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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **15/03/2023**

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT BELFAST

THE KING

v

FIONNGHUALE PERRY

Mr R Steer (instructed by the Public Prosecution Service) for the Crown
Mr D Hutton KC with Ms A Macauley (instructed by Phoenix Law, Solicitors) for the Defendant

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O'HARA J

Introduction

[1] The defendant is charged with two offences:

(i) Collecting or making a record of information likely to be useful to a terrorist, contrary to section 58(1)(a) of the Terrorism Act 2000, in that on a date unknown between 16 September 2015 and 21 February 2018, she collected or made a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a security debrief, regarding the police recovery of firearms, ammunitions and explosives.

(ii) Collecting information likely to be of use to terrorists, contrary to section 58(1)(b) of the Terrorism Act 2000, in that on 20 February 2018 she had in her possession documents or records containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a security debrief regarding the police recovery of firearms, ammunition and explosives.

[2] The second count is essentially an alternative charge if the first one is not proved against her.

[3] The charges arise from a police search of the defendant's home on 20 February 2018. During that search, the lawfulness of which is challenged, the police found handwritten notes in a perfume box. The defendant accepts that the handwriting is hers. On the prosecution case the notes, which are partially in code, amount to a debriefing by dissident republicans of individuals who were questioned, after a significant arms find, in September 2015 in the Ballymurphy area of Belfast. That arms find led to a Kevin Nolan being sentenced in July 2017 to seven years' imprisonment for possession of the weapons.

[4] The prosecution case is that in these circumstances the defendant is guilty because the notes provide practical assistance to any individual or organisation involved in preparing or committing an act of terrorism.

[5] For the defendant it is contended that the notes are of no such use or value. Instead, she says, that the notes which were found had been written by her only by copying, word for word, notes which were left anonymously in her home in or about December 2017. They made little or no sense to her at the time. In fact, on her case, it was not until she was questioned by the police that their meaning or possible meaning emerged. In any event, she says, she can rely on the section 58(3) defence of reasonable excuse in that she has a record of writing stories and information pieces to warn people about what she claims are the sinister and/or unlawful activities of the security services. Her case is that this explains why the notes were left in her home in the first place and why she kept them.

[6] The defendant contends that having raised a section 58(3) defence, the onus passes to the prosecution to disprove it beyond reasonable doubt. She contends that the prosecution has not done that and cannot do that. In this context there is a further issue about what inferences, if any, I should draw against the defendant from the fact that she did not give any explanation for the notes or raise any defence during her police interviews which were almost entirely "no comment" interviews.

[7] I am grateful to counsel for their helpful oral and written submissions in this case. I am also grateful to them for agreeing various facts, a step which succeeded in reducing the length of the trial. At the end of the prosecution case, Mr Hutton, applied for the evidence of the notes, which were found during the search, to be excluded and for a direction that there was no case for the defendant to answer. I refused both applications. The issues which were raised then remain to be dealt with in this judgment.

Terrorism Act 2000

[8] Section 58 as originally enacted was in the following terms:

> "(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, or

(c) the person views, or otherwise accesses, by means of the internet a document or record containing information of that kind.

…

(2) In this section "record" includes a photographic or electronic record.

(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."

[9] From 12 April 2019, an additional provision took effect, namely section 58(3A). It provides:

"(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

(b) the person's action or possession was for the purposes of—

(i) carrying out work as a journalist, or

(ii) academic research."

[10] This provision was not in effect on 20 February 2018 when the defendant's home was searched and the notes were found. It is agreed, however, that it can be referred to because it is an example of a reasonable excuse defence and helps to explain the meaning of section 58(3).

[11] It is further agreed that once the defence adduces evidence to raise a section 58(3) defence, it is for the prosecution to prove beyond a reasonable doubt that there is no reasonable excuse. In this case, the defendant has, in effect, advanced two propositions. The first is that when the notes were in her possession, she had no reason to believe they contained or were likely to contain information of a kind likely to be useful to a person committing or preparing an act of terrorism. In addition, she contends that the notes were in her possession for the purposes of carrying out work as a journalist. In this context "journalism" is not given any narrow interpretation. Rather, it is a term which can be interpreted broadly.

