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IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

DARREN GLEESON

Mr Dessie Hutton KC with Mr Sean Devine (instructed by McConnell Kelly Solicitors) for the Defendant
Mr Ciaran Murphy KC with Mr David Russell KC (instructed by the Public Prosecution Service) for the Crown

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COLTON J

Introduction

[1] Mr Gleeson ("the defendant") is indicted on Bill 21/054477 with the following counts:

First Count

Statement of Offence

Conspiracy to possess explosives with intent to endanger life or cause serious injury to property, contrary to article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and section 3(1)(b) of the Explosive Substances Act 1883.

Particulars of Offence

DARREN JAMES GLEESON, between the 11th day of August 2014 and the 11th day of November 2014, in the County Court Division of Armagh and South Down or elsewhere within the jurisdiction of the Crown Court, conspired together with Patrick Blair, Liam Hannaway, Joseph Matthew Lynch, John Sheehy and persons unknown to possess explosives with intent by means thereof to endanger life or

cause serious injury to property in the United Kingdom or the Republic of Ireland, or to enable some other person to do so.

Second Count

Statement of Offence

Conspiracy to possess firearm and/or ammunition with intent, contrary to article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and article 58(1) of the Firearms (Northern Ireland) 2004.

Particulars of Offence

DARREN JAMES GLEESON, between the 11th day of August 2014 and the 11th day of November 2014, in the County Court Division of Armagh and South Down, or elsewhere within the jurisdiction of the Crown Court, conspired together with Patrick Blair, Liam Hannaway, Joseph Matthew Lynch, John Sheehy and persons unknown to possess firearms and ammunition with intent by means thereof to endanger life or cause serious injury to property, or to enable some other person by means thereof to endanger life or cause serious injury to property.

Third Count

Statement of Offence

Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006.

Particulars of Offence

DARREN JAMES GLEESON, on the 12th day of August 2014, in the County Court Division of Armagh and South Down, with the intention of committing acts of terrorism, or assisting another to commit such acts, engaged in conduct in preparation for giving effect to your intention, namely attended a meeting at 15 Ardcarn Park, Newry.

Fourth Count

Statement of Offence

Preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006.

Particulars of Offence

DARREN JAMES GLEESON, on the 3rd day of October 2014, with the intention of committing acts of terrorism, or assisting another to commit such acts, engaged in

conduct in preparation for giving effect to your intention, namely attended a meeting at 15 Ardcarn Park, Newry.

Fifth Count

Statement of Offence

Receiving training or instruction in the making or use of weapons for terrorism, contrary to section 54(2) of the Terrorism Act 2000.

Particulars of Offence

DARREN JAMES GLEESON, on the 12th day of August 2014, in the County Court Division of Armagh and South Down, received instruction or training in the making or use of explosives for the purpose of assisting, preparing for or participating in terrorism.

Sixth Offence

Statement of Offence

Attending at a place for terrorist training, contrary to section 8 of the Terrorism Act 2006.

Particulars of Offence

DARREN JAMES GLEESON, on the 12th day of August 2014, in the County Court Division of Armagh and South Down, attended a place used for terrorist training, namely 15 Ardcarn Park, Newry, knowing or believing that instruction or training was being provided there wholly or partly for purposes connected with the commission or preparation of acts of terrorism or Convention offences, or that you could not reasonably have failed to understand that instruction or training was being provided there wholly or partly for such purposes.

Seventh Count

Statement of Offence

Belonging to or professing to belong to a proscribed organisation, contrary to section 11(1) of the Terrorism Act 2000.

Particulars of Offence

DARREN JAMES GLEESON, between the 11th day of August 2014 and 22nd day of October 2016, belonged to a proscribed organisation, namely the Irish Republican Army.

Eighth Count

Statement of Offence

Possessing documents or records likely to be useful to terrorists, contrary to section 58(1)(b) of the Terrorism Act 2000.

Particulars of Offence

DARREN JAMES GLEESON, on the 21st day of October 2016, without reasonable excuse possessed documents or records containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely two PDF documents entitled "Expedient Homemade Firearms BSP Semi-Auto SMG" and "Expedient Homemade Firearms – the ZIP gun."

Summary of case

[2] Counts 1-7 relate to specific dates in 2014. It is alleged that the defendant was present at two meetings in Ardcarn Park, Newry, on 12 August 2014 and 3 October 2014. These two meetings were two of a series of meetings which took place at that premises between 12 August 2014 and 10 November 2014. These meetings were attended by a number of persons from Newry, Belfast, and the Republic of Ireland. They were recorded covertly by the Security Services. The court has heard the tapes and read transcripts of what was said during those meetings. It is clear from those recordings that those present were engaged in a common enterprise involving members of dissident republican organisations whereby they formulate their aspirations for the future, planned, trained and received training. They conspired to possess firearms and explosives.

[3] The defendant's co-accused, Blair, Hannaway, Lynch and Sheehy, together with others, have all pleaded guilty to offences arising from their participation in these meetings. The meetings took place at the home of Colin Winters, who was also charged but who is since deceased. The defendant's co-accused, together with eight others, were arrested at the property on 10 November 2014.

[4] Having heard the recordings, the court has no doubt that those present at that meeting were engaged in a conspiracy to commit various terrorist acts. The conviction of the defendant's co-accused is important evidence in the trial. It is evidence of the presence of each of them on the relevant dates and their individual and collective acceptance that they committed the acts alleged against them and made the utterances attributed to them on those dates. The court has no doubt that the meetings constituted terrorist gatherings by individuals who aspired to plan future actions.

[5] The key issue in relation to counts 1-7 is whether the prosecution can prove to the requisite standard that the defendant was present on the dates alleged.

