

IN THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

v

CLIFFORD GEORGE McKEOWN

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**WEATHERUP J**

[1] The defendant Clifford George McKeown is charged with the murder of Michael John McGoldrick on a date between 6 July 1996 and 9 July 1996. It is the Crown case against the defendant that during a series of interviews with the defendant in HMP Maghaberry in the summer of 1999 he confessed to Nick Martin Clark to having committed this murder. Mr Kerr QC and Mr Murphy appeared for the prosecution and Mr Allister QC and Mr Kane appeared for the defence.

[2] The body of Mr McGoldrick was found in the driver's seat of a taxi at Montaighs Road, Derryhirk, Lurgan, on the early morning of Monday 8 July 1996. The events surrounding the murder occurred in or near the town of Lurgan. In the centre of Lurgan are the offices of Minicab Taxis where Mr McGoldrick was based as a taxi driver. To the south west of Lurgan centre is a leisure complex known as Centrepont. To the south east of Lurgan is the town of Waringstown and further south the village of Clare. To the north of Lurgan the road forks to the northwest to Derryhirk and Montaighs Road. To the north east of the fork lie the villages of Aghagallon and then Aghalee. From Clare, southeast of Lurgan, to Montaighs Road, north west of Lurgan, is a distance of 10 or 11 miles by road, depending on the particular route chosen.

**Evidence of events in Lurgan on the evening of Sunday 7 July 1996.**

[3] Damien Duffy was employed as a part-time controller for Minicab Taxis, 24 North Street, Lurgan. On Sunday 7 July 1996, he commenced work at 6.00 pm answering the telephone and co-ordinating the fares for six drivers. He maintained

a record sheet during his period on duty which recorded each fare by reference to a time, a location, a name and the number assigned to the driver who was allocated the fare. Mr McGoldrick was a part-time driver with Minicab Taxis and was on duty on the evening of Sunday, 7 July 1996. Mr Duffy's evidence was that at 11.35 pm he received a telephone call asking for a taxi to make a pick up in 10 minutes at Centrepont to go to Aghagallon. It was a male voice, the conversation was short and the caller gave the name Lavery. The fare was assigned to Mr McGoldrick as he was in the vicinity of Centrepont. The record sheet entry read "11.45 C/P Lavery 21", where 11.45 was the time, C/P was Centrepont and 21 was Mr McGoldrick's number.

[4] In cross-examination Mr Duffy was asked about the time entered on the record sheet as "11.45", which he said represented the time of the pickup at Centrepont and not the time of the call. His first statement to police dated 8 July 1996 was put to him in which he specified 11.45pm as being the time he received the call. His evidence was that he had not realised at the time he made his statement that the taxi was required for 10 minutes later, but that he later remembered the 10-minute delay. Mr Duffy made a second statement on 15 August 1996 stating that the entry of 11.45 was the pick up time and the actual call had been made 10 minutes earlier. He denied that when police returned to see him after 8 July 1996 he had been told by police that his times did not tally with certain phone records the police had obtained.

[5] Mr Duffy's evidence was that if a call were to be received for a taxi to pick up the fare at a later time, he would leave a gap in the record sheet and enter the time at which the taxi was required. He stated that he had done that on this occasion and referred to the sequence of times that appeared on the record sheet. The sequence of time entries read 11.25, 11.30, 11.40, 11.45 (being the call in question), 11.40, 11.40, 11.50, 11.00. It is apparent from this sequence and from other entries in the record sheet that the time entries are not in time sequence. Further down the record sheet after the entry of the time 12.05 is the entry "11.45 Melissa 21". Mr Duffy's evidence was that this entry, which had been assigned to Mr McGoldrick, had probably been booked well before the Lavery call. At around 11.45 Mr McGoldrick radioed in to report that Melissa was not at the pickup point. Mr Duffy told Mr McGoldrick to go to Centrepont for the Lavery fare and he timed that instruction at about 11.50pm.

[6] Detective Constable Cunningham seized the record sheets from Minicab Taxis on the morning of Monday 8 July and recorded the first statement of Damien Duffy at that time. He then re-interviewed Mr Duffy on 14 July 1996 and again on 15 August 1996 when he obtained the second statement. He described the purpose of the interview with Mr Duffy of 14 July as being to put him over the sheets and the times recorded, as he had cause to believe that the Centrepont call had been made earlier than 11.45. DC Cunningham stated that he did not reveal to Mr Duffy any information he had about the time when the Lavery call might have been made. When Mr Duffy was asked by DC Cunningham about the records it was Mr Duffy

who explained that he had received the call earlier than 11.45 and that the entry on the record sheet was the pickup time.

[7] I am satisfied from the manner in which the entries in the record sheets have been made that the times recorded do not necessarily represent the times that calls were received and that the entry of 11.45 represents the pickup time for a call received earlier and which Mr Duffy states was 10 minutes earlier. I am satisfied that DC Cunningham's further enquiries with Mr Duffy prompted his recollection of the times relating to the Centrepont call and that DC Cunningham did not disclose other information in his possession about the times of telephone calls.

[8] Wesley McCabe is a manager with British Telecom. The computer records of telephone calls from a public telephone box with a Waringstown number at Clare indicate five calls between 23.30 and 23.37 on 7 July 1996. At 23.36 a 19 second call was made to the offices of Minicab Taxis. Prior to the call to Minicab Taxis two calls were made at 23.30 and 23.34 to a public call box in Aghalee and after the call to Minicab Taxis a third call was made to the public call box in Aghalee at 23.37. At 23.35, a call was made to a BT private number which was an automatic internal call reporting a fault or to report the cash in the telephone box. The actual reason for the BT call was not known, but as the call to Minicab Taxis was made one minute later there was no fault on the line.

[9] Paula Harbinson was a neighbour of Mr McGoldrick. At 11.30 pm on Sunday 7 July 1996 she was walking along Edward Street, Lurgan, with Brendan McCartan when she stopped at a public telephone box to call a taxi. Edward Street is between Centrepont and Lurgan centre. She and Mr McCartan remained in the area of the telephone box and at approximately 11.50 pm she saw Mr McGoldrick driving past towards the town centre. There was a male passenger in the front seat of Mr McGoldrick's taxi and she saw Mr McGoldrick's face but not the face of the passenger. The passenger was talking to Mr McGoldrick who had his arm on the window and was smiling and nodding.

[10] Brendan McCartan, who was with Paula Harbinson on 7 July 1996, confirmed that she has drawn his attention to her next-door neighbour passing in a taxi. He observed one passenger in the front of the vehicle.

[11] Michael McCreaner knew Mr McGoldrick. On Sunday 7 July 1996 he left a local disco bar at 11.45 pm and admitted to having had a few drinks more than he should. His evidence was that he saw Mr McGoldrick in his taxi at traffic lights leading to North Street out of Lurgan. This would lead north to Aghagallon. Mr McCreaner saw two male passengers in the taxi with one beside Mr McGoldrick and one behind. Mr McCreaner was cross-examined about a statement he had made to police on 16 July 1996, in which he described seeing Mr McGoldrick after midnight when he, Mr McCreaner, was at a public telephone box in Edward Street after having phoned for a taxi. His evidence was that it was only later that he had recalled every step of that evening and that his sighting of Mr McGoldrick had been

10 minutes earlier at about 5 or 10 minutes to midnight at North Street lights. In his police statement Mr McCreaner did explain that he had had quite a lot of drink that evening and that although he then believed that he had seen Mr McGoldrick at the telephone box, it was also quite possible that he had seen him between Church Place and Edward Street between 11.45 and 12.30.

[12] Paul Campbell was a taxi driver with A1 Taxis, Lurgan, and knew Mr McGoldrick. On Sunday 7 July 1996 at around midnight, he was driving into Lurgan centre along North Street when he saw Mr McGoldrick driving his taxi in the opposite direction towards Aghagallon. Mr McGoldrick swerved towards him and he saw that Mr McGoldrick had a passenger in the taxi and believed that he was getting a bit of abuse. The passenger was in the front seat of the vehicle and was looking behind as if talking into the back seat, although Mr Campbell did not see anyone in the back seat.

[13] Mr Campbell gave further evidence that after 2.00 am he was driving through Aghalee towards Lurgan when, at a junction in the town, he saw a black Ford motor vehicle on the right-hand side of the road with a man on his hunkers talking to a male driver. The car was facing Mr Campbell's vehicle and at the time he did not think there was anything suspicious about what he had seen.

[14] I am satisfied that Mr McGoldrick was seen prior to midnight travelling along Edward Street from Centrepont to Lurgan town centre with one male passenger and that very shortly afterwards he was seen in the town centre at the traffic lights at North Street with one male front seat passenger. I doubt that there was a second passenger in the back of the vehicle. I am satisfied that around midnight, Mr McGoldrick was seen travelling along North Street towards Aghagallon with one male front seat passenger.

#### **Evidence of events around Aghagallon on the night of Sunday 7 July and the morning of Monday 8 July 1996**

[15] Rosaleen Kelly lived at Whitehall Road, Aghagallon, being the road to Derryhirk. On Sunday 7 July 1996 at around midnight she was in her bedroom at the back of her house. She heard a shot from the direction of Tiscallen Lane, which runs in a loop off Whitehall Road around the back of her house. She had the radio on in her bedroom as she was waiting for the news at 5 minutes to midnight and she was able to place the shot at prior to 5 minutes to midnight.

[16] Patricia McStravick lived at Gravel Lane, Aghagallon, which is north of Whitehall Road. On Sunday 7 July 1996, she heard, and saw the taillights of, two cars travelling past her house from the direction of Montaighs Road towards the road between Aghagallon and Aghalee. From Montaighs Road to the Aghagallon/Aghalee Road, the direct route is known as Moytown Road. Gravel Lane is a loop off Moytown Road and involves a longer, bumpy, winding diversion

for any vehicle travelling from the Montaighs Road to the Aghagallon/Aghalee Road.

[17] Barry McStravick is the father of Patricia McStravick and he also lived in the house on Gravel Lane. Shortly after midnight he too heard two cars on Gravel Lane and he went to a window at the front of the house and saw the two cars travelling very quickly. He was able to follow the route of the cars along Gravel Lane and back onto the Moytown Road to the Aghagallon/Aghalee Road. At the junction the vehicles turned left towards Aghalee and then right into Rock Lane, which is a turn off before reaching Aghalee.

[18] Elizabeth McStravick lived at Derrymore, which is north of Derryhirk. On the evening of Sunday 7 July 1996, she had been visiting outside Moira and was returning home along Rock Lane towards Aghagallon about 10-15 minutes after midnight. As she passed a derelict farmhouse on her left on Rock Lane, she saw one or two cars parked at the front of the farmhouse with brake lights showing. The vehicles were facing the same direction that Mrs McStravick was travelling. The parked vehicles would have been facing the opposite direction on Rock Lane to the direction of travel of the two vehicles observed by Barry McStravick after they had passed his house.

[19] As indicated above, Paul Campbell saw a black Ford motor vehicle in Aghalee after 2.00am.

### **Evidence as to the discovery of the body of Mr McGoldrick**

[20] In the early hours of Monday 8 July 1996, the body of Mr McGoldrick was discovered in his taxi at Montaighs Road. Conor Douglas was travelling south on Montaighs Road towards Derryhirk when he observed Mr McGoldrick's taxi parked in an opening to the right, facing away from the road with the front passenger door open. He noticed the occupant in the driver's seat in an unnatural position and when he got no response to sounding his horn he went home to Aghagallon and phoned the police. He agreed that it would not have been necessary for the vehicle to pull off the road if a passenger had asked to go to the toilet, as it would not inconvenience other traffic by stopping on the road.

[21] PC Cairns was stationed at Lurgan Police Station and at 6.55 am on 8 July 1996 he received a telephone call from Mr Douglas reporting the sighting of the taxi at Montaighs Road. He immediately informed PC Dennison at Moira Police Station.

[22] PC Dennison went to Montaighs Road at 7.00 am on 8 July 1996 with Reserve Constable Johnston. He found the front passenger door open, the engine running and the body in the vehicle. RC Johnston opened the door and switched off the engine. The vehicle lights were not on. He found a round of ammunition on the ground at the rear of the vehicle and placed a marker beside it. He agreed that the

front passenger's open door suggested a hasty exit and that the position of the car suggested a deliberate driving off the road and that it was a quiet road and that it would be unusual to drive off the road to urinate.