Background

[12] On 17 September 2015 police searched a house in Ballymurphy in West Belfast. They found Semtex explosives, two improvised detonators, a revolver and silencer, a semi-automatic pistol and a substantial quantity of ammunition. The address was the home of Mr Kevin Nolan Snr and his wife, along with their daughter Kelly Nolan. Mr Nolan Snr and his daughter were arrested. Following that arms find, a number of other people were arrested in Northern Ireland – a Kevin Delaney, a Richard Murphy and a Sonya Kavanagh. In addition, Kevin Nolan Jnr was arrested on 20 September 2015 in the north of England. It appears that he had moved there to live with a new girlfriend.

[13] All of the individuals named above were questioned and released save for Kevin Nolan Jnr. He was prosecuted for possession of the items found in his parents' home and had a seven year sentence imposed on him in Belfast Crown court on 6 July 2017.

The lawfulness of the search of the defendant's home

[14] On 20 February 2018 the police arrived at the defendant's home to search it. They assert that they acted under two separate powers. One was section 24 and Schedule 3 to the Justice and Security Act 2007 and the other Schedule 5 to the Terrorism Act 2000. The defendant contends that for different reasons each search was unlawful.

[15] The search under the 2007 Act was authorised and signed by Detective Inspector Lowans in accordance with the statute which requires authorisation by a police officer at that level. However, from the search records and the evidence it appears that the officers who then carried out the search were not themselves individually authorised by the Inspector. Rather, their police numbers were inserted on the search record by Constable Lynch. It was not the Inspector who assigned the officers – he authorised or purported to authorise a search in principle, as Mr Hutton put it. The officers on the ground were, apparently, left to decide which of them entered the defendant's home. Later, as the search became prolonged, other numbers were added. These included Constable 20575 (Constable McCarron) whose number was on the original list but is not on a later list in the search record. His

identification is relevant because he was the officer who found the perfume box with the notes inside it.

[16] In these circumstances, Mr Hutton submitted that the search cannot have been lawful. The main reason for this, he says, is that only Inspector Lowans could authorise the search by named or identified officers, but he did not, in fact, do so. Secondary to this is the contention that while Constable McCarron's number appears at one point in the search record, it does not appear on the list of authorised officers which was left with the defendant when the search ended. Given that this was a search of a private home which did not require judicial approval, the provisions of the 2007 Act should be strictly applied, Mr Hutton said.

[17] I do not accept that submission. In my judgment, the critical fact is that the search of the home was authorised by an inspector. It requires little imagination or understanding to envisage a scenario where the availability of the officers who can take part in the search changes after the search has been authorised, so that some are diverted to another incident and others are detailed to take their place. To my mind, none of this affects the lawfulness of the search. It is not, and should not be, necessary in such circumstances to have to go back, or keep going back, to the inspector.

[18] The challenge to the search warrant under Schedule 5 to the Terrorism Act 2000 was made on the basis that while the warrant was granted on 20 February 2018 by a lay magistrate, the name of the officer who applied for the warrant does not appear on the warrant itself. Instead, the relevant officer, Detective Constable Lynas, is identified only by her (correct) service number. On the evidence of DC Lynas and Sergeant Wylie, that was not an error or oversight. They agreed that in cases involving suspected terrorism the practice of the police is not to use names but numbers instead.

[19] The prosecution accepted that Article 17(6) of the Police and Criminal Evidence (NI) Order 1989 provides that a warrant shall specify the name of the person who applies for it. Mr Steer referred me, however, to the PACE Code of Practice which allows at Code B para 2.9 for the use of numbers rather than names in cases linked to the investigation of terrorism. In interpreting and applying Article 17(6) the Code is a matter to be taken into account. That being the case, I am satisfied that the search of the defendant's home was not unlawful by reason of the use of a police service number rather than the name of the detective constable.

[20] In the event that I am wrong in relation to either of these two findings, I exercise my discretion not to exclude the evidence of the notes found during the search. It is unnecessary to review, in any extensive way, the many authorities on the exercise of that discretion to exclude or admit evidence obtained unfairly. As a general principle, however, it is beyond doubt that in this context a judge is obliged to consider the extent of any departure from the statutory scheme and the intention of those who did depart from it. In my judgment, it could not possibly be

considered that the extent of any breach of the search legislation was other than trivial in this case. Similarly, there is no identified malign intent on the part of the police. On the contrary, their extensive and accurate records of the search show the care which was taken in noting and recording all relevant developments and finds.

The results of the search and the investigation

[21] The defendant occupies a two-storey home with her partner and son. In a small upstairs bedroom, marked as room 6 on the sketch in the search record, Constable McCarron found a Chloe perfume box. Inside the box were envelopes which contained pieces of tobacco paper in bundles with handwriting on them. It is now an agreed fact that the handwriting is the defendants.

