. No forensic precautions were adopted by those attending the scene after the initial stop with no forensic suits worn by investigators or the suspects when removed to custody. That no contemporaneous log scene was opened recording movement in and out of the scene or relevant actions taking place at the stop scene. That officers who had initial contact with the stop scene and the suspects were later involved in the search for and seizure of items/exhibits which the defence say were not properly recovered, packaged or stored as to preserve their forensic integrity.

[59] After the initial stop by RSU, at approximately 04:00 Garda McKenna and Garda Gavin responded to the stop scene in a Fiat Ducato police patrol van. On arrival Garda McKenna noted the VW Passat with all the doors and boot open. He observed the three suspects lying face down on the ground. He remained with the suspects until other police arrived. He was present when Garda Waters arrested the defendant Sean McVeigh and assisted Garda Waters to place McVeigh into the rear of the police patrol van and transported him to Letterkenny Garda Station. The other two suspects were arrested by other officers and separately transferred to custody.

[60] At 04:07 D/Garda McGonigle and D/Garda Kilcoyne arrived at the stop scene. D/Garda McGonigle observed the VW Passat with all the doors ajar and boot open with the exception of the rear driver's door. He stated he looked in the car and searched the immediate grass and hedgerow. He was requested to preserve the vehicle and took five photographs of the VW Passat in situ on his police mobile phone. He remained with the vehicle until the arrival of a civilian recovery vehicle and once the vehicle was loaded onto the recovery vehicle he handed it over to Garda Heneghan who escorted it to the vehicle recovery location. D/Garda Kilcoyne spoke with all three suspects and asked them for their names and addresses under section 30 of the Offences Against the State Act 1939 and informed them it was an offence to refuse. All three refused to answer and he separately in turn touched each on the right shoulder as they lay on the ground and arrested them. He then with D/Garda McGonigle searched the immediate area and the VW Passat (by looking inside the Passat). Subsequently, uniformed Garda again arrested each suspect and removed them from the scene to custody. Each was escorted by a different police officer and in separate police vehicles.

[61] It is self-evident that police would want to satisfy themselves that there were no explosives or firearms within the VW Passat. To this end I am satisfied that Garda Sergeant Murphy on his search confirmed there were no explosives or firearms under the seats or on the vehicle seats. In light of this I am satisfied that the detectives who subsequently attended the scene being forensically aware limited their search of the vehicle to looking inside the car as they have indicated in evidence. Having heard them give their evidence I have no reason to doubt their veracity.

### **Recovery of Gloves**

[62] Gardaí Prunty, Murphy, McGonigle and Kilcoyne, after leaving the stop area, retraced the route the suspect VW Passat took after having been first observed and then followed by police. It was logical the police officers who followed the suspect vehicle would be involved in this investigative step given their knowledge of the route taken by the suspect vehicle. Over the length of the route taken by the VW Passat from when it was first observed by Gardaí Prunty and Murphy to where it was stopped a total of six gloves – three pairs were located, photographed in situ and seized. It is significant that the suspect Ciaran Maguire the driver of the Passat, on his arrest and detention, was found to be in possession of two empty outer plastic bags for ‘Tesco Tough Gloves’. That three pairs of gloves were discovered on the route taken by the VW Passat when being followed by police and that three persons were on board the suspect vehicle which coincidentally matched the number of gloves found. One pair of the gloves was also a product match for the plastic wrapping found in the Passat driver’s possession.

[63] I accept the prosecution proposition that it is a compelling inference that that these gloves recovered had been thrown out of the car when the occupants became aware of the police following them. I am also satisfied this was done in an effort to dispose of evidence prior to their inevitable arrest.

[64] However, the defence have argued that there was a lack of control and management of the stop scene and in particular contact with the VW Passat and suspects. No forensic precautions were adopted by those attending the scene and no forensic suits worn by investigators or the suspects when removed to custody. That no contemporaneous log scene was opened recording movement in and out of the scene. That officers who had initial contact with the stop scene and the suspects were involved in the search for and seizure of items/exhibits which the defence say were not properly recovered, packaged or stored as to preserve their forensic integrity.

[65] D/Garda McGonigle was the police officer who seized all six gloves and packaged them. He photographed the gloves in situ, ascertained and recorded the GPS coordinates of where the gloves were located. He recovered the gloves by placing them in envelopes marking them POD1 – POD4, TK1 and JP1. On his return

to Letterkenny Garda Station at 08:00 he placed the envelopes in his secure locker because the exhibits store was not open at the time. Later the same day at 20:00 he placed the six envelopes containing the gloves in a nylon bag and sealed it with a cable tie then handed it over to D/Garda O'Connell.

[66] He was cross-examined closely in relation to his dealing with the gloves. When challenged about his handling of the gloves at the scene he stated he had been wearing gloves in order to seize the exhibits. It was pointed out to him that nowhere in his contemporaneous notebook or statement of evidence made the day after the incident had he ever recorded having worn gloves as he was now asserting. He claimed he had made a note 8 days after the incident on 26 June, 2105 recording that 'On 18/6/2015 I was wearing blue (faded) denim jeans, gloves ... to scene at Cavan Lower Killygordon'. Suggesting that he was indeed forensically aware of the need to wear gloves at a crime scene. He claimed that his background was in investigating drug crime and suggested that it would be a unique experience for him not to be wearing gloves and that such forensic precautions for him would be 'par for the course'. He went further by giving a vivid description of having a box of gloves with him, having taken them from the boot of his police vehicle and that while he had not noted it down he was adamant that he had worn gloves when seizing the exhibits and had changed gloves between seizing the individual exhibits. He was pressed as to why, if he had worn and changed his gloves, did he not retain the used gloves as controls. He responded by saying that the gloves seized were the exhibits and it was not practice for him to retain the used gloves.

