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IN THE CROWN COURT IN NORTHERN IRELAND

SITTING IN BELFAST

THE QUEEN

v

THOMAS ASHE MELLON

His Honour Judge McFarland
Recorder of Belfast
22 and 30 June 2015

[1] Thomas Ashe Mellon ("the Defendant") faces three counts on indictment 15/003230 – Directing a terrorist organisation, contrary to section 56(1) of the Terrorism Act 2000 ("the 2000 Act"), belonging to or professing to belong to a proscribed organisation, contrary to section 11(1) of the 2000 Act and possession of articles for use in terrorism, contrary to section 57(1) of the 2000 Act.

[2] The offences are particularised as follows:

> "On a date unknown between 31 December 2013 and 7 June 2014, in the County Court Division of Londonderry or elsewhere within the jurisdiction of the Crown Court, directed the activities of an organisation, namely the Irish Republican Army, which was concerned in the commission of acts of terrorism."
>
> "On a date unknown between 31 December 2013 and 7 June 2014, in the County Court Division of Londonderry or elsewhere within the jurisdiction of the Crown Court, belonged to or professed to belong to a

> proscribed organisation, namely the Irish Republican Army."
>
> "On a date unknown between 13 May 2014 and 6 June 2014, in the County Court Division of Londonderry or elsewhere within the jurisdiction of the Crown Court, possessed an article, namely a handwritten note in circumstances which gave rise to a reasonable suspicion that its possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism."

In this judgment I will employ the commonly used abbreviations for the Irish Republican Army – "IRA", and PIRA and RIRA for the Provisional Irish Republican Army and the Real Irish Republican Army respectively. There is no distinction in the eyes of the law between the various schisms within this grouping (see R –v- Z [2005] 1 AC 264)

[3] The defendant pleaded guilty to the charge of possession of the handwritten note as did a co-accused William McDonnell ("McDonnell"). The defendant pleaded not guilty to the charges of directing a terrorist organisation and belonging to or professing to belong to a proscribed organisation and his trial in relation to these offences took place on 22 June 2015. There was no issue in relation to the evidence presented by the prosecution, and this was accepted as factually correct by defence counsel. As a consequence the evidence was admitted under the provisions of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968. The issue before the court was therefore an interpretation of the evidence and whether it was sufficient to make the court sure of his guilt of either or both remaining offences.

The Evidence

[4] On 5 June 2014 McDonnell attempted to enter HMP Maghaberry to take part in what was a scheduled visit to a remand prisoner, Seamus McLaughlin, who was then being housed in the Roe House wing of the prison, occupation of which was restricted to prisoners designating themselves as republican prisoners. As part of the normal procedure he was subject to a search and a staff member recovered from a left inside pocket of a jacket that he was wearing, a small package wrapped in cling film. McDonnell was permitted to leave the prison and the package was retained and marked Exhibit "NS1".

[5] The package was subsequently examined by Brian Craythorne, a scientist from Forensic Science Northern Ireland ("FSNI"), and he observed that the cling film package contained a note which comprised of 13 cigarette papers stuck together bearing handwriting in black ball pen signed 'T'. He observed that the lines of handwritten text on the cigarette paper necessitated using very small writing which

resulted in the handwriting style on the cigarette paper note being very scrappily written and with some words being almost illegible.

[6] Mr Craythorne sought to interpret the handwriting and prepared a document containing his suggested transcription inserting entries in square brackets which represented characters which he could not decipher with certainty. The content of the note is set out below. Upper case type has been used for convenience.