[22] These notes contain a series of entries, some in code and some not. Included in the notes are references such as the following with the police interpretation alongside:

Code	**Interpretation**
KN/Big K	Kevin Nolan
KN's Sister	Kelly Nolan
KD/Wee K	Kevin Delaney
R	Richard Murphy
Belfast Girl	Sonya Kavanagh
Rice Krispies	AK47
Mickey Mouse Club	New IRA
Disney Material	Firearms, munitions
Big Eyes	Police/security forces
Marzipan	Semtex
2lbs of flour	2lbs Semtex
Almonds	Ammunition
Dates	Detonators

[23] The notes were numbered and ordered. Whilst some are hard to make out, others followed a broadly discernible sequence which was put to the defendant by the police during phased interviews. On the prosecution case the notes represent a record of dissident republican concerns covering the period before and after the events which led to the conviction of Kevin Nolan – who was involved, who had the arms at any given time, who could be trusted, who had revealed what information etc. By way of example, in note G there is a series of references as follows:

- "I was introduced to KN by R" – meaning I was introduced to Kevin Nolan by Mr Murphy.

- "I was told to contact KN for gear to get it off him" – meaning I was told to contact Kevin Nolan for arms to get them off him.

- "How tight was KN's security – was he a talker – how did he and his girlfriend meet? How did he leave things with the Mickey Mouse Club? He was saying he would be back in a week or two."

[24] That section of the notes continues with the following:

- "Roughly how long was he home for? – about a month – about three weeks before he was gripped KN started ringing people. What was caught in the Murph? Two guns – electric dets, 9mm auto and Ruger – 1lb–2lb of jelly – 5mm 100. KN wanted to know how KD had gotten his number. All through texting – contract phone.

- Have you ever been stopped? Yes! But nothing heavy, no real hassle.

- R called me from Dobbies during the raid and asked "Are they down there?" on the 21st. I got arrested on the Sunday. I wasn't there on the Friday when they first hit. What did they ask you? Biggest load of shit! Did they ask you to work for them? No!! Was your solicitor there throughout – yes.

- Did he know you worked with Nolan – No."

[25] The content of these notes ties in directly with the 2015 arms find for which Kevin Nolan was sent to jail. In my judgment it is beyond doubt that the notes are in fact a record of individuals being asked about their knowledge of the events leading up to the find because the dissidents who had lost the weapons wanted to explore what, from their perspective, had gone wrong. Questions were also asked about what was said during interrogation by the police and whether solicitors had been present. There are multiple other references in the notes of the same sort. The police evidence to that effect was not challenged at trial on behalf of the defendant – her case was that beyond a few references to "Big Eyes "she simply did not know what the notes meant because they made little or no sense to her.

Police interviews of the defendant

[26] As already indicated the defendant said almost nothing during her police interviews which took place after her arrest in January 2019, approximately 11 months after her house was searched and the notes were found and seized. She was accompanied throughout the interviews by her solicitor and given an opportunity to speak to him as required.

[27] In the period between the search of her home and her arrest, the police had obtained handwriting samples and put to her the case that she had written the notes. That was not admitted by her until a year later, in January 2020, after she had been returned for trial, when her defence statement was served. In that statement she denied all of the elements of the offence and, instead, made the case that she is a writer, commentator, journalist, political campaigner and activist. She indicated that she has been a member of Saoradh since its inception in 2016 and that she is politically active with her views including a critique of the current peace process and the settlements which have followed from it. She then suggested that she, and the party of which she is a member, are critical of republicans such as Sinn Fein, who have accepted the current process. As part and parcel of that criticism, she attacks the manner in which policing has been reformed and is currently practised in Northern Ireland. She writes widely on these issues and because she has gone on record voicing her concerns about policing, she has on occasions been provided by third parties with details of approaches to them or harassment of them by various individuals including officials of MI5. Specifically, in relation to the papers found in her home she set out the following case:

> "(l) The information which is the subject of these proceedings came to the defendant in this fashion, via an anonymous third party or parties. The information contained in the notes were dropped through the defendant's letter box anonymously one night, sometime after the Kevin Nolan described in the Crown's papers had been sentenced. The defendant believes that these notes were forwarded to her due to their having recorded approaches to individuals referred to in the notes from "Big Eyes" which she takes to mean MI5.
>
> (m) The notes received by the defendant were written in the hand of the author or authors of those notes. Insofar as any information in the notes had been "collected" it had been collected by the author or authors of those notes. The defendant did not therefore "collect" any information in the notes. She was not, as was a constant suggestion put to

her during interview, a member of a security team operating on behalf of the New IRA.