[6] In this regard it is important to distinguish him from those who have been convicted by admission. Firstly, they were arrested in the premises on the date of the final meeting recorded on 10 November 2014. Secondly, there was video evidence arising from surveillance which showed those convicted entering and exiting the premises. There was also surveillance evidence of persons who had travelled from the Republic of Ireland being met at Newry train station, being brought to the premises and being returned to the train station on occasions when they were present. Throughout the recordings there were extensive and clear references by name and otherwise to the co-accused, in particular, Blair and Hannaway, who were two of the leading participants in the meetings.

The evidence against the defendant

[7] What then is the evidence relied upon by the prosecution that the defendant was present in Ardcarn Park on 12 August 2014 and 3 October 2014?

[8] The prosecution admit that the evidence is circumstantial, but nonetheless, say that when all the strands are taken together, the court should be in no doubt that the defendant was present on the relevant dates.

[9] Before discussing any prosecution evidence further, I want to say something about the voice recognition evidence in this trial. The court has already given an extensive ruling in which it excluded evidence called by the prosecution which purported to identify the defendant as speaking at the meetings by reference to comparative voice analysis between the recordings of the meetings and proven recordings of the defendant's voice. This was obviously an important plank of the prosecution case. Whilst the evidence has been excluded, I should say that had it been admitted because of the factors identified in my ruling, the court would have paid little weight to it in any event.

[10] The starting point is the contents of the meetings which were recorded. I am satisfied that the transcript I have been provided with is an accurate account of what was said during the relevant meetings. In the transcript the PSNI have attributed the words that were said to individuals, including the defendant. Although it transpired that these attributions were accurate in respect of those who pleaded guilty to offences arising from their attendance at those meetings it is important to record that these attributions do not constitute evidence against those identified, in particular the defendant.

[11] Bearing that in mind I turn to the evidence relied upon by the prosecution in terms of the contents of what was said at the meetings for the purposes of identifying the defendant as having been present on the two occasions alleged.

[12] These fall into three broad categories.

[13] First references in the transcript to "Darren" where it is said that "Darren" is present.

[14] Second references in the transcript to "Darren" when it is not said that "Darren" is present.

[15] Third references in the recordings to a speaker whom the prosecution say is the defendant.

References in the transcript to "Darren" when it is said that "Darren" is present

[16] These references include the following at the meeting on 12 August 2014:

- At 16.49 the person identified as Hannaway says "have a chat with what do you call him, Darren";

- At 17.18 "I goes I know Darren's brother."

- At 33.42; in the course of a discussion about other Republican groupings and feuds Lynch says "and they say (inaudible) Darren."

- At 40.54 Hannaway is recorded as saying "Darren I will get in touch with you and then maybe, sort of closer to the weekend or something and maybe try and get down right."

At the meeting on 3 October 2014:

- At 27.12 Winters is recorded as saying "Darren do you want a beer?";

- At 11.11 at this time the person attributed as the defendant Gleeson is alleged to say "no it wasn't, but I wasn't going to type my name in Darren (inaudible)";

- At 40.28 Blair is recorded as saying "no what I am asking you is apart from Darren is have we another member in Dublin";

- At 43.21 O'Neill is alleged to say "well I tell can if it is decided to do that right, then you have Darren there who do you call it there Darren can, his job would be able to arrange a house (inaudible) there to make sure …";

- At 29.27 at this time Hannaway is recorded as saying "no but ah, once you've got clean people you want to keep as many you know like Darren. I was trying to avoid Darren like the plague because if its not because I don't want to fucking. Because I don't want to bring the heat on you."

[17] Self-evidently, these utterances without more do not identify the defendant as having been present at the meetings. They provide evidence that there is at least one person (or possibly more) at these meetings who is addressed by others as Darren, and that this person is from the general Dublin area.

References in the transcript to "Darren" when it is not said that "Darren" is present

[18] The prosecution points to the following references:

- On 2 September 2014 at 55.24 Hannaway is alleged to say "Aye, and what we can do there is get you (inaudible) (UM talking in the background) and get Darren to do that for to put it out of the way";

- At 55.32 Blair is recorded as saying "(inaudible all talking over each other) get Darren and that's why I'm saying to you" (inaudible all talking over each other);

- At 55.59 Lynch is recorded as saying "what I am saying is why corrupt the connection with Darren?";

- At 55.51 Hannaway asked "with who" and 55.52 Blair says "Darren";

- At 55.53 Hannaway says "Aye but listen if we have nothing to do with him there is no point in getting and I already explained that to Darren, if you let Darren know I'll be seeing him in the next three days";

- On 18 September 2014 at 21.32 Hannaway is recorded as saying "Tiny, Darren right I was talking to him last night on the phone right and I was saying there, tell him, arrange a time when he can come up with someone else right, we meet him here either at the train station or the bus station or whatever right. See the two parts that he needs, save youse are carrying a part each, nothing can be done";

- On 28 October 2014 at 4.00 in answer to a statement from Blair that "that big fella is looking you in Dublin." Hannaway is recorded as saying "Darren";

- At 29.53 Hannaway is recorded as saying inter alia "you know Darren, you know, I don't know if you've been talking to Darren, Darren was up in Belfast the other day and he just was totally amazed, see he goes, I don't believe the cameras he says, from Newry …";

- At 31.58 Hannaway is recorded as saying "cos I dropped Darren down";

- At 37.06 Blair is recorded as saying "how did Darren behave with you?";

- At 37.21 Lynch is recorded as saying "I tell you Darren speaks more Republican than a lot of people";

- At 38.05 Hannaway is recorded as saying "sure if they meet with him, if youse meet with Darren";

- At 01.15 Lynch is recorded as asking "did you meet that (inaudible) that was looking for you, Darren for me" and Hannaway replies "no Darren was to give me his number and he didn't … then the next thing he was on fucking about a day, two days later trying to get a hold of Darren so, let him cook in his own stew for a week or so …";

- At 07.03 Blair is recorded as asking if Darren "can do a boobie";

- At 07.16 Blair refers to Darren as "the wee lad that was up with youse, Darren, can he, you only showed him the one circuit, you didn't show him the boobie, no";

- Later at 06.59 Lynch is recorded as saying "but Darren had a couple of fellas there he told me in Dublin (inaudible)";

- At 08.52 Blair is recorded as saying "Aha. Do you know Darren" to which the person identified as McDonagh replies "yeah I know Darren yeah";

- Later at 10.39 McDonagh asks "how long have you known, how long have you known Darren. How long have you known Darren" to which Blair says that he had only met him, and Lynch said that he knew him about five months. McDonagh is then recorded as saying – "Oh yeah I said earlier he will have your, have your back a 100% that's, that's the thing about Darren, that's the thing about Darren."