[67] Having heard D/Garda McGonigle on this point I am satisfied that as a detective he would have had ready access to gloves for the purpose of seizing exhibits. That these would have no doubt been in the police car he arrived at the scene in. That he in fact did wear gloves and changed them between seizing the recovered gloves.

[68] D/Garda McGonigle was also taken to task concerning how he packaged the items he did seize. It was suggested to him that he should have packaged the gloves seized in sequentially numbered tamper proof evidence bags to avoid any issues concerning integrity of the exhibits rather than ordinary stationery type envelopes. He was asked how, if at all, he had sealed the envelopes he did use. He was unable to recall how he did in fact seal the envelopes. It was suggested this left open the opportunity for contamination of the exhibits given they were in his locker for approximately 12 hours before being placed in a nylon bag and closed over with a cable tie. It appears his locker did not contain any other exhibits in this or any other case He confirmed he had never been involved in investigations involving explosives. He stated his locker contained only old notebooks and documents.

[69] D/Garda O'Connell who received the exhibited gloves delivered them to FSNI where they were received and subsequently examined by Isla Fraser. The gloves were found to be packaged as follows: Outer packaging consisted of a paper bag with a poly window, stapled and taped at the top with a signed integrity label –

sealed, second layer consisting of a blue plastic bag with a swan neck top (repeatedly twisted) and sealed with a cable tie; and inner packaging consisted of 6 brown paper envelopes with handwritten details on the front and sealed with a small piece of tape at the flap. The items had not been opened or examined in Dublin due to the potential for them to have explosives on them.

[70] Given the evidence of D/Garda McGonigle as to how he packaged and stored the gloves before handing them over to D/Garda O'Connell together with the state of the packaging received into FSNI, I am satisfied that proper forensic precautions, packaging and sealing of the gloves was adhered to. That the prosecution have established to the required standard the integrity and freedom from possible contamination of the gloves from recovery at the scene to examination relied upon.

[71] The DNA findings of Dr Doak from the profiles created by Isla Fraser are not disputed. DNA matching Sean Farrell was found on the inside of the left and right Wurth Tigerflex gloves, items POD3 and TK1 respectively. DNA matching Ciaran Maguire was found on the inside of the right Tesco marigold type glove JP1. No DNA matching the defendant McVeigh was detected on any of the gloves. However, what the DNA evidence extracted from the gloves does establish is a connection between the gloves POD3, TK1, POD4 and JP1 and the occupants of the VW Passat.

[72] In addition to forensic testing for DNA the gloves were examined for the presence of explosives. It is accepted that traces of RDX explosives were found on two of the gloves both the left and right Tesco marigold type gloves items POD4 and JP1. Glove POD4 had 73.44 ng of RDX, defined as a low amount of RDX residue being less than 100 ng. Glove JP1 had 391.24 ng of RDX considered to be a medium amount of RDX being between 100 ng - 1000 ng. The significance of whether the trace is regarded as a low amount or a medium amount is that low amounts provide weak support for the proposition that the item has been in contact with a source of the explosive or a surface contaminated with it. Whereas, medium amounts provide support for the proposition that the item has been in contact with a source of the explosive or a surface contaminated with it and this could be either as a result of direct or secondary transfer from contact with a source of RDX explosives. The proposition being that the more RDX is present on an item the more likely it is to have resulted from direct transfer. Accordingly, I am satisfied to the required standard that the finding of the RDX on the gloves connected to the occupants of the VW Passat connects the occupants of the car to RDX explosives. I am also satisfied given the evidence of D/Garda McGonigle as to the seizing, packing and storage of the gloves that the findings of RDX on the gloves cannot be explained by innocent or inadvertent contamination as a result of his connection with the stop scene, the suspects, his police duties or the police station environment.

### **Examination of the suspects' clothing**

[73] On arrest the defendant Sean McVeigh was taken from the scene of the stop to Letterkenny Garda Station in the Fiat Ducato police van by Garda Waters and Garda McKenna. No other suspect or police officer accompanied them back to the Garda station. The defendant was not placed in a protective forensic suit and the police van was a normal police patrol vehicle used by police and prisoners on a regular basis. At Letterkenny Garda Station Garda Waters seized the clothes Sean McVeigh had been wearing when stopped and arrested. He gave evidence that he was wearing gloves when he seized all the clothing from McVeigh. He seized a black hooded jacket with fluorescent shoulder stripes which he placed in a nylon bag and then placed this into a sealed evidence bag. This coat was handed to Sgt McWalters, crime scene investigator who was present when it was seized and marked exhibit MMW3. He also seized from McVeigh his tracksuit bottoms and placed them in a sealed evidence bag marked EW1. Both these items of clothing were tested for explosives residue and the tracksuit bottoms were found to have 45.85 ng RDX on them and the black hooded jacket was found to have 32.27 ng of RDX on it.

[74] Garda Waters was cross-examined closely on why he did not record in his statement of evidence the fact he was wearing gloves when he seized the clothing from Sean McVeigh. In reply he stated that he was wearing gloves and that he wore gloves as a matter of course when seizing exhibits. It was suggested to him that he never recorded anywhere that the exhibit bags other than the one for the jacket MMW3 were sealed by him. He explained in cross-examination that they were sealed and that he has a clear recollection of sealing the bags.