[23] PC Hare was stationed at Moira police station and he attended the scene at Montaighs Road at 7.20 am on 8 July 1996 with RC Wilson. It was his evidence that the engine of the taxi was running and the radio was on. That may conflict with the evidence of PC Dennison to the effect that RC Johnston had switched off the engine of the taxi, although he did not give evidence as to the time at which that occurred, but he had arrived at the scene 20 minutes before PC Hare.

[24] Dr Cupples arrived at Montaighs Road at 8.06 am on 8 July 1996. The life of a young adult male in the driver's seat was pronounced extinct at 8.10 am. A bullet wound to the back of the head was observed. Rigor mortis was present and the limbs were cold peripherally but some residual body heat was still present at the trunk. This was stated to be consistent with death having occurred in the early hours of that morning.

[25] Stephen Totten identified Mr McGoldrick to police at 8.38 am on 8 July 1996.

#### **Evidence of searches carried out**

[26] PC Cathcart was a Scenes of Crime Officer who attended the scene at 8.52am on 8 July 1996. Mr McGoldrick's body remained in the vehicle and the radio was playing, the handbrake had been applied and the gear stick was in neutral. He recovered the round of ammunition on the roadway behind the vehicle (as earlier described by PC Dennison). A bullet head was found in the driver's foot well behind the left foot of Mr McGoldrick. The body of Mr McGoldrick was removed to the mortuary at Craigavon Area Hospital. The vehicle was removed to the Forensic Science Laboratory. Two search teams of soldiers from The Royal Irish Regiment searched the area. One spent bullet case was recovered beside the position where the front driver's side of the vehicle had been positioned.

[27] PC Ardis was a scenes of crime officer who attended the post-mortem examination of Mr McGoldrick at 2.50 pm on 8 July 1996, and there recovered from the Pathologist 4 bullet heads that had been removed from the body of Mr McGoldrick.

[28] Leo Rossi was the forensic scientist who received the taxi for forensic examination. On 11 July 1996 he recovered a spent .22 calibre cartridge from the back of the rear offside seat of the taxi.

[29] Lieutenant Scott was attached to 3 Royal Irish Regiment and he led a team that carried out a follow-up search of the scene at Montaighs Road on the afternoon of 15 July 1996. The scene had been cleared of undergrowth and the search was

undertaken with metal detectors. In a position off the roadway and behind where the taxi had been found, the search team recovered two .22 cases and one .22 round of ammunition.

[30] Corporal Kups was attached to 22 Regiment Royal Artillery. On 20 July 1997, he was part of a search team in a potato field at Aghalee when he discovered a short-barrelled handgun.

### **Evidence of examinations carried out**

[31] Dr Carson, Deputy State Pathologist for Northern Ireland, carried out the post mortem on Mr McGoldrick on the afternoon of 8 July 1996. The cause of death was stated to be laceration of brain due to five bullet wounds of the head. Dr Carson had attended the scene at Montaignes Road at 10.00 am before the body of Mr McGoldrick had been removed. At the autopsy he identified five entrance wounds to the back of the head and one exit wound to the front of the head. The entrance wounds comprised an oval wound and a group of four wounds. The oval wound was the uppermost wound to the back of the head and was bordered by a dark reddish scorched abrasion, giving the overall impression of a muzzle imprint. This wound appeared to correspond to the track of the exit wound in the left cheek. Of the group of four wounds, the uppermost wound had a narrow red abrasion collar and lay within a zone of powder peppering. The wound passed forwards and from right to left at an angle of 30 degrees to the coronal plane and upwards at some 30 degrees to the horizontal plane. The other three wounds at a somewhat lower level were virtually identical in size, shape and direction but did not exhibit conspicuous powder peppering. The exit wound on the left cheek was small and slightly ragged. There was extensive laceration of the brain and two spent bullets were recovered from the left frontal lobe and two more from the left temporal lobe.

[32] Dr Carson's evidence was that he had not been furnished with information as to the manner in which the murder was alleged to have been committed and his conclusion had been that the uppermost wound was probably the first to be caused and that the other four bullets, which he stated were apparently fired later, had entered in a fairly close group to the right of and below the previous wound. He stated that given the position of the deceased and the location and type of wounds, a likely interpretation was that the first shot was discharged at contact range by someone sitting in the seat behind Mr McGoldrick and his head would then have slumped forwards and probably to the left and four further shots were then discharged at a somewhat greater distance. The upper entrance wound of the group of four showed peppering, which indicated that the muzzle of the gun was some inches from the head. The close grouping of the last three shots suggested the muzzle of the gun was within a foot of the head. All five shots were devastating and after the first shot Mr McGoldrick would have been immediately unconscious.

[33] During his evidence a description of the shooting, as alleged to have been given by the defendant, was read to Dr Carson and he stated that he could not exclude the possibility that it was a description of the events that had occurred. On the issue of the sequence of shots fired at Mr McGoldrick I find that the evidence of Dr Carson establishes that the shooting sequence could have been one shot followed by four shots or it could have been four shots followed by one shot. On the issue of the position of the firer Dr Carson stated that, subject to the findings of the other experts, he had concluded that the shots come from a position alongside the driver's headrest.

[34] The evidence was that rigor mortis sets in after three to six hours and would be complete after twelve to fifteen hours. It was almost complete when the post mortem began at 3.15 pm. The degree of rigor mortis was consistent with death having occurred at midnight. An issue was raised as to whether there could be said to have been a shot to the back of the neck and Dr Carson stated that it could be said that one of the shots was to the back of the neck but it was not possible to distinguish properly between the back of the head and the neck.

[35] Dr Ruth Griffin was a Senior Scientific Officer at the Forensic Science Agency whose task was to determine if there was any evidence by blood or fibres to indicate a connection between items submitted to the laboratory, including items relating to the defendant, and Mr McGoldrick or his vehicle. No such connection was found. Dr Griffin examined the vehicle and found that blood had been projected forward on to the top of the windscreen, the head cloth at the driver's side and the driver's mirror. Blood had also radiated outwards to the driver's door window, the steering wheel, the gear well, front near-side seat edge and front near-side window. There was also blood on the rear nearside window and seat edge which had projected through the gap between the front seats. The absence of blood on the centre panel of the front passenger seat, suggested that someone or something had been on the seat at the time of the shot. The distribution of blood indicated that Mr McGoldrick had been facing the windscreen when he was shot and that the gun was situated beside the outer edge of the driver's headrest when it was fired. There was only one exit wound for blood projection and that had been forward and slightly left. There were some spots of blood on the headrest but no backsplash of blood from subsequent shots and none was to be expected to the back of the vehicle. It was possible that the gun was fired by an extended arm from a person outside the vehicle as well as by a person sitting behind the driver. Dr Griffin could say that the gun was at the headrest but could not identify the position of the person holding the gun. There were no beer cans in the vehicle.

[36] Leo Rossi was a firearms expert at the Forensic Science Agency. He examined 4 spent cases (one found on the driver's side of the vehicle, 2 found behind the vehicle and one found in the rear of the vehicle); 5 bullet heads (4 recovered from Mr McGoldrick and one from the driver's foot well); 2 rounds (one from behind the vehicle and one from the roadway behind the vehicle) and one handgun. The 5 bullet heads and 4 spent cases indicated that at least 5 .22 calibre shots had been



discharged, leaving one case unrecovered. The 2 rounds were damaged and unfired indicating that they had not fed properly into the chamber of the gun and had been discarded.

[37] A spent case discharges from the weapon to the right. The spent case found in the rear seat suggested one shot discharged by a firer inside the vehicle with the rear door open or closed. Spent cases hitting the open rear door could bounce off the door and it was not necessarily the case that all the shots had been fired from inside the vehicle. The unfired rounds would have been ejected from the weapon by the firer manually pulling back the slide and discarding the rounds.

[38] The handgun had been recovered on 20 July 1997 and was a .22 Star pistol. It was found to be the weapon that had discharged the bullets recovered in relation to the shooting of Mr McGoldrick and to have been used in the fatal shooting of Bernadette Martin on 15 July 1997.

#### **Evidence relating to the movements of the defendant on the evening of Sunday 7 July 1996**

[39] Maria Corr gave evidence screened from the public by reason of concerns for her personal safety. It was her evidence that she had worked at Centrepont from 1994 to 1998. On Sunday 7 July 1996, she worked at Centrepont to 6.00 pm and then went home. She returned to Centrepont socially between 7.00 pm and 8.00 pm and went to the bar. In the bar she recognised the defendant with another man named Michael. She had known who the defendant was for three to four years as he had been pointed out to her in the area of Aghalee. She was surprised to see him in Centrepont and was uncomfortable about his presence there. She stayed in the bar for about half-an-hour during which time Michael and then the defendant went past her table to go the toilet. Then she went to the bowling alley in Centrepont and returned to the bar after 45 minutes when the two men were still at the same table. She stayed in the bar for 20 minutes before going to the cinema in Centrepont through the main foyer. The two men also went into the main foyer and she believed Michael used the pay phone. This would have been around 10.00 pm and when she left the cinema after midnight there was no sign of the two men.

[40] Ms Corr was at work in Centrepont the following morning when police were making enquiries about Mr McGoldrick's murder. She was spoken to by police and made a statement on 9 July 1996 in which she did not name the defendant and Michael as the two men she had seen in Centrepont. On 25 July 1996 she attended an identification parade in Belfast, where the line up included the defendant, and her evidence was that she recognised the defendant in the line up. However, she picked out a different person in the line up. Ms Corr stated in evidence that while she had recognised the defendant in the line up she had been frightened and did not want to pick him out. Her evidence was that she had told the police officers who escorted her home after the identification parade that the man from Centrepont had

been in the line-up and she had been too frightened to pick him out. Some days later she attended Lurgan Police Station to look at photographs in two albums but did not make any identification from the photographs. She had been contacted by police from time to time but had not made any statement naming the defendant as having been present in Centrepont on Sunday 7 July 1996. Police contacted her in November 2002 when she agreed to make a further statement, which was completed on 25 November 2002, and in which she named the defendant as the person in Centrepont. She made a further statement on 10 December 2002.

[41] The defence case was that the defendant had not been in Centrepont on the evening of Sunday 7 July 1996. Ms Corr was challenged as to how she knew the defendant. She said she had often been in Aghalee and had friends who lived in Aghalee who would have pointed out the defendant to her in the years before 1996. It was put to Ms Corr that the defendant was not in Aghalee in the years up to June 1995 and she said she did not know the exact dates when he was pointed out. Further Ms Corr was asked about the defendant's brothers. She knew that he had at least one brother and did not believe that she had seen the brother. She was sure that the person she had seen in Centrepont was the defendant.

[42] She was challenged about the differences between her evidence and the written statements she had made to the police.

In the first statement of 9 July 1996, she had stated that she was bowling for 20 minutes and not 45 minutes as stated in evidence. She accepted that her first statement was probably correct and her evidence could have been mistaken on that point.

In her first statement she had made no mention of being in the foyer of Centrepont. She stated that in order to move from the bar to the cinema it was necessary to proceed through the foyer. This was not disputed and I attach no significance to her failure to mention the foyer on the earlier occasion.

In her first statement she described being in the bar when the defendant went to the toilet and that he returned to his table with Michael. In her third statement she described being in the bar and Michael was first mentioned as having gone to the toilet. However at the end of that third statement, Ms Corr recorded that when she first saw the defendant he had walked past her to go to the toilet so I do not consider there to be any inconsistency on that point.

In her first statement she did not name the two men. She explained that she had been reluctant to become involved with the police and had been advised by others not to become involved and was afraid for her safety. After making the first statement Ms Corr said that although she had not included any names in her statement she had given the name "McKeown" to DC Cunningham.

In the first statement she stated that when she went to the cinema the two men were at the table in the bar, whereas in her third statement she stated that when she was in the foyer to go to the cinema, the two men were also in the foyer and Michael may have used the telephone in the foyer. When challenged about this her response was that when she made her first statement she was confused and that

her memory when giving evidence was that the men had been in the foyer. There was an inconsistency on this point between her first account and her later accounts.