[19] As is the case with references to Darren when he was allegedly present there is nothing in these references to Darren which would identify the defendant as the person to whom the speakers were referring. There remains open the possibility that it is not the same Darren who is being referenced throughout.

[20] The issue of the identification of "Darren" as being the defendant is complicated by the fact that those present at the relevant meetings know other "Darren" or "Darrens" not involved in the conversation being referenced.

[21] Thus, in one meeting it is indicated that persons identified as Marks and Winters, know a person to whom they refer to as "young Darren" who is a plumber. At the same meeting there is a reference to a "Darren" who appears to have given the group some "men at work."

[22] At the earlier meeting of 12 August 2014 there is a discussion in which the person designated as the defendant is involved in which the need to access plumbing accessories/the utility of knowing someone who works in that field was noted. An individual in the group had been addressed as "Darren" a few minutes earlier. At the meeting on 3 October 2014 there is a further discussion in which the utility of knowing a plumber is again discussed. In reference to equipment Blair suggests that the group should buy the straight connectors as they do not need threading, there is a 2 inch and 1¼ inch one with the straight connectors that you screw the nuts in and then put the powder in, "you can go in and buy them, just go in and buy 2 or 6 or fucking straight 1¾ and then a dozen ends. Now if you are a plumber, if you know a plumber, ask the plumber to get you some." Again, as set out earlier reference had been made to "Darren" some minutes earlier.

[23] Later at the same meeting there is a further discussion where Blair talks about plumbing parts. The individual whom the prosecution say is the defendant is alleged to be present during this exchange. At no stage when this issue is being discussed does the person identified as the defendant indicate that he is a plumber.

[24] Additionally, the group appear to know an individual referred to as "Darso."

References in the transcript to utterances attributed by the prosecution to the defendant

[25] The prosecution draws attention to comments made by the person they identify as the defendant during the two meetings he attended. Obviously, those utterances are important in terms of whether the counts on the indictment are proven, assuming it is the defendant who is making the relevant comments. At this stage I do not propose to set out those references. Rather I will focus on those which it is alleged point to or support the contention that he was present at the meetings and uttered the comments attributable to him.

[26] I have already referred to the attribution in the transcript, where it is alleged, the defendant says, "No it wasn't well I wasn't going to type my name in Darren (inaudible)." This reference does nothing to identify the defendant as the person speaking on the recording.

[27] The prosecution draw attention to a reference to a speaker whom they say is the defendant as saying he was "more or less brought up in Derry." There is no evidence before the court that the defendant was "more or less brought up in Derry."

Facebook entry

[28] The prosecution relies on a Facebook image as evidence supporting the presence of the defendant at the meeting on 3 October 2014.

[29] The transcript of the covert recording is set out in the following sub-paragraph. Again, I stress that the attributions are those of the police and any reference to Gleeson cannot be taken as evidence that, in fact, the defendant was speaking:

"Gleeson: Look, he is no good, he is only good for politicals, political fucking side of things. He is no good for anything else.

Diver: But everybody has their uses.

Gleeson: Oh yes, I know that, but I am just saying.

Blair: I seen some of the stuff you put up about the pictures of the helicopter and pictures of that big plane landing. All we need to do, does he know where that fucking base is blah blah blah.

Diver: He was putting up pictures of balaclavas and fucking toy guns.

Gleeson: Who me?

Diver: Yeah.

Gleeson: I wasn't putting up fucking pictures.

Diver: It fucking looks like you, away last year.

Gleeson: [Inaudible] Ballycl, I didn't put no, balaclavas and toy guns, are you for real man?

Diver: I must look the picture up, I could have swore, I could have swore it was you [inaudible].

Gleeson: It wasn't me.

Blair: He put pictures up of that fucking in Derry of them, you know that big plane coming in. Now there was the biggest British military operation since the Second World War in Derry up around Magilligan and not that, not a fucking word of it. He had all the

fucking armies up there, CIRA's, fucking Real IRA's, Provo IRA's you name it, [inaudible]. I think Georgina had a thing up, on this, this is part of the sell-out you know blah and that was it. Not another thing, nobody attempted to attack them, nobody even fucking

Diver: Yeah, it all went unchallenged.

Blair: Yeah.

Gleeson: **Here I wouldn't have put anything up like you fucking. One thing you could have seen was a picture of my girlfriend with a samurai.**

Hannaway: Naked, naked.

[Laughter]

Gleeson: **[Inaudible] and a colt 40-5 if you look at it that's not no fucking toy. Well it wasn't a toy it's gone anyway.**

Diver: It's not gone?

Gleeson: It's gone anyway.

Diver: Oh it's gone. What did you do, fucking lose it?

Gleeson: No, it got found."
[emphasis added]

[30] DC Wilson gave evidence that he had recorded a video of investigations he carried out into the Facebook page of the defendant in 2014.

[31] He had already carried out an examination of the Facebook before recording and knew what the page contained.

[32] Aligning his investigation with the contents of the covert recordings, the following matters emerge.

[33] There were no photographs of Darren Gleeson's Facebook depicting him with guns and a balaclava. Of course, this assertion was not attributed to Gleeson but to Diver, who was not before the court.