> "WELL HOWS THINGS MUCKER, HOPE YOU ARE WELL. SORRY I HAVE NOT BEEN IN TOUCH BUT YOU KNOW THE CRAIC. JUST A FEW THINGS, I WILL START WITH NATHAN. I, PERSONALLY AM REALLY LET DOWN. I GIVE IT THE BIT, THIS M[AN] GOING THE WHOLE HOG AND THAT MEANS THAT, [L.S] GO OVER THIS CASE. THEY HAVE QUESTIONED VOL'S, CIVILIANS, WHO EVER. THE CAR OWNER IS THREATHENED NOT TO APPEAR IN COURT. MYSELF, SEAN, MURF G[E]T IN TO A HOUSE TO GO OVER THE NEW STATEMENTS COME OUT GET A LIFT AND THE DRIVER TELLS US NATHAN PLED GUILTY, GUTTED AND EMBARRSED IS HOW I FELT. BUT ANYHOW FROM WHAT WE KNOW KURTIS HAS QUESTIONS, TO ANSWER. BUT THE PROBLEM IS THERE IS FUCK UPS ALL OVER THIS, SO TO DETERMINE WHO IS THE BRUSSEL IS VERY HARD. PLUS NATHANS MATES LEAVE IT OPEN THAT HE WAS SLABBERING AND ACTING THE HERO BEFORE HAND. BUT IT IS WHAT IT IS. HAS HE AN IDEA OF SENTENCE? COMRADE I FEEL, THAT TOO MUCH TALK/SHITE IS BEING SAID ON VISITS. I KNOW THAT A CERTAIN AMOUNT HAS TO BE SAID BUT THINGS THAT VISITORS ARE COMING OUT AND SAYING IS JUST LUDICROUS. HAVE [A] WORD THAT P.O.W'S SHOULD NOT ENGAGE IN LOOSE TALK E.G. JASON TELLING PEOPLE THAT SEAMY WAS FOLLOWED THE WHOLE DAY BEFORE HE WAS LIFTED. WE 'D' COMING UP AND SAYING TO ME I HEAR YOU HAVE A NEW JOB CONGRATULATIONS. I TOLD HIM THATS A JOKE AND NOT TRUE. BY THE WAY AS I TOLD YOU HE LIED THE TAXI OWNER NEVER HAS EVER RECEIVED ANYTHING NEVER MIND A PAINTING. PLUS HE SLABBERING ON VISITS. THINGS ARE NOT GOOD IN GOAL AS YOU ARE DEGRADING THE 32'S AND NO CRAFT TO GO TO 32'S. HE IS A NITE MARE. I HAVE COMBATED

THIS BY SAYING THAT OF COURSE THE 32'S CAN GET CRAFT, BUT WHAT GOES OUT HAS TO BE APPROVED AND APPEAL TO THE WIDER REPUBLICAN BASE. THE ARRANGEMENTS AROUND T.C'S FUNERAL WHEN IT HAPPENS ARE MORE OR LESS SORTED. HAD [TO] TALK WITH P. I WILL NOT ALLOW ANY DUAL ARMY OPERATING ALONG WITH THE I.R.A. AND US NOT KNOWING ANYTHING. BUT HOPEFULLY ALL SORTED. VERY HARD WORK BUT I KEEP GOING. P WOULD BE THE OBVIOUS CHOICE TO GIVE THE ORATION BUT WE ARE SWAYING TOWARDS NULA PERRY. HER FATHER SENTENCED WITH TOM WILLIAMS. SHE IS AN OUT AND OUT MILITANT REPUBLICAN. I KNOW ALEC SAID TO ALAN TO ASK T.C BUT WE SHALL SEE. BE ASSURED HE WILL NOT BE LET DOWN AND WE WILL DO OUR BEST BY HIM. IF THINGS HAD OF WORKED OUT RIGHT WE WOULD BE CHEERING ON THE ARMY AFTER A COUPLE OF STIFFS BEAR WITH US COMRADE YOU KNOW THE HAND WE HAVE BEEN DEALT AND THE CARDS WE[RE] PLAYING WITH. COULD YOU GIVE ME ALL YOU KNOW ABOUT BAP HUGHES X INLA BELFAST. P.O.W DEPT MOVING ON. WILL YOU START BUSTER ON WHAT IS TO COME TO THE FORE REGARDING OUR MOVEMENT (32'S) ITS JUST I DONT WANT ANY ONE SAYING I NEVER HAD AN INPUT TO THE NEW THING. REGARDING THE GUILTY PLEA'S. PEOPLE ARE STARTING TO ASK ARE WE (L/SHIP) TELLING POW'S TO PLEAD GUILTY. ARE WE TAKING A BLAZÉ APPROACH TO DEALS. YOU KNOW THE TRUTH ABOUT THE STANCE. I THINK ITS FAIR. I ALSO THINK THAT WE NEED TO HELP AND FOSTER THE NEW FEELING ON THE LANDING. AS LONG AS P.O.WS KNOW THAT PLEADING IS NOT AN EASY WAY OUT. AND THEY KEEP YOU INFORMED AT ALL TIMES. OF THEIR THINKING. THOSE WHO FIGHT IT FAIR PLAY, THOSE WHO DONT THATS FOR THEM AND THEY SHOULD KNOW THE MARKERS. NOT AFFECTING ANY ONE ELSE; L/SHIP KNOWS THE CRAIC. AND NO SAYING SORRY. WELL THATS IT. FOR NOW. I WILL GET UP ON A VISIT AGAIN SOON. TELL BIG A. AND C I WAS ASKING

TAKE CARE

T."