[43] On 25 July 1996, she attended the identification parade. Her evidence was that after the parade she was not sure if she had told the police conducting the identification parade that the person from Centrepont was present in the parade. In her second statement to police she recorded that she was nearly sure that after the identification parade she had told the police conducting the identification parade that the person was present. I accept her evidence that she told the police in the vehicle transporting her from the identification parade that the person was present in the parade. On 8 January 1997 at an interview at Lurgan Police Station, she told police that Clifford McKeown had been on the identification parade and she agreed that that might have been the first occasion on which she had used the name "Clifford".

### **Evidence of the alleged confession of the defendant**

[44] The main prosecution witness was Nick Martin Clark to whom it was alleged the defendant had confessed that he had committed the murder of Mr McGoldrick. When he was called to give evidence Counsel for the defendant gave notice of a challenge to the admissibility of his evidence under Article 74 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (dealing with the exclusion of confessions on the grounds of oppression or unreliability) and Article 76 of PACE (dealing with exclusion of evidence on the ground of unfairness). The issue of the admissibility of the evidence was dealt with by way of a voir dire hearing during which evidence was received from Mr Martin Clark, Stephen Maxwell, a documents examiner, and Detective Inspector Monteith who was the officer in charge of the investigation. The defendant did not give evidence nor did he call any evidence on the voir dire.

[45] The evidence of Mr Martin Clark was that in 1999 he was a freelance journalist whose main interest in Northern Ireland affairs was collusion involving the security forces and loyalist paramilitaries. On 17 June 1999 he and a colleague, Lyn Solomon, visited the defendant in HMP Maghaberry. Ms Solomon had a contact in the office of Jeremy Corbyn MP, and a letter from Mr Corbyn to the defendant introduced Miss Solomon and "a colleague" (being Mr Martin Clark). The visit had been arranged in a telephone call from Ms Solomon to the prison authorities. Mr Corbyn's letter described the purpose of the visit as being concerned with the issue of the defendant's application for release on licence. The purpose of Mr Martin Clark and Ms Solomon was to obtain from the defendant information about loyalist paramilitary activity, as they believed the defendant to be gravely ill and he was known as "a talker". Ms Solomon represented to the prison authorities that they were researchers for Mr Corbyn. However the evidence of Mr Martin Clark was that at that first interview they were introduced to the defendant by Ms Solomon not only as researchers for Mr Corbyn but also as journalists.

[46] At the interview of 17 June 1999 Ms Solomon asked most of the questions and Mr Martin Clark kept contemporaneous notes. After the meeting Mr Martin Clark completed a longer form version of the exchanges at the meeting.

In the course of the conversation the defendant told them that he was under sentence of death from Belfast UVF for the murder of Mr McGoldrick. The defendant was asked by Mr Martin Clark if he had shot Mr McGoldrick and he denied that he had. There were two further references to the investigation into the McGoldrick murder at the meeting. The first was that the defendant said he had been arrested along with his girlfriend in October 1996 and later released. The second was that at interview by the police the comment was made by police that it was a shame that Damien Duffy had not been the victim rather than Mr McGoldrick. The defendant was said to have explained to Mr Martin Clark and Ms Solomon that Damien Duffy was the brother of a known IRA man and that Damien Duffy was a radio operator in the taxi firm.

[47] The second meeting was on 7 July 1996 and was attended by Mr Martin Clark. Again he made contemporaneous notes of the conversation and after the meeting he began a longer form hand-written version of the conversation although that had remained unfinished.

During that meeting there was no direct mention of Mr McGoldrick's murder. In the course of the meeting there was reference to a .22 weapon. Further, at the meeting (although it may have been at the first meeting) the defendant referred to 7 July 1996 and said that Mr Martin Clark should check that date.

[48] The third meeting was on 8 July 1999 between the defendant and Mr Martin Clark. Again Mr Martin Clark made contemporaneous notes during the meeting and he added to those notes after the meeting. Four pages of notes dealing with Mr McGoldrick were torn from the notebook by Mr Martin Clark and he prepared a longer hand-written version of those four pages.

Mr Martin Clark's account of the conversation about Mr McGoldrick at the meeting was that the defendant asked Mr Martin Clark what had happened on 7 July 1996 and Mr Martin Clark was able to confirm that it was the date of Mr McGoldrick's murder. The defendant then said that that date was also Billy Wright's birthday and that the murder of Mr McGoldrick had been a birthday present for Billy Wright. Mr Martin Clark asked the defendant who it was had killed Mr McGoldrick and was it Swinger Fulton. The defendant said that it was not Fulton. The defendant asked if he wanted to know who did kill Mr McGoldrick and Mr Martin Clark promised the defendant that he would not tell anybody, whereupon the defendant said, "you're looking at him". Mr Martin Clark's response was to say "what", as he did not think he had heard him quite right and to that the defendant replied "you're looking at him". After the defendant made that admission to Mr Martin Clark he gave further details of the murder. He said that four people were involved, two of whom were young men and he did not give their names, and the other two were himself and a named accomplice who was described as an experienced man.

[49] Mr Martin Clark's evidence was that the defendant then explained how the police had come to suspect him of involvement in the murder. A named person had gone to a party and had been telling stories about what had allegedly happened, and a drug dealer who was present, and who was also a police informer, told the police what the named person had said. This had been that the defendant and Billy Wright had taken pot shots at Mr McGoldrick which the defendant described as a bit of a far-fetched story. The defendant was arrested and after his release, the drug dealer phoned the defendant and explained what he had told the police.

[50] The defendant was said to have explained that Billy Wright and Mark Fulton were not in the frame for Mr McGoldrick's murder because they had been at a protest at Drumcree and the police would have video evidence that they were there at the time of the murder. Billy Wright originally had had a different plan that had been outlined at a meeting in the defendant's house on Friday 6 July 1996. The original plan had been to kidnap three priests from the Parochial House in Gilford and to leave one priest behind to tell others what had happened. The defendant had organised a team of people to carry out this plan. However, Billy Wright had changed the plan and at another meeting on the Saturday it had been decided to kill a taxi driver.

[51] The defendant explained that he had been in a car in position waiting for Mr McGoldrick's taxi to drive past. A telephone call had been made ordering the taxi and using the name of a Catholic from Aghagallon in order to avoid arousing suspicion. The defendant had had a mobile phone in his car and he told Mr Martin Clark that it would have been better to use mobile phones rather than telephone boxes. Towards the end of the interview the prison staff hastened the conclusion of the interview as the allocated time had elapsed.

[52] The fourth meeting took place on 5 August 1999 with Mr Martin Clark. Again Mr Martin Clark took contemporaneous notes. There was no discussion of Mr McGoldrick's murder during the meeting.

[53] A fifth meeting occurred between the defendant and Mr Martin Clark on 10 August 1999. Again contemporaneous notes of the meeting were taken by Mr Martin Clark and a further record of the meeting was completed by Mr Martin Clark some months later. In advance of the meeting Mr Martin Clark had written into his notebook an account of Mr McGoldrick's murder that had appeared in the appendix of a book by Sean McPhilemy with the title "The Committee".

Mr Martin Clark read to the defendant the description of the murder contained in The Committee and the defendant was said to have picked holes in that account. Mr Martin Clark's evidence was that the defendant then gave his own account of the murder. Mr McGoldrick had been killed at Aghagallon beside Downey's pub (this being another name for the Derryhirk Inn) and the taxi fare had been to Aghagallon from Lurgan. The telephone call to the taxi firm had been made by the accomplice named by the defendant from a telephone box in Lurgan and

then the accomplice had made a call to a telephone box in Aghalee where the defendant was waiting. The defendant criticised the accomplice for having made the two calls in quick succession and said that the accomplice should have used a mobile phone. The defendant received the telephone message that " The parcel is on its way". Mr Martin Clark asked the defendant whether a particular name was that of one of the two young men involved but the defendant said that it was not. The defendant and one of the young men had driven to, and pulled in behind, Downey's Bar. The accomplice drove past having dropped the other young man at Centrepont. The young man with the defendant got out of the car and stood at the side of the road and when Mr McGoldrick's taxi came along, the young man who was in the taxi pointed out the other young man at the side of the road and said to Mr McGoldrick that that was his friend and they were going to a party in Aghagallon and would he stop and pick him up. The younger man by the side of the road had a carryout of beer and wine to make it look as if he was going to a party. The defendant said that they had used a Roman Catholic name from Aghagallon when they phoned up and asked to go to Downey's Bar. When the taxi drove on the defendant pulled out and drove behind the taxi with his lights off, even though it was around 12 o'clock at night, and he was right behind the taxi and using his hand brake to slow down as he did not want his rear brake lights to show. Travelling north from Downey's Bar, the Montaighs Road becomes the Featherbed Road. The two vehicles travelled a short distance along the road and Mr Martin Clark referred to the location as the Featherbed Road. One of the young men in the car asked Mr McGoldrick to stop because he wanted to go to the toilet. This request had been pre-arranged. The young man in the passenger seat got out and the defendant got out of his vehicle and went to the driver's side rear door of the taxi and opened the door and straight away shot Mr McGoldrick five times in the head. The defendant said that he delivered four shots together at the back of the head and then a fifth shot into the back of the neck. The defendant was asked why he had fired the last shot and he said it was to finish the job. The defendant said a .22 gun was not messy and that it was ideal, if there was time, because .22 bullets were of small calibre and they did not exit the skull but would ricochet round inside the brain and thus ensure death. Aghagallon had been picked as a quiet spot where there was no trouble. The three men got into the defendant's vehicle and drove to the accomplice's vehicle, which was parked further along the road on a turning off to the right. The two young men drove to Portadown in one of the cars and the defendant and the accomplice drove to Portadown in the other. The defendant was dropped off at Union Street where he washed his clothes and then the accomplice returned the car to the owner. The defendant buried the gun in a field in Aghalee near his father's house and after a couple of days he picked it up and took it to a safe house in Portadown. The defendant said that the same gun was used in the killing of Bernadette Martin.

[54] There were two diagrams completed during the interview. The first was said to represent the layout of the places described by the defendant and the other showed the position of the cars at the time of the shooting. The defendant had made a mark on one or other of the diagrams.

[55] In December 1999 Mr Martin Clark published an account of his conversations with the defendant in the Sunday Times and received the sum of £7,500. After the publication he was contacted by police and made a police statement and further to service of a Production Order he forwarded to the police his records of conversations with the defendant.

### **The Defendants challenge to the evidence of the alleged confession**

[56] Mr Allister QC, counsel for the defendant, undertook a skilful and penetrating cross-examination of Mr Martin Clark. The defendant's position was that he had not made any confession to Mr Martin Clark and that the evidence of the confession had been invented. In essence the case put to Mr Martin Clark was that in 1999 he was interested in gathering information about collusion in general and in particular he was interested in gathering information to assist Sean McPhilemy in defence of the thesis behind his book "The Committee" that there was a committee of prominent people who organised loyalist violence particularly in the mid Ulster area. In 1999 Mr McPhilemy was the defendant in libel proceedings in America undertaken by two businessmen who had been named by Mr McPhilemy as members of the committee. He was also involved in libel proceedings in London against the Sunday Times arising out of an article alleging that Mr McPhilemy had been taken in by a hoax carried out by Jim Sands who had been a source of information about the committee and further that Mr McPhilemy had paid Mr Sands and had coached him as to what he should say about the committee in a television programme made by Mr McPhilemy prior to the publication of his book. Accordingly, it was contended on behalf of the defendant that Mr Martin Clark and Ms Solomon had arranged to see the defendant in order to obtain information about collusion in general and the committee in particular. It was put to Mr Martin Clark that during the meetings the defendant had denied involvement in the murder of Mr McGoldrick and had stated that he did not believe that a committee existed. At the fifth meeting the defendant broke off contact with Mr Martin Clark and refused to restore contact with the result that Mr Martin Clark concocted the article about the defendant's alleged confession which was published in the Sunday Times. Mr Martin Clark's account of the confession was said to be in effect an attempt to blackmail the defendant into giving information about collusion to Mr Martin Clark.