[34] There was no photograph on the defendant's Facebook of his girlfriend with a samurai and a Colt 45.

[35] Through links from the defendant's Facebook page DC Wilson was able to establish that at that time he was in a relationship with Hazel McDermott.

[36] The link to Hazel McDermott's Facebook page showed the photograph relied upon by the prosecution. That photograph showed a hooded person with his/her back to the camera holding a samurai type sword and a handgun. It is not possible to identify the person in the photograph. DC Wilson could not be sure that it was a female but surmised that it was because the person had painted fingernails.

[37] Mr Hutton emphasises to the court that the photograph was not on the defendant's Facebook page. He argues that anyone could take a picture from Facebook and adopt it as their own. Pictures can be sent around Facebook and "go viral." The fact that a picture is on someone's account on Facebook does not mean that it has not been on countless other accounts prior to that. The fact that a picture is on one Facebook account does not mean that it originated from that account.

[38] DC Wilson confirmed he did not know how many Facebook friends Hazel McDermott had at the time.

[39] Mr Hutton points out that Ms McDermott's account had been "liked" and commented upon by various people through 2013. DC Wilson did not know how many Facebook friends these "likers" or commentors had on Facebook. At its height the evidence indicates that a girl with whom the defendant had a relationship of some sort had a similar picture which may well have been doing the rounds on Facebook for some considerable time.

[40] He draws the court's attention to the evidence of Ms Anne Polland who, in evidence, accepted that it could not be determined from the photograph whether the gun was a toy, an imitation or a real firearm.

[41] Mr Murphy counters that whether the gun was real or not is of no consequence. He points to the unique nature of the photograph. It is a highly specific factual reference from a person at the meeting with a Dublin accent, subsequently verified, on examination of Facebook. He points out that it is remarkably coincidental with that referred to in the covert recordings and permits of a conclusion that the person speaking at the meeting was Darren Gleeson.

[42] He argues that this evidence should be considered along with the other strands of the evidence which each act as mutual support for the other in permitting

the conclusion that the person recorded speaking at the meeting on 3 October 2014 was, indeed, the defendant Darren Gleeson.

Links between the defendant and Liam Hannaway – comments by Hannaway in the transcripts

[43] An important element of the prosecution case are links between the defendant and Mr Liam Hannaway, who as indicated above has pleaded guilty to offences arising from the meetings at which it is alleged the defendant also attended.

[44] In this regard it is important to consider the evidence relating to Count 8.

[45] The uncontested evidence establishes that the defendant was arrested in May Street, Belfast on Friday 21 October 2016. He was the rear seat passenger in a vehicle driven by Liam Hannaway. He had a train ticket and holdall of clothing in his possession; he had travelled from Dublin.

[46] The prosecution says that the defendant's connection with Hannaway is an important piece of circumstantial evidence supporting the proposition that he was the person present on 12 August and 3 October 2014.

[47] When the defendant was arrested a handset phone was seized from him. It was a black Nokia mobile. It contained a memory card and a SIM card with mobile number 085215 8023 ("the 8023 number").

[48] The phone number 8023 was in communication with "Big Liam - +4479 220 69587 – consistently within the three-month period leading up the arrest in 2016. The prosecution points out that this establishes a clear link between the defendant and "Big Liam", on the basis that this was, in fact, Liam Hannaway. Given that they were arrested together that in itself establishes a link between the defendant and Hannaway in 2016. It does not establish a link between the defendant and Liam Hannaway in 2014, although the prosecution say it is a significant piece of circumstantial evidence supporting the proposition that the link existed back in 2014 and therefore the proposition that Gleeson is the person present on 12/8/14 and 3/10/14.

[49] Mr Hannaway, who was in the car at the time of the arrest, was himself the subject of arrest at Ardcarn Park, Newry regarding the investigation into this case on 10 November 2014.

[50] When Hannaway was searched on that date, the PSNI seized a Vauxhall key with a green lanyard.

[51] The key related to a Vauxhall Meriva vehicle – OFZ 8375. The court heard evidence that a police officer took possession of the key found on Mr Hannaway and seized the vehicle at Ardcarn Park on 11 November 2014.

[52] The vehicle was searched on that date and three phones were removed by Detective Constable Crothers.

[53] The vehicle was then conveyed to Larne police station where it was left in a secure garage.

[54] On 14 November 2014 a Detective Sergeant Orr gave directions to colleagues in relation to the search of the vehicle within the station car park. Nineteen items were recovered following a search conducted by Constable D Campbell and Constable G McGall. These included a camouflage jacket, one navy colour cargo style trousers with turn-ups, one protective glaze thinner, one package containing Superstick contact adhesive, one Poundworld plastic bag, one DP-60 canister, five lighters in packaging, one box of icing sugar, one roll of clingfilm, one roll of 40 refuge sacks, one pack of rubber gloves, one pack of plastic containers, one pack of 48 nylon cable ties, one pack of padded envelopes, one white bag and contents, one cupcake book and documentation, one bag of large plastic bags, one pack of six Pedigree dogfood cans.

[55] Constable McGall who assisted with the search found and seized two raffle tickets, one black entrenching tool, one bio ethanol tabletop fireplace, one red container marked 20w50 mineral motor oil, a number of dishcloths, three toilet rolls and one Eurospar carrier bag, a bag of assorted documentation including an Eire passport and certificate re RSF, one Samsung mobile phone, one nail bar, one red strap and one black net and one fabric bag.

[56] The court heard evidence from Detective Constable Wilson that on Wednesday 18 February 2015 he was tasked to return the vehicle to a Mr Kevin Hannaway. On arrival at Larne police station, he removed from secure storage the key to the vehicle which was parked in the police station car park and was locked. He used the key to open the vehicle and moved it to the front of the station. Whilst compiling a list of property from the vehicle to return to the owner, he noticed a piece of white paper in the driver's door glove/storage compartment. The piece of paper had the name "Darren 0852297908" ("the 7908 number") and also the name "James 0858367298" written on it and was folded up. He seized the piece of paper, and it was entered as an exhibit in the trial.