[75] I am satisfied to the required standard that Garda Waters was wearing gloves at the time he seized the clothing from the defendant and that it was indeed second nature for him to do so. I am further satisfied that he sealed the exhibit bags and labelled/marked them appropriately. It is of significance that Sgt McWalters a crime scene investigator was present directing how the clothing was seized and packaged. It was at his direction the jacket was placed in a nylon bag and he would no doubt have raised his concerns if proper forensic procedures were not being followed in his presence.

[76] In relation to the defence suggestion that it is a reasonable possibility that the RDX on the defendant's clothing may well have got there by innocent contamination through indirect secondary or tertiary transfer from the police vehicle or within the police station I reject that contention for reasons I will shortly discuss.

[77] The driver of the VW Passat, Ciaran Maguire was also taken to Letterkenny Garda Station. He was transported there in the Raphoe patrol car and was not wearing a forensic suit. No other prisoner accompanied him and he was escorted by Garda McNally and Gavin. At the police station Garda McNally seized his outer coat, placed it in a nylon bag and then into an evidence bag which was sealed and given to Sgt McWalters who labelled it MMW1. Maguire's denim trousers were also seized, placed in a sealed evidence bag and labelled TMCN2. Forensic examination



revealed 64.88 ng RDX explosives residue on his denim trousers and 38.5 ng RDX on his outer coat. It is significant that both the driver of the suspect VW Passat and the passenger Sean McVeigh had traces of RDX residue on their outer coats and trousers.

[78] The defence raised the issue that the gloves found and clothing seized were not packaged in tamper proof evidence bags or in evidence bags with pre-determined sequential numbering or other unique identification marks. While this may be desirable it is not essential. What is essential is that there is in place a proper system of bagging, labelling, and recording to preserve the integrity of the exhibit seized. I am satisfied the system adopted met this standard in relation to the gloves and clothing mentioned above.

### **Forensic examination of the suspect vehicles**

[79] Garda Prunty who had been involved in the stop of the suspect VW Passat had initially seized the car. He requested that D/Garda McGonigle take over from him and preserve the integrity of the vehicle. D/Garda McGonigle remained with the vehicle until the arrival of Aiden Harold who loaded the VW Passat onto a recovery vehicle. Garda Heneghan then took over custody of the VW Passat and escorted it to Harold's Technical Examination shed in Ballybofey. The vehicle was secured in the examination shed and the door to the shed locked at 05:25. Garda Heneghan and Garda Dunne secured the examination shed and no one entered it until 12:50 when Garda Coyle CSI entered the examination shed to carry out a forensic examination of the VW Passat. Prior to the vehicle leaving the scene it is agreed there was no attempt to forensically seal or protect the vehicle. From photographs of the VW Passat taken in the civilian examination shed it is clear there were other seized vehicles present and the shed was dusty. The point was made that any CSI who entered the shed even if wearing PPE suits would have to make their way across an obviously dust contaminated shed before carrying out any examination or taking samples raising the defence say the reasonable possibility of innocent contamination of the interior of the VW Passat with RDX. It was also argued that 'best practice' was not employed in the taking of the samples from the suspect cars in a number of instances. As a result that this puts into question the integrity of all the samples taken and none of the results obtained could be accepted as reliable and coming from a forensically untainted exhibit. That being the case, they argue, the court can have no confidence in the reliability of any forensic findings in respect of exhibits taken from the suspect cars.

[80] The first forensic examination of the VW Passat was carried out by Garda Coyle CSI who was attached to Letterkenny Divisional Crime Scene Investigation Unit. He attended at the examination shed at 12:50pm on 18 June, 2015. This was approximately ten hours after the incident at Glenrandel and approximately seven and a half hours after the VW Passat arrived in the examination shed. From arrival of the VW Passat in the examination shed until the commencement of Garda Coyle's examination no one entered the examination shed. Garda Coyle gave evidence and

recorded in his contemporaneous written statement of evidence that he put on a white PPE suit before he commenced his examination of the VW Passat. During his examination he took a number of samples and seized items from within the car. In particular he seized the floor mat from the driver's footwell and the floor mat from the front passenger footwell. He placed these in separate nylon bags and labelled them KC16 and KC17 respectively. These were handed to detective Garda O'Connell, the assigned exhibits officer, who logged them as DOC38 and DOC39 respectively. On forensic examination both VW Passat floor mats had RDX explosive residue present on them. The floor mat from the driver's foot well KC16 had 9.76 ng present, this was below FSNI threshold of 10ng for a positive finding of RDX explosives. Accordingly I consider this may well be a false positive and discount this finding from my considerations. However, the floor mat from the front passenger's footwell had 10.73 ng present above the threshold for a positive finding.

[81] There was criticism of the swabbing and sampling process carried out by Garda CSI Coyle. That he failed to place a series of swabs (KC2 – KC14) from the VW Passat into pre-numbered tamper proof evidence bags as would have been standard practice for such samples. The same cannot be said of the floor mats which I am satisfied were appropriately bagged in nylon bags, labelled and handed over to the exhibits officer promptly the same day as they were seized. I am satisfied the interior of the VW remained forensically uncompromised in its loading onto the transport back to the examination shed and during the period it was secured there before its examination by Garda Coyle. I am also satisfied that the presence of the RDX residue on the front passenger floor mat KC17 did not come from innocent contamination arising from RDX residue in the environment of the examination shed or generally a subject to which I will return.