[7] Mr Craythorne also carried out an examination of other documents which had been seized by the police and were attributed to the defendant and as a consequence was of the opinion that after he carried out a comparison between the handwriting style from the seized note and the handwriting style from the other documents attributed to the defendant whilst there were some stylistic differences there were also many significant similarities. He stated that whilst it was not possible to match all the characters present in the seized note with characters from the specimen material, the similarities were of such significance that in his opinion the handwriting evidence strongly supports the proposition that the defendant is the writer of the seized note. Jonathan Irons, a colleague of Mr Craythorne from FSNI, carried out an examination of the seized note and after comparing a buccal swab taken by the police from the defendant he was of the opinion that there was a clear predominant DNA profile matching that of the defendant from a sample recovered from the joins between the cigarette papers that made up the seized note. The defendant, through his counsel admitted that he was the creator of the paper and the author of the note and by his plea of guilty he has acknowledged that he possessed the note in circumstances which gave rise to a reasonable suspicion that his possession of the note was for a purpose connected with the commission, preparation or instigation of an act of terrorism.

[8] To understand the context of the note certain other evidence was admitted relating to the circumstances. The individual who McDonnell was seeking to visit on 5 June 2014 was Seamus McLaughlin. He had been arrested on 3 March 2013 whilst driving a vehicle which contained mortar bombs and a mortar firing device. On 8 May 2014 Seamus McLaughlin pleaded guilty to a count of possession of explosives with intent to endanger life or cause injury to property.

[9] On 12 April 2013 Nathan Hastings was driving a vehicle that was stopped by the police and a subsequent search of the vehicle resulted in the recovery of a quantity of firearms, ammunition and an improvised explosive device. The preparation of the case involved the police obtaining a statement from a person who was resident in the Londonderry area who was the last registered owner of the vehicle which Nathan Hastings was driving when stopped. In the preparation for the trial which was scheduled for 28 May 2014 the witness had expressed a reluctance to attend court. On 28 May 2014 Nathan Hastings pleaded guilty to possession of an explosive device with intent to endanger life and possession of a firearm and ammunition with intent to endanger life.

[10] On 16 December 2012 the police stopped a Renault Megane vehicle. The vehicle had three occupants, Jason Ceulemans, Damian Harkin and Neil Hegarty. The defendant had visited each of these defendants whilst they were detained in HMP Maghaberry. These defendants pleaded guilty to possession of explosives with intent to endanger life on 8 April 2014. As part of the police investigations in relation to this matter a further individual was arrested on suspicion of being

involved in this crime. He was subsequently released on 8 December 2014. It is the prosecution case that he is one and the same person as the individual referred to as "Kurtis".

[11] On 5 June 2014 after being detected with the note and released McDonnell travelled in a motor vehicle in the direction of Londonderry and at a restaurant at the foot of the Glenshane Pass he was observed talking with the defendant.

The Law

[12] Section 11 of the 2000 Act provides that a person commits an offence "if he belongs or professes to belong to a proscribed organisation". Section 3 of the 2000 Act provides that an organisation is proscribed if it is listed in Schedule 2 to the Act and the Irish Republican Army is listed in that Schedule. Lowry LCJ in R v Adams [1978] 5 NIJB when interpreting a similar provision in the Northern Ireland (Emergency Provisions) Act 1973 stated that:

> "Belonging to a recognisable organisation means being a member of it. To profess, in its ordinary connotation, means to declare openly announce, affirm, avow, acknowledge or confess. A profession may be made not only by words but by conduct but to profess something is a positive intentional act and the conduct relied on must therefore be deliberate and clear."

In R –v- Adams the evidence relied upon by the Crown was the conduct of the defendant in 1974 – 1976 when the defendant was detained in prison and included participation in parades and other public displays of support for the PIRA; a speech at a political event and a BBC broadcast; and his connection with Sinn Fein headquarters and the posters and other propaganda material contained in it; and finally the constitution of Sinn Fein. The Lord Chief Justice highlighted that

> "[This] is an ordinary criminal trial……it is my duty to apply the rules of logic and the rules of evidence which must govern any criminal trial."