[57] The witnesses who conducted the search on 14 November were pressed as to why they did not find the piece of paper found by Detective Constable Wilson. The witnesses confirmed that they had made a record of what they had found, and that the car had been secured in the police station from the time of their search until the search conducted by Detective Constable Wilson.

[58] The prosecution called Constable Rainey who was on uniform duty at Larne police station at the time of the search on 14 November 2014. He was the detail log officer for the search of the Vauxhall Meriva. He produced the search record which

specifically references the note subsequently found by Detective Constable Wilson. Under the heading "Other Comments" the following is recorded:

> "Telephone numbers – 1. James 0858367298
> 2. Darren 0852297908"

[59] Having heard the evidence on this issue I am satisfied beyond reasonable doubt that the piece of paper in question was in the Vauxhall Meriva OFZ 8375 at the time it was seized on 11 November 2014.

[60] It is the prosecution case that the Darren referred to is the defendant and that he can be linked to the number referred to in the piece of paper.

[61] It sought to do so based on an exercise carried out by DC McCarragher who presented a Telecoms Liaison Officer report to the court.

[62] Mr Hutton points out that the report was initially described as a "preliminary" one and that a final report would include "impending call data from the Republic of Ireland … and will also refer to a forthcoming Cyber Crime Centre examination report for a handset seized from Mr Gleeson." It was stated that a final TLO report would also visually evidence contact made between Mr Gleeson and relevant defendants. It does not appear that any such final report was prepared.

[63] In any event returning to DC McCarragher's evidence and report, has the prosecution established that the 7908 number can be attributed to the defendant?

[64] The prosecution sought to do so by comparing data relating to the 7908 number to data relating to the 8023 number, which the prosecution can establish was related to the defendant.

[65] Before considering this evidence it is important to set out further evidence in relation to the 7908 number which establishes a link between that number and the defendant's co-accused.

[66] Thus, the 7908 number is shown to have significant contact with a number attributable to the defendant's co-accused, Lynch, on 11 August 2014; 12 August 2014 (meeting); 3 September 2014; 17 September 2014; 18 September 2014 (meeting); 14 October 2014; 22 October 2014; 24 October 2014; 31 October 2014; 1 November 2014; 8 November 2014; and 10 November 2014.

[67] The 7908 number is also shown to have had significant contact with the defendant's co-accused Hannaway from 11 August 2014; 7 September 2014; 8 September 2014; 17 September 2014; 22 September 2014; 27 September 2014; 6 October 2014; 14 October 2014; 25 October 2014; 28 October 2014; 8 November 2014; and 10 November 2014.

[68] The contact on 17 September at 18:59:23 ties in with the alleged comment by Hannaway at the meeting on 18 September 2014 when he refers to a call with "Darren."

[69] This, of course, does not link 7908 to the defendant, rather it reinforces the assertion that the number is attributable to the "Darren" who was at the meetings. It points to the fact that whoever this person was it was the same person who was present on the two alleged occasions and who had been in regular contact with the defendant's co-accused, who have admitted to being present and to having committed offences arising from their presence at those meetings.

[70] Further evidence from the prosecution established that the phone number 7908 was not being used to make or receive calls when it is alleged that Gleeson was present at the meetings at Ardcarn Park. The available call data is consistent with the phone having been switched off prior to and during the meetings on 12 August and 3 October 2014.

[71] The prosecution also called evidence relating to cell site analysis which was consistent with the phone number 7908 being switched off before entering Northern Ireland and recommencing upon return to the Republic of Ireland on the dates it is alleged that the defendant was present at the meetings. The evidence is also consistent with the train times, it is believed by the prosecution that the defendant used to travel to Newry.

[72] Again, all of this is entirely consistent with the number 7908 being associated with the Darren who was present at the relevant meetings.

[73] It does not, however, establish the Darren in question was the defendant, Darren Gleeson.

[74] In order to establish that proposition, DC McCarragher compared contact details and call data for the 7908 number and the 8023 number.

[75] The Detective Constable gave evidence in relation to Meteor call data for the 7908 number between 9 August 2014 to 11 November 2014, a period of just over three months.

[76] Similarly, he provided a print-out of out-going call records for a period between 18 August 2016 and 21 October 2016, just over a two-month period in relation to the 8023 number.

[77] Whilst in custody in Maghaberry in 2016, the defendant provided numbers for his prison phone account, including the contact "+353 018217160; Christopher and Bernadette Gleeson, father/mother."

[78] The call data for the 7908 number showed that it contacted this number for the accused's parents in 2014 on three occasions within a short period of time on 31 October 2014.

[79] Comparing this with the 8023 number, over the two-month period in 2016 there were calls on five separate days to this number, 21 August 2016; 29 August 2016; 19 September 2016; 23 September 2016; and 24 September 2016.

[80] A further contact number provided by the accused in 2016 when arrested was for Hazel Kinsella/Hazel Kinevan with a number recorded as 08574 94097. Evidence was given by a Chris Hill that this number had been entered in the contacts in the 8023 number as "Wifey."

[81] Comparison was then made between the outgoing calls to this number in 2014 and 2016. There were no calls to this number in the three-month period during 2014. In the two-month period between 18 August 2016 and 21 October 2016 there were 442 entries showing contacts to the "Wifey" number during this period.

[82] Again, evidence from Chris Hill established that in the 8023 phone the defendant had entered a number for "Dad" as 35385 8482368.