[82] The Toyota Verso was not seized until 24 June, 2015. The car was located outside Slevin's Pharmacy at Townparks, Lifford. CCTV footage of the early hours of 18 June, 2015, shows the car, which was almost out of petrol, being parked up and the lights of the car flashing as if the car was being locked. When located on 24 June, 2015 it was found to be locked and remained so. On the same date the car was removed by a transporter to Harold's Technical Examination shed in Ballybofey. Once placed inside the examination shed police remained outside the shed to ensure no one entered the shed or touched the vehicle. A Toyota key had been seized from Sean Farrell on 18 June, 2015 and secured in a tamperproof evidence bag. On 25 June, 2015 at 10:28 Garda Sergeant McWalters used this key to open the seized Toyota Verso 06-WW-1870 for the purposes of a forensic examination to be carried out by Garda CSI Kevin Coyle. During the course of his examination Garda Coyle seized inter alia the front passenger footwell floor mat and bagged it in a nylon bag marked KC29. On forensic testing for explosive substances this floor mat was found to have 15.37 ng of RDX on it.

[83] I am satisfied the Toyota Verso remained locked from being discovered at Slevin's Pharmacy until it was examined by Garda CSI Coyle the following day. I am satisfied the interior of the Toyota Verso remained forensically uncompromised in its

loading onto the transport back to the examination shed and during the period it was secured there before its examination by Garda Coyle. I am also satisfied that the presence of the RDX residue on the front passenger floor mat did not come from innocent contamination arising from RDX residue in the environment of the examination shed or persons generally in the in the shed.

[84] The VW Passat was again further examined just less than three months later on 11 September, 2015 by CSI Michael Hannigan attached to the PSNI. This was carried out in the same examination shed in Ballybofey. He swabbed the VW Passat for traces of explosive material using a standard swab kit and after he had taken a series of swabs packaged them and labelled them MDH1. On testing swabs taken from the interior door handles, front passenger seat and rear seat revealed traces of RDX explosives in the following amounts; interior door handles - 7.96 ng (I discount this as potentially a false positive), front passenger seat - 11.40 ng and rear seat - 69.1 ng. Again the reading in respect of the interior door handles is below 10 ng. I am satisfied that the presence of the RDX residue on the front passenger and rear seats did not come from innocent contamination arising from RDX residue in the environment of the examination shed or persons generally in the shed.

[85] Likewise the Toyota Verso was also examined again approximately 3 months later. On 11 September, 2015 CSI Gemma McGuigan gave evidence and recorded that she attended the examination shed at Ballybofey where she examined the Toyota Verso. She gave evidence and recorded in her statement of evidence that she was wearing a PPE suit when she examined the car which had been locked and had to be unlocked for her examination by Detective Garda O'Connell. She proceeded to take CDR swabs using a standard CDR swab kit (unique serial number 166). She took swabs from various areas of the interior of the vehicle including the glove box and the front passenger footwell. She exhibited this swab kit as GMG1. The swabs taken from the glove box and the front passenger footwell on forensic examination revealed the presence of RDX explosives residue in the following amounts - glove box - 34.10 ng and passenger footwell - 753.39 ng. Again I am satisfied that the presence of the RDX residue from the glove box and in the front passenger footwell did not come from innocent contamination arising from RDX residue in the environment of the examination shed or persons generally in the shed.

### **Innocent Environmental Contamination**

[86] It is contended by the defence that the fact the defendant and suspects were touched by and came into contact with police officers who may have been involved with explosives cases or suspects in explosives offences that this gives rise to the possibility of innocent contamination with explosives. Further, the fact the defendant was placed in an ordinary police patrol van used by police and suspects and placed in a cell used for suspects may give rise to innocent contamination. The fact that the stolen Toyota Verso was used by a civil engineer who may have been involved in visiting demolition sites where explosives were used may give rise to the possibility of innocent contamination. The fact the previous owner of the VW Passat is now

deceased and no information/evidence as to his occupation of use of the vehicle is available to exclude innocent contamination with RDX. That the storing of the suspect vehicles in a dusty environment where people and vehicles were coming and going may have led to innocent contamination by explosives. Indeed, that it cannot be said when and in what circumstances the explosives residue came to be deposited.

[87] The prosecution case is that the extent and nature of the explosives residue found (RDX alone) cannot simply be explained away by the potential for contamination from the general environment.

[88] Mr Samuel Baird, a Senior Scientific Officer at FSNI, called on behalf of the prosecution examined a number of items recovered from the disrupted UVIED from the Glenrandel incident. These included two items RK4 suspected piece of semtex explosives and RAH12, 17 grams suspected explosives. On examination these two items consisted of an orange pliable material similar to the commercial explosive Semtex. He gave evidence that while Semtex is usually manufactured from the explosives cyclotrimethylene trinitramine (RDX) and pentaerythritol tetranitrate (PETN) unusually in the explosives used in the UVIED at Glenrandel, RDX was the only compound present. He gave evidence that the laboratory in Northern had come across Semtex before that contains only RDX. Significantly, it is only the residue of the compound RDX (mirroring that recovered from the UVIED sample) that is found in the suspect cars, gloves and on the defendant McVeigh's track suit bottoms and outer coat (and indeed the trousers and outer coat of Ciaran Maguire).