[57] It was established in cross-examination of Inspector Monteith that neither the Sunday Times nor Mr Martin Clark had made any contact with police prior to publication of the article in the Sunday Times in December 1999. After publication there was no such contact made by the Sunday Times or Mr Martin Clark until Inspector Monteith arranged a meeting with Mr Martin Clark in the offices of the Sunday Times in London on 19 January 2000. Thereafter Mr Martin Clark did not make a written statement to police until 1 June 2000. Furthermore Mr Martin Clark did not voluntarily hand over to police his notes of interviews with the defendant so

that police obtained a Production Order and that resulted in Mr Martin Clark handing over his notes of interview through his solicitors on 18 October 2000.

[58] The defendant contended that Mr Martin Clark's notes of the interview with the defendant were invented at a later date. The notes of the five interviews that were said to be contemporaneous and the other notes that were written up by Mr Martin Clark after the meetings were forwarded to the document examiner at the Forensic Science Laboratory. The purpose of the examination of the documents was to ascertain if there was evidence of indented writings. From his examination the examiner was unable to state when any of the documents had come into existence. There was evidence of indented writing, which in some cases was identified by reference to other writings and in some cases was not so identified. Examination of some loose pages established that the writing had been sequential.

[59] The defendant contended that the manner in which the notes of interviews were said to have been composed indicated their lack of authenticity and in any event their unreliability. Mr Martin Clark explained his method of making entries in the notebooks as being one that was intended to allow his notebook to pass inspection by prison officers from whom he was concealing his role as a journalist. In some instances the notebooks contain preparatory notes made by Mr Martin Clark before meetings as well as notes said to have been made during the course of interviews, and notes made after interviews relating to matters discussed at interview or as comments by Mr Martin Clark to himself. In addition the notes may commence in the middle of a notebook and then move either forwards or backwards in the notebook. Entries appear in pencil or by a variety of pens. Coloured attachments are fixed to some pages.

#### **The notes of the interviews of the defendant by Mr Martin Clark**

[60] The notes of the first interview on 17 June 1999 were contained in a red Rhino notebook. The notebook contained 16 pages of notes and it was Mr Martin Clark's evidence that the first page comprised notes probably written up afterwards by Mr Martin Clark to himself and the notes at the end were not part of the interview. On the reverse of page 15 of the notebook was a list of contacts and telephone numbers. After the meeting Mr Martin Clark typed up a longer version comprising 11 pages. The long version of the notes was said to have been completed that evening and the following morning, and was said to be based on the entries in the notebook and Mr Martin Clark's memory of the conversation with the defendant. The long version contained references to a number of items that were not included in the notebook entries. The notebook included entries relating to the defendant's health and involvement in criminal proceedings as well as details of personalities and events said to concern loyalist paramilitaries and references to collusion. The long version dealt with matters under four headings namely, the defendants relationship with Billy Wright; his health; his prison record and offences; and finally miscellaneous. The notes contain considerable detail about loyalist paramilitary activity.



[61] Mr Allister raised many queries about the two forms of notes and the differences between them. In some instances Mr Martin Clark offered an explanation and in other instances he had no ready answer or no answer at all. By way of example, the notes referred to the defendant and Mark Fulton being under sentence of death from Belfast UVF for the McGoldrick murder. Mr Martin Clark explained that the defendant had told him this whereas it was put to him that the press had reported that it was Billy Wright and not the defendant who was under this threat. Mr Martin Clark said he was unaware of the press report.

Further, there were references in the notes to a television programme involving a person named Sands and another named Quinn who appeared in the programme in disguise. In the notebook the comment was made that the defendant thought Sands was intended to represent him and in the long version the comment is made that the defendant thought Quinn represented him. Mr Martin Clark's explanation for the difference was that, having reflected on the point after the meeting, he changed his interpretation of what the defendant had been trying to convey at the meeting.

Further, there was a notebook entry that a named journalist had offered the defendant money to implicate the defendant's solicitor in the committee and the long version adds that the offer was on instructions from Mr McPhilemy. Mr Martin Clark agreed that he did not believe the defendant in relation to the offer.

Further, the long version description of Quinn or Sands representing the defendant in the television programme was followed by a reference in brackets to another journalist reporting that the defendant's arm had been broken in a fight at this time. As the long version was said to have been written on the evening of the first interview or the following morning, Mr Martin Clark was questioned as to the date on which he had received the information about the defendant's broken arm. He agreed at first that he must have received the information prior to the first interview with the defendant or from Mr McPhilemy on the evening of the first interview. In his evidence the following day, Mr Martin Clark returned to this subject and stated that he had no memory of finishing the long version of his notes of the first interview and that he may have completed them a few days later and in the meantime would have spoken to the journalist who had given him the information about the defendant's broken arm. He agreed that if that were the case then, contrary to his earlier evidence, the last four pages of the long version of the first interview would have been written some days after the interview ended. Mr Martin Clark remained unclear as to the timing of the completion of the notes.

[62] The notes of the second and third interviews were contained in a green "Homes and Gardens" notebook. It was Mr Martin Clark's evidence that the notes relating to the second interview on 7 July 1999 were to be found on pages numbered 1 - 18. The first entries in the notebook were thought to be pages 7 - 11. There were then six pages of agenda written on the front and the back of the pages numbered 6, 7 and 8. The notes of the interview with the defendant were on pages 12 - 18 with a sketch on the reverse of page 16. The agenda had its origins in a different notebook, described as a pink notebook, that Mr Martin Clark had not brought to the

interviews. His explanation was that he had first written out an agenda in the pink notebook but he then considered that prison officers might too easily identify the nature of his discussions with the defendant, so he made further preparatory notes, including the agenda, in the Homes and Gardens notebook and commenced the entry some pages from the front of the notebook. Once he had completed the entries he numbered the pages. After the agenda was first written out in the Homes and Gardens notebook he added items to the agenda. During the meeting the notes of interview were completed. After the interview additional comments were added. At a much later date coloured fixers were attached to some pages in the notebook containing additional comments. The agenda comprised a list of names and events that Mr Martin Clark proposed to discuss with the defendant. The notes of interview refer to loyalist paramilitary figures and events but do not correspond with the agenda because the evidence was that the defendant led the discussion to the other matters contained in the notes of interview.

[63] The particular points raised by Mr Allister in relation to the notes of the second interview included the numbering of the pages. The pre-interview notes were numbered at the top of the pages as 1 to 11. On the second page was the entry “ii) Quinn (p7) - when was broken arm?” That was a reference to a future page in the notebook (page 7) and the question arose as to how Mr Martin Clark, in completing the second page of his notebook, would be able to make an entry dealing with a matter which is to appear five pages later. His answer lay in the writing of the pre-interview notes before the numbering of the pages, and there being a space available to enter the page numbers into the text afterwards.

Further, a matter was explored that was said to be an example of Mr Martin Clark’s capacity for deception in his quest for evidence of collusion. One agenda entry indicated that it would help the defendant’s case if he named two policemen as having given guns to loyalists and that a question could be raised in Parliament by Jeremy Corbyn to explain why the police had a grudge against the defendant. The deception was said to arise on the basis that Mr Martin Clark was not in a position to influence the matters raised in Parliament by Mr Corbyn.

[64] The notes of the third interview of 8 July 1999 were also contained in the Homes and Gardens notebook and it was Mr Martin Clark’s evidence that they were to be found from pages 19 - 37. There was a sketch on the reverse of page 19 and a coloured attachment to page 37. There were then four pages of the notebook written up after the interview containing details that had been disclosed by the defendant during the interview relating to the McGoldrick murder. At the end of that fourth page and on a fifth page were notes added at a later date. There were also additions to the interview notes made at a later date. In addition Mr Martin Clark completed a two page handwritten version of the details relating to the McGoldrick murder dated 10 July 1999.

[65] The notes of the interview again refer to loyalist paramilitary figures and events. It was Mr Martin Clark’s evidence that during the third interview the defendant first confessed to him that he had been responsible for the murder of Mr

McGoldrick. The words of confession were not recorded in the interview notes and the only comment on the McGoldrick murder was "Birthday present to Billy Wright". Mr Martin Clark's evidence was that the moment of confession was so intense that he had not recorded the words of the confession. The four pages of the notebook written up after the interview contained what Mr Martin Clark said in evidence he had been told by the defendant and included the note that two youths, the accomplice and the defendant were involved in the McGoldrick murder but the words of confession are not recorded. Mr Martin Clark stated that it did not occur to him to record the words of confession when he wrote out the four pages or when he added to the last of those pages.

[66] However when Mr Martin Clark completed his longer version of the confession on 10 July 1996 he quoted the exchange he claimed had taken place between himself and the defendant as follows -

"You want to know who killed McGoldrick"  
"Yeah, sure"  
"Well, if I tell you this, you have to swear you'll never reveal it to anybody"  
"Okay"  
"You're looking at him".

Mr Martin Clark was challenged about the difference between that conversation and another version completed by Mr Martin Clark in an unpublished article written in December 1999 reading as follows -

"Do you want to know who killed Michael McGoldrick"  
"Sure"  
"You must promise not to tell anyone"  
"Okay"  
"You are looking at him"  
"What?"  
"You are looking at him".

[67] Mr Martin Clark rejected Mr Allister's criticism of his use of quotation marks to report two versions that could not both be accurate. Mr Martin Clark considered both versions to be to the same effect. I accept that Mr Martin Clark considered that he was entitled to literary licence in the use of quotation marks and that resorting to quotation marks did not demand total accuracy, provided the words quoted were to the same effect as those used.

[68] It was Mr Martin Clark's evidence that after receiving the confession at the third interview he was in an emotional state and concerned for his personal safety, as he had arranged to meet the defendant and another prisoner while they were on parole in August 1999. Accordingly, on 10 July 1999 he completed a written statement in which he referred to the defendant's confession, and while recognising

a duty to inform the police of the information he had received he considered that it was in the greater public interest that he should continue his work of exposing state sponsored terrorism. He regarded the statement as an insurance policy and it was forwarded in a sealed envelope to a colleague together with the four pages of notes of the third interview that he removed from the notebook, and the longer version of references to the McGoldrick murder arising from the third interview that was also written on 10 July 1999. Mr Martin Clark retrieved the envelope from his colleague when he returned to England after his fifth interview with the defendant. He then added to his enclosures some pages removed from the notebook containing the notes at the fifth interview and forwarded all the documents to a colleague in the Republic of Ireland on 3 December 1999, that being the date on the envelope produced to the defence.

[69] The notes of the fourth interview of 5 August 1999 were contained in a black and white address book. There were three pages of agenda followed by 17 pages of notes. The pages were not numbered but as the notebook was an address book the sequence of the pages could be identified by reference to the letters of the alphabet down the right hand side of some of the pages. The interview was said to have started with a subject that is recorded on the eight and ninth pages of the notes of interview. Mr Martin Clark explained this on the basis that at the commencement of the interview the defendant was anxious to talk about a current topic that was not on Mr Martin Clark's agenda and when he did so Mr Martin Clark turned over a number of pages in his notebook and began to make notes of the defendant's topic. When that topic was completed Mr Martin Clark dealt with his agenda and turned back to complete the preceding blank seven pages and then continued with the notes of interview from the bottom of page 9 - 17.

[70] The subject of the McGoldrick murder was not on Mr Martin Clark's agenda for the fourth meeting nor was it discussed at the fourth meeting. Mr Martin Clark's explanation for this was that he considered that he ought to deploy some subtlety in raising the McGoldrick murder again. The defendant had rushed off at the start of the interview to talk about other things and there was no appropriate opportunity to return to the subject. Once more the agenda referred to persons and events relating to loyalist paramilitaries and the notes of interview set out considerable detail about such matters.

[71] The notes of the fifth interview of 10 August 1999 were contained in a red Silvine notebook and comprised 27 sheets of notes. The first part of the notes contained 9 sheets that were later torn from the notebook by Mr Martin Clark. The second part of the notes contained 16 sheets that were later cut from the notebook by the Forensic Science Agency and subjected to ESDA testing. Prior to the interview the notebook started with some blank pages, followed by two pages of text that Mr Martin Clark copied into the notebook from an appendix to Mr McPhilemy's book and which contained a description of the McGoldrick murder, followed by more blank pages, and finally, three pages of agenda written in that part of the notebook subsequently cut out by the Forensic Science Agency.