[83] Again, comparison was made with the occasions this number was called from the 7908 number and the 8023 number. The evidence establishes that there were no calls to this number in the three-month period in 2014. In relation to 2016 there were 29 entries in the out-going call data showing contacts to this number in the two-month period in 2016. These contacts occurred on 29 August 2016 x 3; 1 September x 2; 5 September x 5; 10 September; 11 September; 16 September; 21 September x 4; 10 October; 12 October x 4; and 13 October x 4.

[84] An analysis of the three-month period for the 7908 number indicates that the phone was used extensively during this period.

[85] Standing back, on any analysis, the pattern of use of the 7908 phone was wholly different from the pattern of use in relation to the 8023 phone number.

[86] Importantly, there were very significant differences when comparing the calls between the contacts provided in 2016. This is self-evident from the absence of any contacts with "Wifey" or "Dad" in the three-month period in 2014 and the very significant contact in the two-month period in 2016.

[87] The only link that can be established is the call from the 7908 number to the defendant's parents on 31 October 2014; ie one day over a three-month period in 2014 in contrast to the five calls over the two-month period in 2016.

[88] In my view, it could not be said that this is sufficient to establish to the requisite standard that the 7908 number is in fact attributable to Gleeson.

[89] I also note that the 2016 phone when examined had images on it dating back to 2014, indicating that the defendant was using the 8023 number in 2014.

Bad character evidence

[90] Bad character evidence was admitted by agreement between the parties in the following terms:

> "[1] There are two bad character applications in the case (a) cross-admissibility as between the counts on the indictment; (b) the admission of a previous conviction of the accused. **It is agreed between the parties that the bad character material is admitted as part of the prosecution case but that both parties will make submissions as to its effect or otherwise, including ultimate admissibility/weight at a later stage**.
>
> [2] In respect of cross-admissibility the prosecution introduces the evidence on count 8 as admissible evidence in respect of counts 1-7. The prosecution rely upon article 6(1)(d) and that the evidence is relevant to an important matter in issue between the defendant and the prosecution.
> …
>
> [6] In the second application the prosecution proceeds only in respect of the conviction at the Special Criminal Court in Dublin on 1 November 2017 for membership of the IRA.
>
> [7] The certificate of conviction is attached to the application. The accused was convicted of being a member of the IRA on 18 May 2017. He faces an allegation of being a member of the IRA in count 7 on the current indictment and it is alleged he was a member between 11 August 2014 and 22 October 2016. This is an application based on propensity."

[91] I will have to be satisfied in respect of the accused's guilt on count 8 before I could use that conviction to display a propensity to commit the type of offences in counts 1-7. I will therefore deal with the issue of cross-admissibility when I consider the evidence in relation to count 8.

[92] In relation to the membership conviction the prosecution can establish that the defendant was a member of the IRA on 18 May 2017. It is argued that this is

particularly relevant in relation to the seventh count, namely belonging to or professing to belong to a proscribed organisation.

[93] It seems to the court that this evidence may well be important in supporting the counts with which the defendant is charged, provided it is satisfied that the defendant is the person identified by the prosecution as being present at the meetings in question. Any propensity that this conviction establishes does not say anything about the actual identity of the person speaking at the meetings in 2014.

[94] It is important the court should not place undue reliance on previous convictions. The only basis on which the court can decide that the defendant was a member of the IRA in 2014 is by determining beyond reasonable doubt that he was at the meetings in Ardcarn Park and taking part in the relevant conspiracies with the other co-accused. Where the court cannot so conclude beyond reasonable doubt based on the Crown's evidence, absent bad character, the introduction of this evidence to support the Crown's case on count 7 does not assist in determining the specific count of membership to which the evidence is directed.

[95] I am satisfied that the conviction does not go towards establishing the identity of the persons speaking at the meeting as being the defendant. For this reason, the court pays no weight to the conviction on 1 November 2017.

Failure to give evidence

[96] The defendant was not called to give evidence at the trial. The prosecution say that the court should draw an adverse inference from this failure.

[97] The court may, pursuant to the provisions of Article 4 of the Criminal Evidence (Northern Ireland) Order 1998, draw such inferences as appear proper from the failure of the defendant to give evidence in determining whether he is guilty of any of the offences with which he is charged.

[98] In my view, failure of the defendant to give evidence does not support the contention that he is the person identified by the police as being Darren Gleeson in the relevant meetings. As such I do not believe it would be fair to draw such an inference in this case. I agree with Mr Hutton's submission that what is required in respect of counts 1-7 to defeat the counts is not the accused's denial but a proper assessment, that the Crown's circumstantial case is not a winning one.

[99] One important matter in relation to this issue, although not determinative, relates to the court's ruling in relation to the voir dire. The parties will recall that the court was critical of the use of answers given in interview for the purposes of providing samples for forensic voice analysis. When interviewed the accused provided no answers on legal advice related to the nature of the Crown case, based on forensic voice analysis.

[100] If the defendant were to give evidence at trial, he is likely to be faced with a submission from the Crown that his giving evidence and any facts relied upon would give rise to an inference under article 3 of the 1998 Order. In the court's view it would be unfair for the court to draw an adverse inference in these circumstances.

The 2016 count

[101] As previously indicated when the defendant was arrested on 21 October 2016 a black Nokia mobile phone with the number 08521 58023 was seized from him.

[102] The memory card in the phone contained files dated 21 September 2016 which appear to have been downloaded from the internet. They included:

(a) A download of a publication "Hitman online" – a technical manual for independent contractors.

(b) A pdf named "BSP-Semi-auto.pdf";

(c) A pdf named "ZIP Gun.pdf."

The materials at (b) and (c) give rise to the charge in count 8.

[103] This material has led to a charge under section 58 of the Terrorism Act 2000. It provides:

> "(1) A person commits an offence if—
>
> (a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, ...
>
> (b) he possesses a document or record containing information of that kind, …
>
> (2) In this section "record" includes a photographic or electronic record."