[89] Mr Baird was cross-examined on the prevalence of RDX residue in the environment generally and within the police environment. A 1996 paper by Cecelia Crowson et al entitled 'A Survey of High Explosives Traces in Public Places' was introduced in cross-examination. This referred to research conducted in trace explosives detected on public transport, in public areas and in police areas and vehicles in London. It was put to Mr Baird that while the research indicated traces of explosives such as RDX are rare within the general environment traces of RDX have been detected in police environments. Mr Baird stated that the finding of any explosive residue in the environment would be a rare occurrence whether that be public areas or police areas. In terms of explosives traces in police areas/vehicles he indicated that it would not be surprising to find traces of nitro glycerine in police stations or cars given the fact it is present in cartridge discharge residue and armed officers frequently pass through custody suites, police offices and travel in police vehicles. This was consistent with the research findings of the study. However, he was of the opinion that finding traces of RDX in police areas is rare and an unlikely occurrence. It was put to him the research reported the finding of trace RDX in police stations and vehicles and it could not be ruled out as a possibility. In response Mr Baird indicated that in the report RDX was found in only one police area out of a sample of 87 police stations. This was a finding of 4 ng of RDX in a police station main office, he suggested this reading was so low that under FSNI thresholds for a positive finding this would be regarded as a false positive; that the survey only found

RDX present in two police vehicles. In relation to these findings one vehicle had a low reading of 12 ng while the other vehicle, which registered a high trace reading of RDX, was a vehicle which was believed to have been used to transport explosives for police dog training and in Mr Baird's opinion should have been excluded from the study. This was out of a sample of 20 police vehicles. Mr Baird further indicated that FSNI have carried out tests in police stations in Northern Ireland and have not detected any traces of RDX. The tests and their results have not been published or peer reviewed. Mr Baird maintained his position that the prevalence of RDX in the environment – public or police - is rare and a finding of RDX explosive residue is an unlikely occurrence.

[90] It was also suggested in cross-examination that there could possibly be other sources of RDX other than Semtex. Artillery shells and commercial explosives were suggested as potential sources. Mr Baird believed artillery used TNT and did not believe RDX was used in any commercial explosives in Ireland. Thus excluding the civil engineer who previously used the Toyota Verso.

[91] Mr Doyle, an explosives expert called on behalf of the defence agreed that RDX was found in military grade explosives such as the British military explosive PE4 or American military explosive C4. He could not give any other possible commercial sources or uses of RDX. He also agreed that the amounts found in this case in the suspect vehicles, gloves and clothing were in excess of those recorded in the study presented to Mr Baird. Mr Doyle also agreed that the amounts of RDX found on glove JP1 and the sample taken from the passenger footwell of the Toyota Verso GMG1 could have been the initial source and then transferred. He accepted that while the UVIED was contained in a plastic box wrapped in heavy tape that due to its construction RDX residue could well have been transferred onto the outside of the plastic electrical box the Semtex was enclosed in. Despite the defence criticism of a failure by officers taking samples failing to keep controls of either gloves or evidence envelopes/bags, Mr Doyle accepted that a batch of exhibit bags specifically supplied to take exhibits were highly unlikely to be contaminated with RDX (given its rare occurrence in the general environment) and that twisting the neck of an exhibit bag into a swan neck was appropriate and sufficient to ensure sample integrity.

[92] In light of the above evidence I am satisfied that the suspect cars were not innocently contaminated with RDX as a result of previous use unconnected to the Glenrandel incident, or by police officers carrying out a cursory search of them, or from the dust and movement of cars or persons in the examination shed at Ballybofey or by the CSI officers examining them. I am also satisfied that the gloves and clothing of the defendant and suspects were not innocently contaminated with RDX by coming into contact with police officers at the stop, search and arrest, or by transport in police vehicles or while detained in police cells. I am satisfied the contamination of these items are as a result of their involvement in the Glenrandel incident.

## **The Under Vehicle Improvised Explosive Device**

[93] Army technical officers attended the scene of the UVIED at Glenrandel and carried out actions to disrupt and make safe the device. The remains of the disrupted device were examined by Mr Baird. The device comprised of a magnet, plastic electrical junction box within which was contained approximately 321 grams of Semtex explosives. These explosives were armed with a detonator, electro-mechanical run back timer, battery, two toggle switches, an orange arming light, probable improvised mercury tilt-switch and a copper cone. All the component parts of a viable UVIED. The electrical components are wired together to form a firing circuit. The magnet is used to secure the improvised explosive device to the underside of a vehicle. The run-back timer is pre-set for a specific time delay after which the device becomes armed, thereafter, any subsequent movement of the vehicle causes the mercury tilt switch to operate completing the firing circuit. Electric current from the battery initiates the detonator inserted in the explosives which in turn initiates the explosives. While many of these devices have been observed in Northern Ireland this particular device was the first time a UVIED has been recovered that incorporated a copper cone. The purpose of the copper cone is that on detonation the cone deforms into a rod shaped projectile capable of considerable penetration. A reconstruction of this device was undertaken and the resulting explosion underneath a similar model of vehicle as was targeted in this case caused devastating damage.

[94] I remind myself that for the offence of attempted murder only an intention to kill will suffice and such intention to kill must be proven beyond reasonable doubt. Similarly, I remind myself that for the offence of possession of explosives with intent the required intent to be proven beyond reasonable doubt in the circumstances of this case is intent to endanger life.

[95] Mr Baird in cross-examination accepted that the battery connected to the UVIED was not tested and should have been tested by him to confirm that it held a charge. While he accepted he would normally test the battery in these cases he noted that the battery had been damaged by water and by the disruption actions of the army technical officer. He also noted that the battery appeared relatively new and had an expiry date of March 2019.