He further added a word of caution to avoid jumping to conclusions about certain strands of evidence:

> "Fighting talk and military metaphors are the current coin of politics, especially revolutionary politics and, going even further, support for violence is not equivalent to actual membership. The same considerations apply to all evidence based on the posters at the headquarters."

The Lord Chief Justice granted a "No Bill" in the case indicating his view that the evidence did not disclose a case sufficient to justify putting Adams on trial, concluding that "speculation can never be allowed to take the place of inference".

[13] Hart J in R –v- Shoukri [2007] NICC 22 in another "No Bill" application, held that there was a sufficiency of evidence to try the defendant as, taking the Crown case at its height, the defendant could have been the author of a note which could be interpreted as not merely supporting the aims of a terrorist organisation, but was a declaration by the defendant that he was a member. This was, of course, a preliminary ruling focussing on the sufficiency of evidence as opposed to a full consideration of the evidence after a trial.

[14] Further assistance can be derived from the judgment of Hughes LJ in R v Ahmed [2011] EWCA Crim 184 at 87 when he stated:

> "What then amounts to membership of a proscribed organisation? That is likely to depend upon the nature of the organisation in question. Membership of a loose and unstructured organisation may not require any formal steps whereas a more structured organisation may have an express process by which a person becomes a member. A criminal association is inherently more likely to lack formality than an innocent one. We derive assistance from the analysis of Jack J in Smith Kline Beecham PLC v Greig Avery and others [2009] EWHC 1488 QB as to the nature of the organisation known as the Animal Liberation Front ("ALF"):
>
> > "The evidence in this trial establishes that the ALF is a name adopted by a group of individuals who carry out illegal acts in purported furtherance of animal liberation. There are some who are at the centre and will from time to time take decisions as to actions to be taken and policy. Others will have an ongoing involvement with those at the centre and in activities in the name of the ALF. Some will have a temporary involvement by carrying out an action undertaken in the name of the ALF. These are of course not listed categories but shade into one another. They are usually simply to provide a description of those who at one time should be considered members of the ALF. There is naturally no formal membership nor any published criteria nor is there any formal constitution or structure."

Hughes LJ went on at [89] to state:

> "We agree with the submission made to us that in some cases it will be necessary to make clear that unilateral sympathy with the aims of an organisation, even coupled with acts designed to promote similar objectives, will, whilst being clear evidence of belonging, not always be sufficient; the jury may need to consider whether there is the necessary element of acceptance or reciprocity which will be involved in belonging."

[15] In the Ahmed case the English Court of Appeal approved the direction given by the trial judge to the jury in the following terms:

> "Now the description of the offence as being a member of a terrorist organisation and the particulars described someone belonging to a proscribed organisation so those are words you need to consider, member and belonging to, and they are ordinary English words. They are intended to be ordinary English words and you should give them their ordinary meaning, they are not technical. You would not perhaps expect as has been said to you that Al Qaeda would actually issue membership cards or issue a membership list of its members and it would not be necessary for the prosecution to prove that the defendant whose case you are considering has sworn an oath of allegiance of anything like that. Membership does not necessarily involve anything permanent or long term, the question on both of these counts is are you sure that the one whose case you are considering belonged to Al Qaeda for at least part of the period covered by the count on the indictment and you take into account all the evidence you have heard in the case."

[16] Section 56 of the 2000 Act provides that a person commits an offence:

> "If he directs at any level the activities of an organisation which is concerned in the commission of acts of terrorism."

Section 1 of the 2000 Act defines terrorism in the following terms:

> "(1) In this act "terrorism" means the use or threat of action where:
>
> (a) the action falls within sub-section 2;

(b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public; and

(c) the use or threat is made for the purpose of advancing the political, religious, racial or ideological clause.

(2) Action falls within this sub-section if it:

(a) involves serious violence against a person;

(b) involves serious damage to property;

(c) endangers a person's life other than that of the person committing the action;

(d) creates a serious risk to the health of safety of the public or a section of the public; or

(e) is designed seriously to interfere with or seriously disrupt an electronic system."