[72] The interview started with a discussion of the McGoldrick murder as described in the notes from the appendix to Mr McPhilemy's book and it was Mr Martin Clark's evidence that the defendant rejected that description of events in almost all respects and then gave Mr Martin Clark his own description of events which Mr Martin Clark noted down. That description then appeared on the reverse of pages 2, 4 and 5 of the notebook with a diagram drawn on the reverse of page 5. The description continued on page 6 with a diagram and notes on the reverse of page 6. The defendant's description then continued on pages 7, 8 and 9 of the notebook. The discussion then moved to the items on Mr Martin Clark's agenda which was set out on pages 5 - 7 of the second part. This agenda was again concerned with personalities and events related to loyalist paramilitary activity. The notes of the interview concerning the agenda items commenced on page 8 of the second part and continued to page 16, with additional notes on the reverse of page 12 and the reverse of page 14. These notes again contain considerable detail in relation to loyalist paramilitary activity. The evidence of Mr Martin Clark was that the discussion then reverted to the subject of the McGoldrick murder so Mr Martin Clark returned to the earlier part of his notebook where he had copied from the appendix to Mr McPhilemy's book and he continued his note taking on the reverse of pages 2, 3 and 4 before completing the notes on pages 1 and 2 of the second part of the notes. In addition Mr Martin Clark completed a handwritten transcript of the fifth interview some months after the event.

[73] The notes of interview and the later transcript of interview do not record the defendant as saying that it was he who shot Mr McGoldrick. Further the notes contained a reference to the murder of Bernadette Martin who had been shot with the same weapon as had been used in the murder of Mr McGoldrick and Mr Martin Clark had noted the defendant as naming a person who the defendant said committed the murder. The defendant's brother had been convicted of the murder of Bernadette Martin and Mr Martin Clark did not believe the defendant when he named this other person as having committed the murder.

#### **Admissibility of the evidence of Nick Martin Clark.**

[74] At the conclusion of the voir dire hearing the defendant confined his challenge to the admissibility of Mr Martin Clark's evidence of the interviews with the defendant to the ground of unfairness under Article 76 of PACE and it was agreed that in the circumstances of the present case Article 76 was to the same effect as a common law challenge on the ground of unfairness. Mr Allister for the defendant recognised the difficulty of relying on Article 74 of PACE to challenge the admissibility of a confession on the basis of oppression and unreliability while at the same time denying that the confession was made. Whether a confession was made is a question for the jury although it may be appropriate to undertake a voir dire where a challenge to the making of a confession was intertwined with an

admissibility challenge, as appears from Blackstone's Criminal Practice (2003) at F17.28.

[75] Under Article 76 the Court has discretion to exclude unfair evidence -

“... if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.”

Even when the defendant's challenge to the admissibility of evidence is limited to Article 76 there remains an issue as to whether it is necessary for the court to decide if the confession was made before considering the issue of exclusion. The approach of the court to the application of the defendant under Article 76 was to ask two questions. First, whether there was *prima facie* evidence that the disputed confession had been made by the defendant? Secondly, if there was a case to answer that the defendant had made the confession, should the evidence of the confession be excluded under Article 76?

[76] When the application was made to exclude the evidence at the conclusion of the voir dire hearing, it was not necessary, at that stage, for the prosecution to establish beyond reasonable doubt that the defendant had in fact made the confession. It was necessary, however, to establish that there was evidence on which the notional jury, after proper direction, could be so satisfied, and in that event, subject to the Article 76 question, the evidence should be admitted. If such evidence was present, the time to address the question whether it had been established to the requisite criminal standard that the defendant had *in fact* made the statements was when the evidence was complete. I concluded that there was evidence on which a jury could be satisfied that the statements that Mr Martin Clark claimed the defendant had made had indeed been made by the defendant. On the first issue I ruled that there was a *prima facie* case that the alleged confession had been made by the defendant.

[77] On the second question I was invited to exercise the power under article 74 (3) of PACE to exclude the evidence on the basis that it had not been proved that the confessions made to Mr Martin Clark had not been obtained -

- “(a) by oppression of the person who made it;
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof.”

[78] Under Article 74(3) the burden is on the prosecution to prove to the Court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained by oppression or in circumstances that would render any confession unfair. The defendant made no case, nor did any arise from the evidence, that the alleged confession was or may have been obtained by oppression and I was satisfied beyond reasonable doubt that the confession was not obtained by oppression. However I was of the view that if I could not be satisfied beyond doubt as to the reliability of a confession obtained in the circumstances of the present case for the purposes of Article 74(2)(b), I should exercise my discretion to exclude the evidence of confession under Article 76. In addition I would exercise my discretion to exclude the evidence under Article 76 in relation to any other unfairness.

[79] The approach to issues of unreliability in this context is an objective approach. Blackstone at F17.10 states that -

“.... the court must consider whether what happened was likely in the circumstances to induce *an* unreliable confession to the offence in question, and to ignore any evidence suggesting that the *actual* confession was reliable.”

[80] The approach to the exclusion of evidence for unfairness under Article 76 requires the Court to take three steps -

- (a) to have regard to all the circumstances.
- (b) to determine whether the admission of the evidence would have an adverse effect on the fairness of the proceedings.
- (c) to exclude the evidence where the adverse effect would be such that the Court ought not to admit the evidence.

[81] It is necessary to identify the nature of the unfairness and unreliability upon which the defendant relied on the application to have the evidence of Mr Martin Clark excluded. That was said to arise from the confidence that would be reposed in communications to a journalist and the promise of secrecy confirmed by Mr Martin Clark and relied on by the defendant in disclosing information amounting to a confession. This was classed as bad faith on the part of the person to whom the information was conveyed arising either by deceit, in that it was never intended to maintain the confidence, or else by breach of promise, in that the confidence was certainly broken. Mr Allister drew an analogy with confessions obtained in circumstances involving bad faith on the part of the police which have been held to be *prima facie* unfair so that the evidence was liable to be excluded.

[82] Confessions obtained by subterfuge by or on behalf of the police have been considered by the European Court of Human Rights in Allen v United Kingdom [2003] 36 EHRR 143. Police placed a listening device in the defendant's cell and this was found to be in breach of his Article 8 Convention rights because it was not

regulated by statute in domestic law. However, the police action was held not to be contrary to his Article 6 Convention rights because he had the opportunity in his trial to challenge the admissibility and reliability of the recording. In addition the police placed an informant in the defendant's cell to obtain information from the defendant. This was held to be contrary to Article 6 as it infringed the defendant's right to silence and privilege against self-incrimination as two conditions were satisfied, first the informant was an agent of the State and secondly the agent had elicited the confession from the defendant. The approach of the European Court of Human Rights drew from certain Commonwealth cases. In the Canadian case of Broyles [1991] 3 SCR 595 the police had placed a friend of the accused in his cell with a listening device and the evidence was excluded. The right to silence and the privilege against self-incrimination were designed to protect against the coercive power of the State and it was recognised that if there was no State agent involved there would be no violation of the right. In Australia the cases of Swaffield and Pavic [1998] HCA 1 concerned similar circumstances where in the first case the evidence was excluded and in the second case the evidence was admitted. The discussion of the discretion to exclude unfair evidence assessed the nature and extent of the unreliability, impropriety and unfairness involved.

[83] Mr Martin Clark was not an agent of the police or of the State. Confessions obtained by police in formal interviews are subject to Codes of Practice and a significant and substantial breach of the Code is prima facie unfair and a confession obtained in such circumstances is liable to be excluded. Further, there may be confessions obtained by police in an informal interview setting and, as R v McKeown [2000] NIJB 139 illustrates, such evidence will be excluded if the circumstances involve circumventing the protective shield provided to suspects being questioned by police. In circumstances involving undercover police activity Allen v UK demonstrates that subterfuge involving the use of a State agent is not unfair if the agent has not elicited the information by causing the person to confess. In cases where a State agent is not involved the coercive power of the State is not in play and there will be no breach of the right to silence or the privilege against self-incrimination. Nevertheless it remains the position that any confession obtained in those circumstances must be voluntary and reliable and not obtained unfairly or be such that its admission in evidence would render unfair the trial of an accused.

[84] There was no basis for the confession being involuntary by reason of oppression or inducements. It was submitted on behalf of the defendant that there was an absence of equality between the parties by reason of the contrasting status, education and circumstances of Mr Martin Clark and the defendant. That may be so, but there was no evidence that differences in their respective positions played any part in the making of the confession; on the contrary all the evidence indicated that the confession was either volunteered by the defendant or freely given in response to questions by the witness. While there was a dispute as to whether Mr Martin Clark's status as a journalist was disclosed to the defendant at the first interview it was agreed that at the third and fifth interviews when the defendant made the alleged admissions to Mr Martin Clark the defendant had knowledge of his status as



a journalist. The defendant did not enjoy any right of confidentiality in respect of admissions of criminal activity made in confidence to a journalist. While he may have expected that his confidences might be respected since he received a promise of confidentiality the law does not recognise an obligation of confidence on the part of someone such as Mr Martin Clark. The defendant may well have regarded his disclosures to Mr Martin Clark as being “off the record”. However there is a difference between “off the record” discussions with police officers in circumstances where a legal shield is otherwise in place to protect a defendant’s rights and “off the record” discussions with others where no such legal shield of protection exists. In any event there is a public interest in the disclosure to the authorities of evidence of criminal activity and a statutory duty to provide information to the police, the breach of which duty amounts to a criminal offence in the absence of reasonable excuse.

[85] In answering the question as to whether any confession which a defendant might make in the circumstances of the present case was likely to be rendered unreliable, I was satisfied beyond reasonable doubt that the confession was not obtained in consequence of anything said or done which was likely to render any confession unreliable. Further in the exercise of the discretion to exclude unfair evidence I did not consider that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that it ought not to be admitted. Accordingly the evidence of Mr Martin Clark was admitted. The main trial proceeded. The witnesses who had given evidence on the voir dire adopted and affirmed their evidence in the main trial.

### **The police interviews of the Defendant**

[86] The defendant was interviewed by police in connection with the McGoldrick murder on several occasions between 1996 and the time of the interviews with Mr Martin Clark. During those interviews with the police he maintained a denial of involvement in the McGoldrick murder.

[87] On Friday 13 October 2000 the defendant was interviewed by police on two occasions in relation to the confession he was alleged to have made to Mr Martin Clark. During those interviews the defendant denied any involvement in the McGoldrick murder and denied making any confessions to Mr Martin Clark although he agreed that Mr Martin Clark had put to him details of the McGoldrick murder. The accused claimed that he told Mr Martin Clark that he was not commenting one way or the other. The defendant indicated that Mr Martin Clark had asked him to make a statement for Sean McPhilemy to support the existence of the committee and that he was offered inducements to make the statement and refused.

[88] After the Sunday Times article appeared in December 1999 the defendant told police that another journalist visited him purporting to act on behalf of Mr

McPhilemy and requested the defendant to make a statement about the existence of the committee in exchange for financial reward and the withdrawal of Mr Martin Clark's allegations.

[89] The defendant told police that during their fifth interview he had confronted Mr Martin Clark about his true purpose in visiting him. He suggested to Martin Clark that this was merely to gather information rather than assist the defendant and that he had told Mr Martin Clark that he did not want to see him again.

[90] The defendant also told police that his interviews with Mr Martin Clark were largely concerned with the defendant's health. At the second police interview the defendant was shown a letter he had written to Mr Martin Clark on 20 July 1999, which letter was in friendly terms and acknowledged receipt of a copy of The Committee and referred to their conversations on various subjects and to a private joke about cheese. The letter suggested a wider range of discussion than the defendant's health. The defendant's explanation was that he had not written the letter but that he had given Mr Martin Clark's letter to another prisoner and asked him to type a reply without giving any briefing as to the contents of the reply.

#### **Application for a direction of no case to answer**

[91] At the conclusion of the prosecution case the defendant applied for a direction that there was no case to answer. He relied on the second limb of R v Galbraith 73 CAR 124 which indicates that a direction should be given where "there is some evidence but it is of a tenuous character, for example, because of inherent weaknesses or vagueness or because it is inconsistent with other evidence." Mr Allister submitted that the alleged confession of the defendant was inconsistent with other evidence that had been given in relation to the murder of Mr McGoldrick and further that the alleged confession was internally inconsistent in some respects.