[96] Mr Baird also confirmed that on testing the detonator recovered from the device failed to function. It was confirmed that before disruption at the scene of the incident an X-ray of the detonator established that the bridge wiring within the detonator was intact indicating that it was capable of functioning as designed. Mr Baird gave evidence that the detonator may have failed either due to the disruption actions of the army technical officer or due to the age of the detonator. It was established that detonators have a shelf life of 2 to 3 years.

[97] The defence suggest that there is no or insufficient evidence to indicate that the device was a working device, intended to cause harm, as opposed to an elaborate hoax intended to intimidate AB and BB out of their home.

[98] I reject the suggestions this may have been an elaborate hoax. I am satisfied there is ample evidence to indicate this was a viable device. This was a skilfully constructed UVIED with all the component parts of a viable device designed for maximum damage with the inclusion of a copper cone. It would not be expected that an elaborate hoax would contain 321 grams of high explosives. It would not be expected that an elaborate hoax would have attached to this significant quantity of explosives a detonator which gave no external or internal indication of being compromised significantly the bridging wire observed on X-ray was intact. Likewise, the battery that was included within the device was connected to the firing circuit, appeared new and dated up to March 2019. If it were the intention for it to be an elaborate hoax with no potential to go off why have a battery and detonator connected or included at all?

[99] I am satisfied beyond reasonable doubt, that it is a compelling inference that anyone being involved in planting a device of this nature, construction and composition underneath a car intends to kill anyone unfortunate enough to drive or be in this vehicle when it moves. I am further satisfied beyond reasonable doubt that anyone in possession of this UVIED would possess it with the necessary intent to endanger life.

#### **McArthur Reconstruction of placement of UVIED**

[100] The case made by the prosecution is that the defendant McVeigh was one of a number of persons involved in a joint enterprise to plant a UVIED to attempt to kill a police officer. However, they invite the court to consider whether or not the totality of the evidence in the case does establish to the requisite standard that McVeigh was indeed the person caught on CCTV placing the device. The prosecution point to the original CCTV footage at Glenrandel and reconstruction evidence using the jacket seized from the defendant McVeigh.

[101] The CCTV footage from Glenrandel records a person wearing dark clothing placing the UVIED under BB's Ford Mondeo car. AB who witnessed this person described them as male she believed to be in his twenties with slim build. This video footage was examined by Mr Ian McArthur a specialist in Forensic Audio and Video Enhancement. It was clear from the enhanced CCTV footage of the incident that the jacket worn by the male had a hood and reflective strips on the shoulder area that illuminated under the artificial lighting close to the Ford Mondeo car. On examination of the clothing seized from the suspects when arrested DOC 28 the outer coat seized from the defendant McVeigh was the only jacket seized that had reflective strips on the shoulders.

[102] On the evening of 7 March 2018 Mr McArthur went to Glenrandel and using the same Ford Mondeo car and CCTV equipment in the house carried out a reconstruction exercise using the coat seized from the defendant. Using video editing software he created annotated split screen imagery of the original incident and the reconstruction to illustrate elements of similarity and dissimilarity in the recordings. Common elements in both the original incident and the reconstruction were the hood and reflective strips on the shoulders and where these reflections appeared on the body of the person planting the bomb and reflected against the body of the car. There were no uncommon elements observed between the original footage and the reconstruction.

[103] His reconstruction was criticised by the defence in that it did not assist in a determination of the gender, age, height or build of the person planting the bomb. It did not establish the precise colour of the jacket worn by the offender. That the original CCTV did not establish whether the jacket worn by the offender had reflective strips on the shoulders, pockets and lower back which could be made out in the reconstruction using the jacket seized from the defendant McVeigh.

[104] Despite these criticisms Mr McArthur remained of the firm opinion that his comparison work lends strong support to the proposition that the jacket seized from the defendant McVeigh and the jacket recorded as worn by the offender in the Glenrandel CCTV of 18 June 2015 is the same make and model of jacket. Further, there was nothing observed in the comparison to suggest that the jackets were not one and the same make and model of jacket.

[105] Again the weight to be attached to this evidence and the conclusions drawn depends on an assessment of this evidence taken together with all the other evidence in the case.

### **Soil/mineral evidence**

[106] A second limb the prosecution rely on to establish the defendant was the person who planted the UVIED comes from soil/mineral analysis. The prosecution say a comparison of soil/mineral brushings taken from one of the defendant's trainers and the hood of his jacket connect the defendant to being in the driveway of Glenrandel. The prosecution say these brushings bore a comparison to samples taken close to where the front offside wheel of the Ford Mondeo car was parked in the driveway.

[107] Dr Ruffell attended at Glenrandel and took soil and mineral samples from various areas including samples from two areas close to the front offside wheel of the Mondeo and labelled these samples as DP6 and DP7. These samples were forwarded to Dr Duncan Perrie for Qemscan analysis and comparison with brushings from the defendant's trainer and jacket hood exhibits DP1 and DP2 respectively. Dr Pirrie on examination found that there was a high degree of similarity between the reported modal abundance of the minerals/man made phases



in the samples recovered from the trainer and jacket hood seized from the defendant at time of arrest. Of the 21 particle types recognised, 19 particle types co-occur in the samples from the trainer and jacket hood and the scene. These same mineral types occurred in the same sizes, proportions and textures.