[17] This offence was considered by Hart J in R –v- Fulton & others (No.10) [2006] NICC 35. He quoted the New Shorter Oxford English Dictionary's meaning of "directs" – "keep in proper order; control, govern the actions or movements of" and "give authoritative instructions; order (a person) to do (a thing) to be done; order the performance of" and finally "give instruction, command that". The article by Walker & Reid The Offence of Directing Terrorist Organisations published at [1993] Crim LR 674 also gives a further suggested meaning for "directs" as seeming to embody the attributes of being able to order other people and of commanding some obedience from them.

[18] Although focus was made on the ability to order others to do, or not do, certain acts, it should be borne in mind that a simple rank of seniority in a hierarchical structure would not normally be sufficient. A lance-corporal may have that role in relation to a private in the military context, however is unlikely to be involved in strategic or tactical decision making. The legislation refers to directing "at any level" but to direct does involve control to a degree of an organisation (for example in company structures the directors have the directing mind of a company). The directing needs to be of the organisation itself, rather than a specific terrorist act being planned by the organisation. Ministerial comments during the debates in the House of Commons and the House of Lords included references to "any level" being designed to catch not so much minor members of the terrorist group as opposed to

regional and local leaders, and further that directing embraced the notion of a controlling influence on the activities in question.

[19] It is therefore important to bear in mind that the offence relates to the directing of the organisation, in this case the IRA, as opposed to directing individuals to carry out terrorist acts. The organisation itself has to be concerned with the commission of terrorist acts, rather than the person alleged to be a director. The offence is designed to bring what have been described as criminal or terrorist masterminds or "godfathers" within the ambit of the criminal law, when there is a paucity of evidence to charge them with offences relating directly to criminal incidents. It carries a maximum sentence of life imprisonment.

[20] Walker & Reid (above at 670) when referring to the membership and directing charges highlight the difficulties facing the prosecution –

> "To prove that a person is an ordinary member a "volunteer" – of say the Provisional IRA is formidably difficult. The paramilitaries do not issue membership cards, keep accessible records, make returns to Companies House or hold open meetings. Consequently, evidence of participation is usually obtained by a confession or by overt acts which consist of crimes committed on behalf of the group. It follows that the offence of membership is of limited assistance in the criminalisation of activists. It is rarely the sole charge brought against a defendant and more commonly features as an added count which is secondary to other more serious charges. It follows that it is even more difficult to bring charges against leaders and strategists of paramilitary groups"

[21] Section 57 of the 2000 Act provides that a person commits an offence if:

> "He possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism."

As the defendant has already pleaded guilty to this offence, it is not necessary for me to make any further comment on it.

[22] It is important to consider the relationship between the three offences. The offence to which the defendant has pleaded guilty involves the possession of the note. The defendant by his plea has acknowledged that the circumstances of his possession (namely the creation and content of the document and then passing it on to another to deliver into HMP Maghaberry) gave rise to a reasonable suspicion that

his possession of the note was for a purpose connected with the commission, preparation or instigation of an act of terrorism. The offence under section 11, the membership offence, relates to him belonging or professing to belong to a proscribed organisation. It is only necessary for the prosecution to prove that he belonged to the proscribed organisation and technically this has no relation to acts of terrorism, although presumably Parliament when passing the 2000 Act decided that the inclusion of the IRA in the second schedule was by virtue of the role of that organisation in committing acts of terrorism. The offence under section 56 of the 2000 Act (directing a terrorist organisation), relates solely to the directing of the activities of the organisation. This does not have to be a proscribed organisation, although in this case the prosecution particularised the count by stating that the organisation in question is the IRA. The offence does not relate to directing the commission of acts of terrorism.

[23] The prosecution has particularised the membership and directing offences as relating to the IRA. In those circumstances, although in theory it could be possible for someone to direct at any level an organisation without being a member of it, it would be a rare situation. If one had a degree of control within an organisation and the ability to order members of the organisation to carry out certain acts, membership would appear to be a pre-requisite.

Consideration of the Evidence

[24] I now turn to the consideration of the evidence. During the trial the defendant declined to give evidence and the prosecution have asked me to draw an inference under the provisions of Article 4 of the Criminal Evidence (Northern Ireland) Order 1988 ("the 1988 Order"). Recently, Gillen J in R –v- Davison & others [2008] NICC 28 at [185] quoted with approval the comments of Hutton LCJ in R v McLernon [1992] NI 168 when he quoted in turn from an Australian judge as follows:

> "It is proper that a court should regard the failure of the plaintiff to give evidence as a matter calling for close scrutiny of the facts upon which he relies and is confirmatory of any inferences which may be drawn against him but it does not authorise the court to substitute suspicion for inference or reverse the burden of proof or to use intuition instead of ratiocination."