[92] The Galbraith approach provides that the case against a defendant should continue where -

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

[93] In asserting that this did not apply in the present case the defendant submitted that the Court should be satisfied that the evidence as to the circumstances of the murder and the evidence as to the alleged confession should "fit like a glove". I rejected that suggestion and adopted the approach that there

would be sufficient evidence for the case to continue even if there were inconsistencies in the evidence if those matters appeared reasonably capable of resolution or if any outstanding inconsistency was such that a court could still be satisfied beyond reasonable doubt of the guilt of the defendant.

[94] Following that approach and taking account of the totality of the prosecution case I was satisfied that there was evidence on which the Court could properly come to the conclusion that the defendant was guilty. Accordingly the defendant's application for a direction was rejected. The defendant did not give evidence on his own behalf nor did he call any evidence in his defence.

**Findings on the evidence other than that relating to the alleged confession.**

[95] The burden is on the prosecution to establish beyond reasonable doubt that the defendant is guilty of the murder of Michael McGoldrick. When I state that I am satisfied on any particular matter I am indicating that I am so satisfied beyond reasonable doubt.

[96] I make the following findings on the evidence –

(a) I accept the evidence of events in Lurgan on the evening of Sunday 7 July 1996 at paras. [3] to [14] above.

(b) I accept the evidence of events around Aghagallon on the evening of Sunday 7 July and the morning of Monday 8 July 1996 at paras. [15] to [19] above. However I do not accept that the shot heard by Rosaleen Kelly as she was waiting for the radio news at 5 minutes to midnight, as set out at para. [15] above, was related to the death of Mr McGoldrick. It is possible that the other evidence of events around Aghagallon, set out at paras. [16] to [19] above, related to the death of Mr McGoldrick but I am unable to find that those events were so related.

(c) I accept the evidence as to the discovery of the body of Mr McGoldrick at paras. [20] to [25] above.

(d) I accept the evidence of searches carried out resulting in the recovery of the firearm and ammunition at paras. [26] to [30] above.

(e) I accept the evidence of the examination carried out by Dr Carson at paras. [31] to [33] above, subject to the qualification at para. [33] concerning the sequence of shots discharged. I find that the evidence of Dr Carson does not establish that the shots were discharged in the sequence of one shot followed by four shots rather than four shots followed by one shot.

(f) I accept the evidence of the examinations carried out by Dr Griffin and Mr Rossi at paras. [34] to [37] above.

(g) The evidence relating to the movements of the defendant on the evening of Sunday 7 July 1996 at paras. [38] to [42] was that the defendant was in Centrepont between 8.00 pm and 10.00 pm. Caution must be exercised in relation to identification evidence and I apply the guidelines set out in R v Turnbull (1977) QB 224. The purported identification was by recognition, although there was an issue as to whether Ms Corr could claim to recognise the defendant. I am satisfied that it was the defendant that Ms Corr purported to recognise and she had the opportunity to observe the person she was identifying over an extended period. I have taken into account the grounds of challenge to her identification as set out above including the inconsistency in relation to the presence of the defendant and Michael in the foyer as set out at para. [42] above. I accept Ms Corr's evidence and I am satisfied that the defendant was in Centrepont between the times stated.

However I am not satisfied that the defendant's presence in Centrepont at that time is of evidential value in relation to the present charge. His presence in Centrepont is irrelevant to the alleged confession by the defendant and to the content of the alleged confession and to the reliability of the alleged confession. The prosecution contended that, if I accept the evidence of Ms Corr as to the presence of the defendant in Centrepont, the defendant's claim that he was not there should be held to undermine his credibility. Because the question of whether he was at Centrepont is remote from the issues that I must decide, I do not propose to take into account the defendant's presence in Centrepont on the evening of Sunday 7 July 1996 in determining whether I am satisfied that the defendant is guilty of the murder of Mr McGoldrick.

[97] The defendant did not give evidence, and on being informed by Counsel for the defendant that it was not intended that he should give evidence, I inquired of Counsel in the terms of the Practice Direction issued by the Lord Chief Justice on 11 April 1997 for the purposes of the Criminal Evidence (Northern Ireland) Order 1988 Article 4 –

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

Counsel for the defendant replied that the defendant had been so advised. This being a case where the sole evidence against the defendant concerned a confession that the defendant was alleged to have made, and the making of that confession being in dispute, I do not consider it appropriate in the circumstances to draw any inferences from the failure of the defendant to give evidence.

[98] The issues to be addressed are first of all whether the defendant made the confession to the murder of Mr McGoldrick as alleged by Mr Martin Clark, and

secondly, if he did make that confession, whether the confession is reliable so that I can be satisfied beyond reasonable doubt that he committed the murder of Mr McGoldrick.

### **Did the Defendant make the alleged confession?**

[99] The case made on behalf of the defendant was that Mr Martin Clark had invented the defendant's confession in order to blackmail the defendant to provide information to him to support the existence of collusion between the security forces and loyalist paramilitaries and in particular to support Mr McPhilemy in relation to the existence of the committee. In addition it was contended on behalf of the defendant that Mr Martin Clark stood to make financial gain out of the conviction of the defendant. The defendant contended that Mr Martin Clark was dishonest and unscrupulous in his methods and that his evidence was not worthy of belief.

[100] First of all there are the claims of dishonest and unscrupulous methods. Mr Martin Clark was said to have been dishonest in relation to his dealings with the prison authorities. Ms Solomon and Mr Martin Clark were introduced to the prison authorities as researchers for Jeremy Corbyn MP with an interest in the health of the defendant and his early release from custody. On such an introduction they secured advantages that would not have been available had they introduced themselves simply as journalists, namely, they were entitled to privileged visit arrangements that included bringing notebooks into the prison. Mr Martin Clark maintained this subterfuge when he arranged later visits and he made entries in his notebooks in a manner that would not arouse the suspicions of prison officers who examined the notebooks. I am satisfied that Mr Martin Clark misrepresented his status to the prison authorities during his visits to the defendant.

[101] In addition the defendant contended that Mr Martin Clark had been dishonest in his dealings with the defendant. The letter of introduction indicated that a friend of the defendant had contacted Mr Corbyn's office and that Ms Solomon and her colleague Mr Martin Clark were responding out of concern for his health and in support of his entitlement to release from custody. I am satisfied that Mr Martin Clark implied to the defendant, and intended the defendant to believe, that it was Lindsay Robb, who was a friend of the defendant, who had been responsible for contact being made with the defendant when that was not the case. Further I am satisfied that at the initial introduction the emphasis was on Ms Solomon and Mr Martin Clark being researchers for Mr Corbyn, although I am also satisfied that the defendant was told at the first interview that Mr Martin Clark was a journalist. In any event Mr Martin Clark was prepared to convey to the defendant that he, or a party whom he represented, was concerned for the health of the defendant and was anxious to secure his release, while he agreed that his primary concern was to obtain information about collusion. A further example of Mr Martin Clark's approach to the defendant related to the agenda for the fourth meeting which indicated a strategy to obtain from the defendant information about collusion involving two

named policemen on the basis that the defendant's cooperation would assist the public to understand the defendant's position and that Mr Corbyn could assist the defendant by raising a question in the House of Commons. In reality Mr Martin Clark did not know Mr Corbyn at all. I am satisfied that Mr Martin Clark misrepresented the position to the defendant on the above matters.

[102] Further, it was contended that Mr Martin Clark misrepresented his position to the defendant's solicitor. Mr Martin Clark wrote a letter to the defendant's solicitor dated 11 July 1999 adding to his name the word "researcher" and with the letter bearing the House of Commons crest. Mr Martin Clark's evidence was that he had obtained a copy of the crest by downloading it from the Internet, although in a telephone conversation with Ms Solomon he described having copied it from a fax he had received of Mr Corbyn's letter. By means of this letter Mr Martin Clark agreed that he had attempted to make contact with the defendant's solicitor in order to obtain information from the defendant's solicitor about the committee. Mr Martin Clark admitted his abuse of the House of Commons logo and said that he had not repeated the practice after discussing the matter with Ms Solomon.

[103] A number of matters were raised on behalf of the defendant in relation to the publication of the Sunday Times article in December 1999. The Sunday Times article was introduced on page 1 of the newspaper by Nick Fielding who was Mr Martin Clark's contact in the Sunday Times. The text of the article appeared on page 6 of the newspaper as written by Nick Martin Clark and in his evidence he explained that his text had been subject to editorial amendment by Mr Fielding. The article was accompanied by a series of graphics illustrating the article with drawings and text completed by the Sunday Times graphics staff. The introduction and the article referred to Mr Martin Clark as a researcher for Jeremy Corbyn the Labour MP and more generally as a Labour party researcher. Mr Martin Clark's connection with Mr Corbyn was tenuous in that on his first visit to the defendant during which he was accompanied by Ms Solomon it was she who had arranged the introductory letter from Mr Corbyn through her contact in Mr Corbyn's office. After the publication of the article Mr Corbyn made it clear to the Sunday Times that he had no knowledge of Mr Martin Clark's activities and that he was not entitled to call himself a researcher for Mr Corbyn or for the Labour party. I am satisfied that Mr Martin Clark was not entitled to describe himself as a researcher for Mr Corbyn.

[104] The article was written under the name of Nick Martin Clark but it was written in the third person and described the person to whom the defendant's alleged confession had been made as "the researcher". The article stated that the researcher "could not keep silent about such a brutal crime" and hence the confession came to be published. The defendant contended that this resort to conscience was a false reason for publication as Mr Martin Clark had received other information in the course of his investigations about the identity of persons responsible for another murder but those details had not been published. It is apparent that the disclosure of this information was not based on abhorrence of the nature of the crime because Mr Martin Clark agreed in evidence that he would not

have published the confession he attributed to the defendant had the defendant continued to supply him with information about loyalist paramilitary activity.

[105] Further the article stated that the Sunday Times had agreed to make the confession available to the police. Mr Martin Clark agreed in evidence that neither he nor the Sunday Times had made contact with the police before or after publication of the article and that the police initiated contact in January 2000. It was Mr Martin Clark's evidence however that the agreement referred to in the article was that Mr Martin Clark had agreed with the Sunday Times that he would co-operate with the police. I do not accept the contention that the article was misleading in this respect.

[106] Further the article stated that Mr Martin Clark was unsure of the defendant's veracity and that the Sunday Times had carried out extensive checks and were convinced that the defendant's account was true. The defendant challenged Mr Martin Clark's evidence that he believed the defendant's account to be true when he had stated otherwise in the Sunday Times article. In his evidence Mr Martin Clark stated that the wording had been an editorial alteration but that in any event he had been 90-95% sure of the defendant's story and he wanted to be 98% sure and it was he who carried out certain checks on behalf of the Sunday Times in relation to the defendant's account and in this I accept Mr Martin Clark's evidence.

[107] The defendant contended that Mr Martin Clark was unworthy of belief because he had lied to the Court in the course of his evidence. Mr Martin Clark's evidence was that he was a freelance journalist and a member of the National Union of Journalists at the time of visiting the defendant. In November or December 1999 he telephoned the NUJ Ethics Committee to seek advice on his proposed article because he was disclosing information received in confidence. The proposed publication was said to have been approved by the NUJ Ethics Committee because it involved a very grave criminal offence. On a later date the cross-examination returned to Mr Martin Clark's membership of the NUJ and when asked directly if he was a member of the union in June 1999 he agreed that he had joined the NUJ in the period prior to the publication of the Sunday Times article in December 1999. Mr Martin Clark explained that in the period prior to publication of the article he considered it preferable to be a member of the union and he joined at that time to provide himself with some protection and support. I am satisfied that Mr Martin Clark told a deliberate untruth to the Court when he declared his membership of the NUJ at the time of the interviews with the defendant.