[108] In cross-examination it was accepted by Dr Pirrie and Dr Ruffel that there were sub-types identifiable within the 19 co-occurring particle types which Quemscan does not differentiate between and which were not identified and compared as between samples. Thus raising the reasonable possibility that at least some of the sub-types present in the seized clothing may be not be present in sample 7 from the scene. On top of this it was agreed by Dr Pirrie that there was nothing to prevent the items of clothing from the defendant picking up material from an area other than the crime scene with a similar mineralogical make-up to that exhibited at the crime scene. This would be particularly so in light of the fact shoes and clothing if worn would be continually being contaminated with and shedding debris throughout the hours, days and weeks before the clothing is seized. It is suggested that absent some 'exotic' or unusual mineral or combination of soil/minerals such analysis is limited when it comes to determining where any particular garment has been. I agree with that assessment and do not consider the soil/mineral evidence satisfies me to the required standard that it is of such similarity or reliability as to connect the defendants clothing to the driveway at Glenrandel. Equally there is nothing in this evidence inconsistent with, or excludes the possibility of, the defendant wearing that trainer and hooded jacket having been present at the scene.

### **Defendant's failure to give evidence**

[109] At the conclusion of the Crown case the court addressed counsel for the defendant in the usual terms stating that if the defendant chose not to give evidence the court may draw such inferences as appear proper from their failure to do so. I enquired if the defendant intended to give evidence and if not had he been advised about the inferences which might be drawn if he chose not to do so. Mr Pownall QC stated that his client did not intend to give evidence and stated that his client had been advised about the inferences which might be drawn from his failure to do so.

[110] The defendant is entitled not to give evidence, to remain silent and to make the prosecution prove his guilt beyond reasonable doubt. Two matters arise for him not giving evidence. The first is that the case is tried according to the evidence. The defendant has given no evidence at his trial to undermine, contradict or explain the evidence given by the prosecution witnesses. Secondly, the law is that the court may draw such inferences as appear proper from the failure on the part of the defendant to give evidence. The court must decide whether it is proper to hold the defendant's failure to give evidence against him in deciding whether he is guilty. The court may only draw an adverse inference against the defendant for failing to go into the witness box to give an explanation for, or an answer to, the case against him if the court considers that it is a fair and proper conclusion for the court to reach. The court must first be satisfied that the prosecution case is sufficiently strong to clearly call for

an answer by the defendant. Secondly it must be satisfied that the only sensible explanation for his silence is that he has no answer or none that would bear examination. I remind myself that the courts should not find the defendant guilty only or mainly because he did not give evidence. But the court may take into account as some additional support for the prosecution case the fact that the defendant has not given evidence when deciding whether the defendant's case is true or not.

### **AC Evidence**

[111] As a result of material disclosed to the defence it appears an individual called AC had a dispute with AB following an incident at Maydown Police Station. It seems AB challenged him as to his presence in the police station grounds playing football with a friend. It was disclosed that a recording device in a vehicle he was in on 4 September, 2015, recorded him speaking to a male person in the vicinity of Glenrandel. In it he states he 'hates driving past that bastard's house up there'. He is asked 'who' and he replies 'that police woman's'. He is then asked 'is that the person you put a bomb under and they got a restraining order against you' to which AC replied 'No, they can't ... they can't prove that I done it'. The defence called AC and he confirmed that he lived in Woodvale Crescent and that his mother lived in Glenrandel. That he played football in Maydown Police Station with a friend. That he had use of a VW Passat car. The tape recording from the car was then played to him and he refused to answer any questions on the grounds that his refusal might incriminate him. It is agreed no inference can be drawn from a witness's refusal to answer questions based on his claim of privilege against self-incrimination. The defence argue that the words spoken on the recording are indicative of accepting personal responsibility for planting the bomb and are inconsistent with the prosecution case against the defendant and are evidence which points away from the defendant. As I have reminded myself at paragraph 2 [v] and [vi] this is a circumstantial case and the court must consider carefully any alternative or competing explanations and evidence pointing away from the defendant having committed the offence.

[112] The prosecution argue that even if his 'confession' were to be believed and he was in some way involved in this incident, the circumstances of the present case does not represent an either or situation where the crime is known to have been committed by one person acting alone. That even if AC was involved it does not preclude the involvement of others. His absence for the VW Passat is consistent with any number of possible roles in this incident.

[113] I am of the view that the present attempted murder of police officers by the planting of a UVIED containing over a quarter of a kilo of Semtex was the culmination of a planned terrorist plot. It is clear to me that a planned operation of this kind would require a number of committed individuals to be involved. It required the obtaining of the Semtex, the construction of the bomb with a uniquely shaped copper cone, the provision of stolen vehicles to facilitate the audacious transporting and planting of the device, the targeting of the police officers and their

vehicle and the identification of their address. Having carefully considered the factual background and circumstance surrounding this case, listening to the tape recording and the words attributed to AC - 'they can't prove I done it' - I do not consider that it precludes others, including the defendant McVeigh from being involved in this incident.

## **Conclusions**

[114] At this stage the various strands of the circumstantial evidence in this case must be considered in combination and reviewed in light of those inferences that may properly be drawn from the fact that the defendant has declined to give evidence.

[115] I am satisfied from the forensic examination of the UVIED placed under the Ford Mondeo at Glenrandel that it contained 321 grams of Semtex. That chemical analysis of the explosives revealed somewhat unusually it consisted of RDX alone.