[25] The consideration of whether or not the prosecution has proved the case against the defendant beyond all reasonable doubt is of course an evidence-based exercise. The defendant has not given evidence and therefore I have not received any evidence from him concerning what he meant by some of the equivocal statements in the handwritten note.

[26] I now propose to deal with the consideration of the handwritten note. I bear in mind that I am entitled to draw inferences by coming to common sense conclusions on my interpretation of the document. I further bear in mind that in the absence of evidence from the defendant I do not have the benefit of his input as to the meaning of certain words and phrases. In general terms the note does appear to come from someone in authority. It could be described as something of a polemic or diatribe but includes a rallying call, attempts at morale boosting, and a few words of warning. The note is clearly addressed to an individual – "Mucker", however when one considers the full content it is clear that it is intended that the messages contained in the note are for a wider audience within Roe House in the prison.

[27] I bear in mind the comments of Levison LJ in the case of Khan and others v R [2013] EWCA Crim 462 at [73] where he states when referring to recordings of statements by the defendants:

> "too much weight should not be placed on conversations for the purpose of ascribing comparative sophistication; it is not implausible that some self-publicists will talk "Big" and other more serious plotters may be more careful and keep their own counsel."

As Lowry LCJ observed in R –v- Adams fighting talk is not the equivalent of proof of membership, so talking big, in an effort to impress, may not be as well.

[28] Of particular relevance are the following matters:

(a) There is reference to the defendant being "really let down" by the conduct of Nathan. I have no difficulty in inferring that this is a reference to Nathan Hastings. There is reference to what would clearly be an attempt to pervert the course of justice – "the car owner is threatened not to appear in court" and further there is a reference to the defendant and others he describes as Sean and Murf as being "gutted and embarrassed" on having heard that Hastings had pleaded guilty, the plea of guilty having been entered a matter of days before the note was discovered.

(b) There is then a reference to an individual "Kurtis" having questions to answer in relation to the Hastings case.

(c) There is a reference to the fact that there is an informer in the area and the fact that it is "very hard" to determine who the informer is. I interpret the word "Brussel" as meaning informer following the pattern of cockney rhyming slang – brussel sprout = tout.

(d) There then follows an admonition to the prisoners (or "POWs" as the defendant refers to them) not to engage "in loose talk" with reference to certain information being disclosed during prisoner visits.

(e) There are several comments about "the 32's". I infer that this is a reference to the 32 County Sovereignty Movement – "things are not good in [jail] as you are degrading the 32's and no craft to go to 32's. He is a nite mare. I have combatted this by saying that of course the 32's can get craft but what goes out has to be approved and appeal to the wider republican base." And later "Will you start Buster on what is to come to the fore regarding our movement (32's)."

(f) There is reference to arrangements for a funeral of T.C., including possible speakers of an oration. Within this section it is stated "I will not allow any dual army operating along with the IRA"

(g) There is a comment which appears to condone political murder – "If things had of worked out right we would be cheering on the army after a couple of stiffs."

(h) There is reference to the fact that some people are entering pleas of guilty in criminal cases – "It's just I don't want anyone saying I never had an input to the new thing regarding the guilty pleas. People are starting to ask are we (L/Ship) telling POWs to plead guilty, are we taking a blaze approach to deals. You know the truth about the stance I think its fair. I also think that we need to help and foster the new feeling on the landing as long as POWs know that pleading is not an easy way out and they keep you informed at all times of their thinking. Those who fight it fair play those who don't that's for them and they should know the markers not affecting anyone else L/Ship knows the craic and no saying sorry."

[29] I am satisfied having considered all the evidence as inferred from the content of the note and the context that the defendant has a leadership role in what has been described as the 32s, namely the 32 County Sovereignty Movement.