[108] The defendant contended that a further example of Mr Martin Clark's dishonesty before the Court arose in relation to Mr Corbyn's letter of introduction, which stated that a friend of the defendant had been in contact with Mr Corbyn's office. When Mr Martin Clark was asked in evidence to identify the friend he named Lindsay Robb as the name given to him by Ms Solomon. However later in his evidence Mr Martin Clark agreed that it was not a friend of the defendant who had been the contact who had pointed Mr Martin Clark and Ms Solomon towards the

defendant. Rather it transpired that a former policeman who had been convicted of murder and who had been a source of information for Mr McPhilemy, had suggested that contact should be made with the defendant. I am satisfied that the earlier reference to the friend of the defendant was deliberately misleading and Mr Martin Clark was attempting to avoid having to disclose the true origin of the decision that was made to contact the defendant.

[109] Mr Martin Clark had never been in contact with Mr Corbyn's office but in his evidence he relied on the indirect contact through Ms Solomon and expressed his regret that Ms Solomon was not giving evidence in the trial to support the nature of the relationship. During the course of the trial Mr Martin Clark was obliged to make disclosure of a tape recording of a telephone conversation he had had with Ms Solomon on 21 December 1999. From the transcript of that conversation it is apparent that, whatever view Mr Martin Clark might have had about his relationship and connection with Mr Corbyn, Ms Solomon made it clear in the course of that conversation that he, Mr Martin Clark, had no authority to act in the name of Mr Corbyn other than during the first visit to the defendant, and that whatever contact Mr Martin Clark had made with Ms Solomon during the period of his visits to the defendant there had been no authority for Mr Martin Clark to represent that he had any connection with Mr Corbyn. In the light of the recorded conversation between Mr Martin Clark and Ms Solomon in December 1999, it was at least disingenuous of Mr Martin Clark to imply in his evidence that any support for a connection with Mr Corbyn could be obtained from the evidence of Ms Solomon.

[110] In relation to the defendant's claims of dishonest and unscrupulous methods I am satisfied that Mr Martin Clark has been guilty of misrepresentation to the prison authorities, to the defendant, to the defendant's solicitor and that the Sunday Times article misrepresented Mr Martin Clark's reason for disclosure of the alleged confession. Further I am satisfied that Mr Martin Clark was untruthful in his evidence to the Court in relation to his membership of the NUJ and that his evidence was at least disingenuous in relation to the support he might receive from Miss Solomon in relation to his connection with Mr Corbyn. Further I am satisfied that Mr Martin Clark was evasive in his evidence as to the basis on which he and Miss Solomon came to visit the defendant. In addition I am satisfied that Mr Martin Clark was not as forthcoming to the Court as he might have been in relation to his association with Sean McPhilemy.

[111] There were matters relied on by the defendant as examples of dishonest and unscrupulous methods that I do not accept. The defendant challenged the credibility of Mr Martin Clark on the basis that he was prepared to breach the journalist's duty of confidentiality and breach an express promise of confidentiality he claimed to have given to the defendant. Mr Martin Clark treated his promise of confidentiality as dependant on the defendant's continuing cooperation in the supply of information. He accepted that had the defendant continued to provide information he would not have made any disclosures implicating the defendant in the murder of Mr McGoldrick. Mr Martin Clark did refer to a provision in the Code of Ethics that



permitted disclosure by journalists in exceptional circumstances, which he said applied to information concerning the commission of a murder and according to his evidence he obtained the approval of the NUJ Ethics Committee. In any event the legal obligation requires the disclosure of such information. I find no grounds for criticism of Mr Martin Clark based on any alleged requirement that he should have kept such information confidential.

[112] The defendant's contention was that Mr Martin Clark's motives in making false allegations against the defendant were to blackmail the defendant for information about loyalist violence and for financial gain. It was put to Mr Martin Clark that the contact with the defendant was initiated at a time when Mr McPhelemy was in most need of supporting information about the committee by reason of the ongoing libel actions in England and America. Mr Martin Clark had limited knowledge of the details of the proceedings and there was no evidence on the subject other than Mr Martin Clark's agreement to some of the facts put to him by Mr Allister. However the picture emerged of a coincidence in the timing of contacts with the defendant and the changing fortunes of Mr McPhelemy. In May 1999 Mr Martin Clark interviewed Mr Sands, who was Mr McPhelemy's source for his allegations about the existence of a committee, and published a newspaper article supporting the allegations. Then Mr Sands claimed that his account had been a hoax and another journalist published a newspaper article to that effect. This was said to threaten Mr McPhelemy's position in the libel actions, particularly in England where he could have faced financial ruin. It was agreed by Mr Martin Clark that on 8 June 1999 he and Ms Solomon met with the contact who was to suggest that they should arrange to meet the defendant. It was contended on behalf of the defendant that the arrangements to meet the defendant were then made to investigate the prospects of obtaining alternative confirmation for the existence of the committee from the defendant. At a more general level Mr Martin Clark did accept that his concern in contacting the defendant was to obtain information about collusion between the security forces and loyalist paramilitaries.

[113] Of course the claim that the confession had been invented also involved the claim that the notes of the confession had also been invented. The defendant pointed to the structure of the entries in the notebooks as well as the nature and content of some of the notes as evidence of invention. I find no evidence of invention in connection with the structure or nature or content of any of the notes.

[114] The defendant contended that all the details attributed to the defendant could have been obtained by Mr Martin Clark from other sources such as newspapers and the other personal sources. I accept that research and interview could have revealed to Mr Martin Clark all the information about the McGoldrick murder that could have enabled him to present an account that was consistent with the version of events now presented by the prosecution.

[115] In relation to the issue of financial gain, it was accepted by Mr Martin Clark that in the event of the conviction of the defendant he might be able to publish

further articles for financial reward on the subject of the defendant and the McGoldrick murder.

[116] In the light of all the reservations expressed above about Mr Martin Clark there is a special need for caution in relation to his evidence, and particularly so as it concerns an alleged confession. Having considered all the evidence I am satisfied that Mr Martin Clark did not invent the confession attributed to the defendant, whether for the purpose of blackmailing the defendant into giving information about loyalist violence in general or the committee in particular, or for financial gain. There was a coincidence in timing between the contact with the defendant and the urgent need for support for Mr McPhelemy in the libel actions and such need may well have been a factor in the approach to the defendant. Mr Martin Clark agreed that the contact with the defendant was not concerned with his health or his release but with obtaining information about loyalist collusion, included in which might be information about the existence of the committee. When relations broke down between the defendant and Mr Martin Clark, for reasons that were never apparent to Mr Martin Clark, I am satisfied that he did not invent the defendant's confessions in an attempted blackmail of the defendant for information. Further I am satisfied that, while it may be to Mr Martin Clark's financial advantage if the defendant is convicted of this offence, he has not invented the confession or given his evidence in order to secure any such financial advantage. Having considered all the evidence and all the submissions I am satisfied that the defendant made the confession of his involvement in the murder of Mr McGoldrick at the third and fifth interviews. I have considered whether the caution that must be exercised in relation to the evidence of Mr Martin Clark, by reason of the reservations expressed above, raises a reasonable doubt in relation to his evidence about the making of the confession but I am satisfied that the defendant made the confession.

Further I am satisfied that the notes presented by Mr Martin Clark are not an invention and that they represent the record of the interviews and were made during as well as after the interviews. I do not believe that invented notes would have appeared in the manner that these notes were presented. The confusing sequence of notes did not indicate later invention. The muddled nature of the relevant notes of the third interview indicated that they represented a hasty and confused and partly misunderstood description of events recorded in the circumstances outlined by Mr Martin Clark, rather than being the product of invention. The supplementary statement of 10 July 1999 made after the third interview bore the hallmarks of alarm in the light of the character of the information then available. Rather than indicating lack of authenticity the haphazard nature of the notes left me in no doubt that in the circumstances in which the notes emerged they were a genuine attempt at a record of discussions with the defendant.

### **The Defendant's challenge to the reliability of the confession**

[117] Being satisfied that the defendant made the confession it remains to be determined whether the confession is reliable. While the defendant denied the

making of the confession I have considered whether the defendant might have had a reason to advance false claims of his involvement in the murder of Mr McGoldrick. I have considered whether the defendant might have made such false claims to Mr Martin Clark in order to establish with Mr Martin Clark a reputation as a Loyalist gunman and so gain notoriety for himself. I am satisfied that the defendant would not have expected publication of the information attributed to the defendant or the identification of the defendant as claiming responsibility for the murder either in a newspaper or to police but that such expectation would not have prompted a false confession. He had already gained notoriety for the McGoldrick murder as he had been the chief suspect and was named in the appendix from the committee as having committed the murder.

[118] The defendant referred to R v McGrath [1990] NIJB 22 where the evidence against the accused involved oral confessions made during police interviews and recorded in the notes of interview completed by the police officers during the interview. Kelly LJ stated at page 34 –

“Nevertheless the courts expect that the proof of oral confessions at all times and especially whenever their truth and accuracy is challenged, to be punctilious. Therefore when irregularities and unnatural features are found in their recording, concern arises.”

There are relevant features of that case that are not present in this case. First, in police interviews it is rarely the case that police have an independent recall of the interviews and it will be the interview notes that constitute the evidence against the accused. Secondly, there are established police practices that are expected to be followed and police officers have been trained and are experienced in the practice of note taking in the interview situation, so that there is immediate cause for suspicion and inquiry when those established practices have not been followed. In the present case I am satisfied that, even without the notes of the interviews, Mr Martin Clark did have independent recall of the interviews and of the content of some of the discussion that took place during the interviews, and that after having refreshed his memory by reference to the notes he had further recollection of the content of the interviews.

[119] It was submitted on behalf of the defendant that the confession was unreliable because of inconsistencies between the evidence of events concerning the murder and evidence as to the terms of the alleged confession. I take account of the following general considerations in assessing the alleged inconsistencies itemised by the defendant. First, the defendant would not have had first-hand knowledge of all aspects of the events described. Secondly, some aspects of the events described would have been of such importance that the defendant would be expected to be accurate, especially where he was directly involved, while other aspects may have been peripheral and lack of clarity may not be unexpected. Thirdly, there may be some matters of detail that the defendant would reasonably not include in a

description of such events. Fourthly, there may be occasions when the understanding of the defendant's description would have been unclear or the notes were unclear about the detail of the description and clarification had not been sought. Finally, it is not without significance that involvement in such a traumatic event as the murder of an individual is not conducive to total accurate recall of all aspects of the incident.

[120] The first alleged inconsistency concerns the relative positions of the defendant's vehicle and Mr McGoldrick's taxi at the scene of the murder. The evidence was that the taxi had turned off the road and was facing away from the road at the time the shots were fired.

The confession was said to have placed the taxi at the side of the road and the defendant's vehicle immediately behind it on the side of the road. This detail is not dealt with in the notes of the third interview or in the text of the notes of the fifth interview. However the notes of the fifth interview contain a diagram of the taxi with the front nearside door open and the back off side door open and the defendant's vehicle immediately behind and an arrow showing the path of the defendant from one vehicle to the other. If the path represented the route from the front driver's side of the defendant's vehicle to the rear offside door of the taxi then the diagram shows the vehicles one immediately behind the other. In the later transcript of the fifth interview Mr Martin Clark reproduced the diagram although the path of the defendant from his vehicle to the taxi brought the defendant to the rear of the taxi. It was Mr Martin Clark's evidence that the defendant had told him that his vehicle was parked immediately behind the taxi. He assumed that both vehicles were at the side of the road. Thus there is an inconsistency between the evidence that the taxi pulled off the road and Mr Martin Clark's diagram drawn in the fifth interview and his interpretation of the defendant's description of events involving the vehicle stopping behind the taxi at the side of the road.

[121] The second alleged inconsistency concerns the position of the front seat passenger at the time of the shooting. The forensic evidence was that the blood distribution in the front of the taxi indicated that at the time of the discharge of the bullet that exited from Mr McGoldrick's cheek someone or something was covering the front passenger seat.

The notes of the third interview did not deal with this detail. At the fifth interview there was a note "guy in passenger seat got out." Mr Martin Clark then completed the sketch referred to above showing the relative positions of the defendant's vehicle and the taxi on the reverse of the previous page. The sketch shows the path of the defendant from his vehicle to the taxi and is followed by a note on the sequence of shots. In his evidence Mr Martin Clark stated that he was not sure if the defendant had said that it was the youth in the front seat or the youth in the back seat who had got out of the vehicle but it had been his interpretation that it was the front seat passenger who had got out of the vehicle. If that was a correct interpretation then there is an inconsistency between the evidence that someone or something covered the front seat of the taxi and the confession indicating that the front seat passenger had left the vehicle at the time of the shooting.