[104] It will be seen that section 58 creates three offences, namely:

(i) Collecting information of a kind likely to be useful to a person committing or preparing an act of terrorism.

(ii) Making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism.

(iii) Possessing a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

[105] Mr Hutton points out that section 58 has been expanded since the time of the commission of these offences by adding the following:

> "(c) the person views, or otherwise accesses, by means of the internet a document or record containing information of that kind.
>
> (1A) The cases in which a person collects or makes a record for the purposes of subsection (1)(a) include (but are not limited to) those in which the person does so by means of the internet (whether by downloading the record or otherwise)."

[106] In light of that amendment he argues that it is questionable whether the type of downloading of documents prosecuted here should properly be prosecuted under section 58(1)(b) rather than section 58(1)(a).

[107] There is no doubt that the evidence established that the two texts which form the subject matter of the charge were downloaded onto the defendant's phone on 21 September 2016. There is no doubt that they were retained on the defendant's phone.

[108] Whether the appropriate charge is under 1(a) or (b), the defendant raises two issues by way of defence. Firstly, he argues that the prosecution has not proved beyond a reasonable doubt that the material in question was of a kind "likely to be useful to terrorists." Secondly, he argues that the defendant can rely on the defence provided by section 58(3) which at the relevant time provided:

> "58(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession."

[109] Like section 58(1) the defence under section 58(3) has also been expanded since the commission of these offences. The following has been added to section 58:

> "(3A) The cases in which a person has a reasonable excuse for the purposes of subsection (3) include (but are not limited to) those in which—
>
> (a) at the time of the person's action or possession the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind

> likely to be useful to a person committing or preparing an act of terrorism, or
>
> …"

Likely to be useful to a person committing or preparing an act of terrorism

[110] Section 58 was considered by the House of Lords in *R v G* [2010] 1 AC 43.

[111] At para [50] of its judgment the court said:

> "50. To summarise: in order to obtain a conviction under, say, section 58(1)(b), the Crown must prove beyond reasonable doubt that the defendant (1) had control of a record which contained information that was likely to provide practical assistance to a person committing or preparing an act of terrorism, (2) knew that he had the record, and (3) knew the kind of information which it contained. If the Crown establishes all three elements, then it has proved its case against the defendant, and he falls to be convicted - unless he establishes a defence under subsection (3)."

[112] In this case I am satisfied that the prosecution has proven elements at (2) and (3).

[113] Subject to any defence under sub-section (3) the case turns on whether the prosecution have proven that the information was "likely to provide practical assistance to a person committing or preparing an act of terrorism."

[114] Mr Hutton points to the accessibility of the materials which were downloaded by the defendant on 21 September 2016.

[115] Although not the subject matter of a charge the download of the "Hitman on-line" – a technical manual for independent contractors – is available to purchase on Amazon. Mr Hutton established that it can be bought for Kindle for £2.27. Doubtless, this was a factor in the decision not to prosecute.

[116] The two texts which form the subject matter of the charge were downloaded at the same time.

[117] The pdf named "BSP – Semi-auto.pdf" is available on an open blog – "The home gunsmith.com" hosted from the UK. The ZIP Gun.pdf document can be downloaded from the same "Expedient Homemade Firearms" site.

[118] Whilst the ease with which these documents can be accessed might provide some context as Mr Murphy says the focus of section 58 is on the nature of the information itself, not how it was collected, recorded or possessed.

[119] The court has seen and reviewed the information in question.

[120] Returning to the BSP–SMG machine gun design, the introduction indicates that "I assembled these drawings to illustrate my idea as to how such a gun could be constructed. This is a semi-auto version of my simple full-auto design. The following drawings are intended as a brief outline only due to time limitations." This text is followed by nine pages of drawings which purport to show the finished article and subsequent drawings and measurements setting out the elements which make up the firearm.

[121] The court's initial reaction was that the information on the face of it met the test of being of a kind likely to be useful to a person committing or preparing an act of terrorism.

[122] This was robustly challenged by Mr Hutton during the trial. He draws the court's attention to the references in the preliminary text to the information being "my idea" as to how a gun "could" be constructed. The drawings were intended as "a brief outline only."

[123] The information was reviewed by Ms Anne Polland who is a firearms expert and who gave evidence on behalf of the prosecution. She accepted that she reviewed these drawings as an expert who could bring her abilities to bear on her assessment of the utility of the drawings.

[124] In her evidence she indicated the drawings appeared to be based on a book from P A Luty – "Expedient Homemade Firearms; the 9mm sub-machine gun." This was a book that ran to about 80 pages of diagrams and text. It is to be contrasted with the PDF which had very little text. Mr Hutton points out that the drawings were basic with few measurements. There was little detail to explain materials needed, specific measurements or method of manufacture. The sketches did not contain sufficient detail or instruction for a lay person to manufacture the gun described. By way of example, the pamphlets had sketches on how to manufacture a trigger group, but gave no instructions for assembly, no diagrams on how to manufacture a barrel, bolt or lower receiver. These are all essential working parts of a working firearm. The pamphlet did not state what calibre or type of cartridge it was designed to discharge – if any. It did not state what materials were required for manufacture.

[125] Ms Polland accepted that a person with specific skills, knowledge and understanding of gun-smithing and/or engineering processes as well as a level of metal working/fabrication skills may be able to "attempt" to manufacture this gun.

She agreed that additional measurements, instructions, information and materials would be required.

[126] In light of this evidence, Mr Hutton submitted that the likelihood of the pamphlet being of actual use to anyone was very slight indeed.

[127] Turning to the ZIP gun.pdf document, it too is downloadable from the same "Expedient Homemade Firearms" site.

[128] The information contains an introduction where the author says that:

> "I decided that the need existed for a simple homemade version of this tried and tested 'contraption' and came up with the following design!
>
> I designed this weapon with the caveat that it should be buildable in one day or less, and I think I have achieved that requirement."