[30] This organisation is not a proscribed organisation. Whilst I did not hear any evidence in relation to the organisation I believe I can take judicial notice of the fact that this is a movement that would appear to have emerged out of disagreements within the then mainstream republican movement in the mid-1990s and was largely set up by disaffected members of Sinn Fein and others who were not supportive of the engagement of Sinn Fein in its negotiations with the British and Irish governments and locally based political parties. The success of those negotiations, the resulting Belfast, or Good Friday, Agreement and the support shown for it by the electorate in both jurisdictions in Ireland resulted in further acts of terrorism. The 32 County Sovereignty Movement has continued in existence since and is said to have a relationship with the RIRA as the equivalent of the relationship with Sinn Fein and the PIRA. This symbiotic relationship has been the subject of much discussion and conjecture, and it would not be appropriate for me to comment on

that. Parliament, and the Secretary of State for the Home Office who has amending powers, have chosen not to proscribe this organisation under the 2000 Act.

[31] To convict the defendant of membership of the IRA, in whatever its guises, Provisional, Real or whatever, the prosecution cannot simply rely on membership of what is a lawful organisation, and then read membership across to the proscribed organisation. It must either show that the 32 County Sovereignty Movement is one and the same as the IRA, or should they be independent organisations, whatever his membership or role in the 32 County Sovereignty Movement he is also a member of the IRA.

[32] The inferences that can be drawn from the content of the note are that the defendant is familiar with recent terrorist incidents in Londonderry, he is familiar with the trials of arrested persons, and he is familiar with what would appear to be steps being taken to frustrate lawful process in one trial through the intimidation of a witness. Further he appears to indicate his displeasure at the conduct of individuals in relation to their approach to their trials, his concern about the presence of informers and about "loose" talk generally. There are further comments which appear to condone murder for political ends. He is describing efforts being made to arrange the funeral of the person T.C. This does show sympathy for republican ideals which could well indicate support for the IRA and the current terrorist acts being committed by it. The evidence of that sympathy may extend to even a suspicion and probability that it reflects membership given the specific details revealed. However, on its own it does not make me sure of his membership of that organisation.

[33] I have also considered the content not only in relation to membership but also in relation to the suggested directorial role in the IRA. He says he will not allow a "dual army operating along with the IRA" and later he refers to the leadership and the clear implication is that he is in the leadership. He then purports to give instructions from the leadership. In particular, he sets out an instruction that the leadership will permit pleas of guilty to be entered by the accused persons housed on remand in the Roe House wing at the prison.

[34] The reference to a dual army is contained in the middle of a passage relating to the T.C. funeral that he was organising. I accept that one interpretation could be that it was a statement referring to the activity of two rival terrorist groups, or schisms of a single group, each claiming allegiance from those members of the community who support militant republican ideals. It could equally be a specific reference to the proposed funeral, and a similar rivalry between two factions attempting to take control of the funeral as a propaganda exercise.

[35] Expressing permission for the accused persons to enter pleas of guilty can be considered as evidence despite its apparent support for co-operation with the constitutional arrangements within the country through the admission of guilt. (Walker & Reid highlight this anomaly when they point out that an IRA commander

directing members to surrender or to observe a cease-fire is guilty of the offence.) It does clearly imply a degree of authority over those accused persons and it is a clear sanctioning of their conduct. It could be considered as fulfilment of a directing role, but of which organisation? As always, it is important to look at the context. The apparent reason for the instruction was concern about morale outside the prison. There appears to be dismay at the apparent co-operation with the criminal justice system by the accused persons. The instructions could have come from the leadership of the IRA as a form of exercising discipline, but equally, they could have come from the 32 County Sovereignty Movement, as the role of that Movement, being the so called political wing of RIRA, would be to garner and maintain support for the RIRA within the community. This would include maintenance of morale outside the prison.

[36] There is no evidence before me to suggest that the 32 County Sovereignty Movement is one and the same as the IRA. The content of the note and its context does raise suspicions about the exact position of the defendant, but falls short of the standard required in a criminal trial. Having considered Article 4 of the 1998 Order, I feel that whilst the failure to give evidence clearly confirms my suspicions in this case, it goes no further. The prosecution case on the interpretation of the note is not of sufficient weight to call for an answer, and therefore the prosecution cannot call on his failure to give evidence as giving extra weight to its case.

[37] The often quoted phrase that the proverbial dogs on the street may have reached certain conclusions in relation to matters is of no relevance. This court does not rely on canine intuition, but rather on hard evidence. There is no such evidence in this case to make me sure that the defendant is a member of the IRA, or that he has a directing role, at any level, of it, either as a member or outside its structures. I therefore find him not guilty of counts 3 and 4.