[122] The third alleged inconsistency concerns the sequence in which the shots were fired. The evidence of Dr Carson was that the one shot fired with the muzzle of the gun next the skin was probably fired first although he did accept that the description of the shooting given by the defendant was possible. As stated at para [33] above I do not accept that the evidence establishes that the sequence of shots was one shot followed by four shots rather than four shots followed by one shot.

The detail relating to the sequence of shots was not noted in the third interview but the notes of the fifth interview recorded "Four back of head. One back of neck last one." Dr Carson accepted the possibility of a sequence of four shots followed by one shot and on that basis there is no inconsistency between the evidence as to the confession and the other evidence.

[123] The fourth alleged inconsistency concerns the position of the firer when the shots were fired. It was Dr Carson's evidence that the position of the deceased in the taxi and the location and type of wounds indicate that a likely interpretation of events was that the first shot was discharged by someone sitting in the seat behind him. He deferred to other expert findings but stated that the shots were likely to have come from alongside the driver's headrest. Dr Griffin's evidence was that the gun was fired from a position at the driver's headrest and she could not position the firer, although it was possible that he was in the back seat of the taxi or outside the taxi with his arm extended to the headrest. Mr Rossi's evidence was that the finding of the bullet case down the back of the rear seat of the taxi suggested that the firer was in the taxi when that shot was fired, although it was not necessary that all the shots were fired from inside the taxi.

There were no notes of this detail at the third or fifth interviews. The text of Mr Martin Clark's Sunday Times article described how the defendant "ran up, yanked the taxi door open and shot McGoldrick in the head". The introduction to the article and the graphic prepared to accompany the article described the defendant as climbing into the taxi before shooting Mr McGoldrick. (The sketch showing the relevant positions of the defendant's vehicle and the taxi had the words "opened back door"). Mr Martin Clark's evidence was that he interpreted the defendant's description of events as involving him getting into the back of the taxi, although the question of whether the defendant was inside or outside the taxi was not addressed directly. The evidence is that the single shot was probably fired by a person in the back of the taxi and the other four shots were fired by a person who may have been inside or outside the taxi with the weapon beside the driver's headrest. Again on this point there is no inconsistency as the confession did not address the position of the person firing the weapon.

[124] The fifth alleged inconsistency concerns whether the telephone call between the defendant and his accomplice was made by the use of a mobile phone or a telephone box. The evidence was that the call to Aghalee was made from a telephone box.

The notes of the third interview contain a comment that was added by Mr Martin Clark after the interview "Mobile phone in McK's car". The long version of

the third interview completed later states that the accomplice “made a mobile phone call to McK”. The notes of the fifth interview refer to a call by the accomplice from a telephone box. The Sunday Times article described the telephone call for the taxi and the telephone call to Aghalee as being from a telephone box and this was Mr Martin Clark’s understanding of the defendant’s description of events. This complaint relates to an internal inconsistency in the evidence as to the notes of the confession. The long version of the notes of the third interview introduced the reference to the use of the mobile phone. In his evidence to the Court Mr Martin Clark described the rushed conclusion to the third interview because the allotted time had expired and the prison warders were pressing for a conclusion to the interview. He indicated that his understanding of the defendant’s account and his note taking at that time might not have been accurate. There is an inconsistency between the long version of the third interview as to the use of a mobile phone and the other evidence that calls were made by the use of telephone boxes.

[125] The sixth alleged inconsistency concerns the location from which the telephone call was made to Aghalee. The evidence was that a telephone call was made from a telephone box in Clare to the taxi firm at 11.36 pm and a telephone call was made from the telephone box in Clare to the telephone box in Aghalee at 11.37pm.

The notes in the third interview do not record the location from which calls were made but the long version of the interview prepared afterwards records that the call to the defendant was made after the accomplice had watched the taxi leave, which would have placed the accomplice at Centrepont in Lurgan. The notes of the fifth interview record the accomplice as making the call from a telephone box in Lurgan. Thus there is an inconsistency between the evidence of the confession as to the location from which the telephone call was made and the other evidence.

[126] A further point that emerges from Mr Martin Clark’s long version of the third interview is that the note of the making of the telephone call to the defendant placed the accomplice at Centrepont at the time Mr McGoldrick’s taxi picked up the youth. The other evidence timed the pick up at 11.50 pm. The long version of the third interview records the telephone call being made to the defendant after the pick up but the other evidence indicates the telephone call to Aghalee was made at 11.37, namely 13 minutes before the pick up. The long version was written after the third interview and this part also deals with the concluding part of that interview when the prison staff were pressing for a conclusion to the interview.

[127] The seventh alleged inconsistency concerns the number of telephone calls made to the phone box in Aghalee. The evidence was that three calls were made to the telephone box in Aghalee being at 11.30, 11.34 and 11.37pm.

The confession only referred to one call to Aghalee being the call to report “The parcel is on its way”. The evidence of the confession was not that there were no other telephone calls. It would not have been unreasonable to have omitted reference to other calls and I do not consider there to be an inconsistency between the evidence of the confession and the other evidence.

[128] The eighth alleged inconsistency concerns the jamming of the gun used in the shooting. The evidence was that two bullets had been ejected from the weapon at the scene after the weapon had misfired twice.

The confession included no reference to the jamming of the gun. This is a detail that might reasonably have been omitted from a description of events. I find no inconsistency between the confession and the other evidence.

[129] The ninth alleged inconsistency concerns the number of priests in Gilford. The evidence was that there was one priest based in Gilford.

The confession described a plan relating to four priests in Gilford, where three would be kidnapped and one would be left behind. I find no inconsistency between the confession and the other evidence in that the evidence of the actual number of priests in Gilford does not detract from what was reported to have been said but rather detracts from the viability of the suggested plan.

[130] The tenth alleged inconsistency concerns the movements of the accomplice in delivering the youth to Centrepont and then making the telephone calls and driving to Derryhirk, which, it was submitted, geography and timing rendered impossible. The evidence was that the telephone call from Clare to Aghalee was made at 11.37 and Mr McGoldrick collected the youth at Centrepont around 11.50 and the accomplice and Mr McGoldrick's taxi were at Derryhirk around midnight.

The confession involved the accomplice making the telephone call and then driving to Derryhirk and if the youth was at Centrepont I do not find any inconsistency in the accomplice completing that task whether from Clare or from Centrepont in Lurgan and whether by geography or timing or otherwise. As with point seven above the accomplice could not have watched Mr McGoldrick leave Centrepont and then travel to Clare to make the phone call to Aghalee.

[131] The eleventh alleged inconsistency concerns the route taken by the two motor vehicles from the scene of the shooting. The evidence in relation to the two motor vehicles travelling at speed around midnight on 7/8 July 1996 was that they were travelling in an easterly direction.

The confession indicated that the two motor vehicles had returned to Portadown after the shooting, this being southwest of the location. It would be unsurprising if vehicles involved in the incident had taken a circuitous route to return to their base. I find that on this point there was no inconsistency between the confession and the other evidence.

[132] The twelfth alleged inconsistency concerns the location of the defendant's vehicle prior to the arrival of the taxi at Derryhirk Inn. The notes of the fifth interview recorded that the defendant pulled in "behind" Downey's bar. Mr Martin Clark drew a sketch of Downey's bar on which was marked an arrow from the front of Downey's bar into the Montaighs Road as representing the route travelled by the defendant's vehicle. This movement of the defendant's vehicle from the front of Downey's bar was said to be inconsistent with the note that the defendant's vehicle

had pulled in behind Downey's bar. This is a further complaint that the record of the confession was internally inconsistent. Mr Martin Clark's evidence was that he had visited the area after his interviews with the defendant and had noticed a car park behind Downey's bar where the defendant's vehicle might have waited. On the other hand Mr Martin Clark also noticed a lane behind Downey's bar that was entered from Montaighs Road, and he surmised that this lane might have been the location where the defendant waited. Had that been the case it would have been inaccurate to show the defendant's vehicle travelling from the front of Downey's bar to Montaighs Road. However Mr Martin Clark's placing of the defendant's vehicle in the laneway was guesswork. A vehicle in a car park behind Downey's bar that was proposing to travel along Montaighs Road would pass along the roadway to the front of the bar and that movement would be consistent with that shown on the sketch. Accordingly I do not consider there to be any inconsistency.

[133] Of the suggested inconsistencies raised by the defendant I accept two relating to the telephone call between the accomplice and the defendant and two relating to the scene of the crime. As to the telephone call the defendant described the location of the call as Lurgan but I do not regard that detail as significant. The defendant did not have personal knowledge of the matter and further, he could not be expected to describe an incidental detail to Mr Martin Clark, who he would have known was not familiar with the area. As to the suggested use of the mobile phone and the position of the accomplice at the time of the making of the call I am satisfied that the recording of those details after the third interview arose in the circumstances outlined by Mr Martin Clark. A hurried conclusion to the interview arose as the prison officers sought to bring the interview to an end and the information conveyed was not properly understood or recorded.

[134] The other matters related to the position of the taxi at the time of the shooting and the presence of a front seat passenger in the taxi at the time of the shooting. The defendant would have been expected to have first hand knowledge of these matters. The events being described would have occurred in such fraught circumstances that accurate recollection of every detail could not reasonably be anticipated. The events occurred with the taxi having pulled to its right off the road rather than remaining by the side of the road and with the front seat passenger remaining in his seat during the shooting rather than leaving his seat before the shooting. A participant may well not remember the exact details or the exact sequence. The description of the position of the taxi was not critical to an account of the incident. It is the type of detail that someone might well confuse on a retelling of the story some time later. It is certainly not such a prominent aspect of the event that a discrepancy as to the location of the taxi would create a doubt about the essential core of the account.

[135] I find that the suggested contradictions are either not contradictions at all or, while appearing to be contradictions, are explicable in the manner set out above on the basis of reasonable inferences from the evidence. I have considered the suggested contradictions relating to the notes of the confession both individually and collectively and I am satisfied that they do not render the confession unreliable.



[136] Mr Martin Clark accepted that he did not believe the defendant in relation to certain information furnished to him by the defendant. For example he attributed the murder of Bernadette Martin to a third party rather than to his own brother who had been convicted of the murder, and Mr Martin Clark did not believe the defendant although he left open the possibility that the third party was also involved. However Mr Martin Clark did not believe the defendant to the extent that it was implied that the defendant's brother was to be exonerated. I do not accept that Mr Martin Clark's rejection of some of the information furnished by the defendant undermines the evidence of the defendant's confession. Ultimately the issue for this court is whether the confession that the defendant made can be regarded as reliable and accurate. While Martin Clark's reaction to information furnished by the defendant is relevant, it cannot be determinative of the issue.

[137] At the second police interview the defendant was shown a letter he had written to Mr Martin Clark after their third interview, (referred to at para. [89] above). The defendant's letter was a reply to a letter from Mr Martin Clark when he had forwarded to the defendant a copy of The Committee. In interview with the police the defendant sought to distance himself from discussions with Mr Martin Clark on any subject other than his health. He sought to explain the friendly terms of his letter and the reference to matters other than the defendant's health by suggesting that he had asked another prisoner to write his reply. The defendant claimed that he had given no briefing to the other prisoner as to the contents of the reply. This explanation was incapable of belief. Relations between the defendant and Mr Martin Clark, at least up to the date of the letter that was written after the third interview, were clearly regarded by the defendant as being on a friendly basis and discussions had ranged over a wider area than the defendant's health. I am satisfied that the defendant's description to police of the scope and content of his interviews with Mr Martin Clark is untrue.

[138] There is a special need for caution in relation to evidence of confession. Having considered all the evidence I am satisfied that the evidence of the defendant's confession is reliable.

[139] Accordingly, I am satisfied beyond reasonable doubt that the defendant made the confession to Mr Martin Clark and that the confession is reliable and that it represents a true account of the defendant's involvement in the murder. I find the defendant, Clifford George McKeown, guilty of the murder of Michael McGoldrick.