[116] The defendant and two other suspects Ciaran Maguire and Sean Farrell were arrested outside Killygordon in a stolen VW Passat with false number plates. Ciaran Maguire was the driver, the defendant the front seat passenger and Sean Farrell the rear seat passenger. The defendant's clothing was seized and on examination the jacket and tracksuit bottoms he was wearing were found to have RDX residue on them. I am satisfied his clothing was not innocently contaminated. The VW Passat on examination was also found to have RDX residue on the front passenger footwell, front passenger seat and rear seat. Gloves with the other two arrested suspects DNA and RDX residue were found on the road along the route the police pursued the VW Passat. I am satisfied these gloves were discarded by the suspects in an attempt to dispose of incriminating evidence. I have determined and am satisfied the DNA and RDX found on the gloves did not get there by innocent or accidental transfer.

[117] The second suspect car, the Toyota Verso, when examined was discovered to have RDX residue on the passenger front floor mat, glove box and front passenger footwell. The key to this car was found in the possession of the suspect Sean Farrell. I have found and am satisfied that the RDX in the Toyota Verso did not get there by innocent or accidental contamination.

[118] I am satisfied that the VW Passat and Toyota Verso vehicles were stolen less than two weeks before the incident at Glenrandel for the sole purpose of being used in a terrorist UVIED attack on two off duty serving police officers. They had false number plates attached and do not appear anywhere in Northern Ireland or the Republic of Ireland on ANPR cameras until half an hour before the incident. At this time the vehicles are observed crossing back and forth across the Foyle bridge in convoy and I am satisfied a proper inference to be drawn is that this was to ensure their route to the cityside and the Republic of Ireland was clear. The two stolen vehicles with the suspects on board, two men from Dublin and the defendant from Lurgan, with no obvious reason to be in this area make their way towards Eglinton.

The defendant has not given evidence to explain his presence in this area, at this time, with the other suspects in stolen vehicles contaminated with RDX a most uncommon compound in the general environment.

[119] I am satisfied that the evidence of Mr Wooller is correct when he identifies the car that pulled up outside Glenrandel as consistent with a dark coloured Passat B6. The presence of RDX in the suspect VW Passat car and the fact, as I find it to be, that the vehicles are observed speeding away from Eglinton over Foyle Bridge shortly after the bomb is planted persuades me so that I am satisfied the vehicle seen pulling up outside Glenrandel just before the bomb is placed is the suspect VW Passat with the defendant on board.

[120] In considering the evidence of Mr McArthur in the context of the evidence as a whole, he is of the firm opinion that the comparison between the jacket seized from the defendant and the jacket worn by the person placing the UVEID is the same make and model. In reaching conclusions in relation to the weight to be attached to this evidence it must be borne in mind that this evidence must be assessed in light of all the surrounding circumstances. This evidence is fortified by the finding of RDX residue on both the seized jacket worn by the defendant and his tracksuit bottoms. The fact when the VW Passat is stopped by AGS he is the front seat passenger leads to the inference he was and remained the front seat passenger. The fact Sean Farrell is in possession of the keys to the Toyota which has all but ran out of petrol and is in essence abandoned in the car park at Slevin's Pharmacy leads to the compelling inference he was the driver of the Toyota. Also bearing in mind the defendant has failed to give evidence which might lead the court to draw inferences against the defendant. The inference which falls to be drawn against the defendant and which I do in fact draw is that he was the passenger in the suspect VW Passat, that it pulled up outside Glenrandel and the defendant exited the car and planted the UVEID under AB and BB's car. He has offered no explanation for his presence in the Eglinton area.

[121] In relation to the three police cars tasked to respond to the incident at Glenrandel vehicles GH73, GH78 and GH71, I am satisfied that they observed two cars fleeing from Glenrandel these being the VW Passat and the Toyota Verso. It is clear they did not see these vehicles where they claim to have encountered them given the inconsistencies between the police witnesses as to where and when they claim to have been on the Clooney carriageway when they saw the suspect vehicles. I accept that in responding to such a dangerous situation any error as to precise location of observing the vehicles and/or inconsistency as between officers accounts is readily explained by the emergency situation and the fact that the carriageway looks very similar along its length.

[122] I am equally satisfied that these two vehicles fleeing the incident proceeded in convoy and at speed over the Foyle Bridge and accelerated through the VCP set up on the cityside of the bridge. That they did exit on to Madam's Bank Road and proceeded to Bridgend where they are captured on ANPR.

[123] Accordingly, the court concludes that the combination of circumstances present in this case is such that it produces compelling evidence of the guilt of the defendant Sean McVeigh. His presence in a stolen vehicle bearing false number plates which tried to evade police in Killygordon. A stolen vehicle contaminated with RDX as are his jacket and tracksuit bottoms. The jacket he is wearing is the same type and model with reflective stripes as is worn by the person planting the UVIED in Glenrandel. The UVIED contains RDX. The car seen pulling up outside Glenrandel is consistent with a VW Passat B6 the car he is found in. The car he is stopped in is caught on ANPR and CCTV travelling towards the scene of the UVIED before it is planted and leaving the area after it is planted taking a circuitous route south. All of these circumstances combine cumulatively to lead to the conclusion that he was actively and intimately involved in this murder attempt. This accumulation of circumstances leads the court to draw the appropriate inferences. This is particularly so when there is no account given by the defendant and he has chosen to say nothing in relation to the case against him which cries out for an explanation. Absent such explanation the court draws the inference that if there were an innocent explanation for this constellation of circumstances he could and would have been well capable of providing it to the court but he has chosen not to do so.

[124] Accordingly, I find the defendant Sean McVeigh guilty on both counts 1 and 2 on the Bill of Indictment.