[129] The text goes on to set out the component parts and how the "ZIP/pen gun" could be assembled which runs to two pages. Thereafter, there are photographs of examples of ZIP/pen guns built by other private individuals and arms manufacturers, running to three pages. These appear to be photographs of some homemade efforts including an old collector's piece.

[130] Again, on first impression the court's view was that this would meet the test of being information of a kind likely to be useful to a person committing or preparing an act of terrorism under section 58. This too was challenged robustly by Mr Hutton. In relation to the text of the material he points to the theoretical status of the information. There is no indication that this design has actually been followed or followed successfully.

[131] The evidence of Ms Polland is important on this issue. She said of the information that the plans were incomplete and further work would need to be carried out to allow the ZIP gun to fire. It did not contain detail as to how the barrel should be fixed to the receiver or how the gun was to be loaded or unloaded. Even if someone with expertise adapted the design it would be unlikely to produce something that was practicable to use.

[132] The cocking mechanism described in the information would be prone to accidental discharge. The barrel section does not state how deep the chambers should be drilled to accept a cartridge. It does not state what calibre a .22 rim fire should be used. There is no information as to how to actually fit the pin in the breechblock section. There were no diagrams or measurements on how to do this. The correct position of the pin is essential for any practical use.

[133] The main spring section contains no instructions on the length of the spring. Again, this is a significant omission. The correct spring is also essential for the effective use of such a gun.

[134] The end result, if all put together correctly and workable, would be an implement that fired one cartridge, although one would need to entirely remove the breech plug, the spring and breechblock from the receiver in order to put another cartridge in.

[135] In light of all this, Mr Hutton submitted that the implement would be unlikely to be of any practicable use for anyone considering an act of terrorism.

[136] In light of the evidence heard at the trial, has the prosecution established, as it must, that the information was "likely to provide practical assistance to a person committing or preparing an act of terrorism?"

[137] Having considered the evidence which I have summarised above, notwithstanding my initial view as a lay person, I have concluded that the evidence does not establish this. Irrespective of any intention of the defendant, the limitations of the material exposed in the evidence demonstrates that it was unlikely to provide practical assistance to a person committing or preparing an act of terrorism.

[138] Accordingly, the charge in count 8 under section 58 is not made out. Consequently, it is not admissible as evidence in relation to counts 1-7.

[139] It is not, therefore, necessary to consider any potential defence under section 58(3). I would comment, however, that whilst Mr Hutton is undoubtedly correct that there appears to be great curiosity about such matters, in the absence of any specific case made by the defendant at interview or at trial, the court could not draw an inference that these matters were downloaded simply out of curiosity and that as a result there was an onus on the prosecution to disprove this.

Conclusion

[140] At the outset I remind myself of what Mr Hutton describes as the "corrective effect" of the exclusion of the forensic voice analysis initially relied upon by the prosecution. Although I have referred to the transcript of the covert recordings by reference to the attributed speakers, it is essential to remember that such attributions as against the defendant are inadmissible and of no probative value.

[141] The prosecution must prove beyond a reasonable doubt that the defendant was present in Ardcarn Park on 12 August 2014 and 3 October 2014.

[142] The case against the defendant is a circumstantial one. That does not mean that it is a weak one. As Kerr LCJ said in the case of *R v Courtney (No.2)* [2007] NICA 6 at para [31]:

> "… in a case depending on circumstantial evidence, it is essential that the evidence be dealt with as a whole because it is the overall strength or weakness of the complete case rather than the frailties or potency of individual elements by which it must be judged. A globalised approach is required, not only to test the overall strength of the case, but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case."

[143] I refused the defendant's application for a direction at the close of the prosecution case. In a written ruling I concluded that I did not consider that the state of the evidence with reference to the various strands relied upon by the prosecution was such that there were no circumstances in which I could properly convict the defendant.

[144] At this stage, of course, the evidence must be subject to an intense analysis. I must be satisfied that the prosecution has proven the case beyond a reasonable doubt.

[145] In discussing circumstantial evidence at F1.22 of *Blackstone's Criminal Practice 2024*, the learned author says:

> "However, although circumstantial evidence may sometimes be conclusive, it must always be narrowly examined if only because it may be fabricated to cast suspicion on another. For this reason, it has been said that:
>
> > 'it is also necessary for drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no co-existing circumstances which would weaken or destroy the inference.'"

To establish guilt, I must be satisfied that the confluence of the circumstances relied upon by the prosecution in this case lead to an irresistible inference of guilt.

[146] I have analysed the various strands of evidence above and have made comments on their implications for the prosecution case.

[147] Self-evidently, the individual pieces of evidence identified do not establish the defendant was present at Ardcarn Park on the relevant dates and that, therefore, counts 1-7 are not proven by direct evidence.

[148] The question is whether those strands of evidence taken together are sufficient to satisfy me beyond a reasonable doubt that the defendant was present at those meetings on those dates.

[149] As already indicated, the prosecution narrative was sufficient to overcome an application for a direction. The proven link to Hannaway and what was referred to as the "Facebook evidence" are perhaps the strongest elements supporting that narrative.

[150] That said, in light of the summary of the evidence set out in this judgment and my analysis of that evidence, I am not satisfied that the prosecution has proven to the requisite standard that the defendant was present at Ardcarn Park on 12 August 2014 and 3 October 2014. Consequently, I am not satisfied beyond a reasonable doubt that the defendant is guilty of counts 1-7. My consideration of the evidence in its totality leaves me with a reasonable doubt as to his guilt. The individual strands of evidence which I have analysed undoubtedly give rise to a high suspicion that the defendant was present, but they do not "cross the line" to establish guilt to the criminal standard.

[151] Accordingly, I acquit the defendant on counts 1-7.

[152] I have already indicated that I acquit the defendant on count 8.