(n) These original notes were forwarded to the defendant some considerable time after the events giving rise to Kevin Nolan's conviction and were forwarded after Kevin Nolan was sentenced. Any currency in the information contained in the notes was considered by the defendant to have long since dissipated. The defendant did not think that the information in the notes, at the time at which she received them, would be of any future use to any one in any sinister way. Any usefulness or utility that the information might once have had (which utility is not accepted) had been spent. She believes that this was partly why the notes were considered suitable for sending to her at that time.

(o) The defendant considered that the manner of the delivery of the notes and the anonymous nature of same indicated that the materials were forwarded in a confidential manner in furtherance of her political and journalistic activities. In seeking to maintain the confidential nature of the information and the source of the information she copied the notes provided in her own hand and retained her copy. The original notes were then disposed of. The defendant considers that the copying of the notes in this fashion is not the making of a record within the meaning of section 58 of the Terrorism Act 2000. It is the copying of a record already made.

(p) The defendant accepts that the copied record or documents were as described in the Crown papers and were seized by police and exhibited as SMcC4. This exhibit was stored in the perfume box on a shelf in the spare bedroom where the defendant's workstation was located. The exhibit was not carefully hidden in a manner that a security conscious person might have secreted it. This is due in part to the defendant's view that the information in the documents had lost its currency and due, in part, to the fact that the documents were research material that would be used by the defendant in the course of her writings."

[28] The defence statement continued in similar vein for a further number of paragraphs which effectively concluded with her asserting that in the circumstances she has a reasonable excuse or excuses within section 58(3) of the Terrorism Act 2000 for having the notes.

[29] The defendant's case is that she was relieved when her solicitor, Mr Corrigan, advised her not to answer any questions during interview. Apart from not trusting the police, she said that she had been feeling unwell for some time. It was confirmed some months later in August 2019, after she had been charged and released on bail in January 2019, that she suffers from multiple sclerosis.

[30] Dr Carol Weir, consultant psychologist, gave evidence that multiple sclerosis can cause cognitive deficits which vary in degree from one patient to the next. By the time Dr Weir examined the defendant in February and May 2022 her speed of processing information was very much reduced. This was more than three years after the arrest. That reduction would be apparent from hesitation in answering questions and/or not fully understanding the questions. Dr Weir also alerted me to the fact that at trial in February 2023 the defendant's ability to give evidence might be impaired by her multiple sclerosis and the stress associated with giving evidence, especially with the defendant's history of some anxiety and depression over a number of years.

[31] It is relevant to note that no case was ever made that she was unfit to be interviewed in 2019, nor were any interviews brought to a premature end because she was feeling unwell.

[32] In March 2018, between the search of her home and her later arrest, the defendant gave an interview to the Andersonstown News about the search. The heading on the article was "MI5 in driving seat and not the police, says woman whose house was raided." In the course of the interview the defendant made a number of statements which included the following:

> "I do a lot of writing, I had various personal accounts people had given me who had actively been followed daily by MI5 who were attempting to recruit them. Accounts from people who were approached on holiday, by text or in the street, I believe that is what brought them here."
>
> "We are supposed to be in phase of accountability here, we heard in 2007 that Sinn Fein were going to put manners on the police, but we didn't hear in 2007 that MI5 were in the driving seat, overseeing nearly every aspect of policing here. What's transparent now is just

how much control they have in this place and it's all going unchallenged."

[33] In February 2018, when her home was searched, the defendant had a full-time job in addition to which she wrote pieces which were published in a number of forms. These pieces which are relied on by her to raise a section 58(3) reasonable excuse defence, include by way of example, the following:

- In October 2016 she wrote a piece based on information supplied by a man who asserted that he had been stopped at Manchester airport and questioned by an individual who identified himself as being from MI5. This piece, written for Saoradh, highlighted what the defendant views as the improper use of anti-terrorism legislation and the deployment of MI5 and the PSNI to recruit agents or informers.

- In December 2017, she wrote a letter to the Irish News which was published on the Saoradh website about Sinn Fein, Mr Adams, and the tactics of the RUC.

- On 31 December 2017, she wrote a further piece about the activities of MI5 and the contrast between what was supposed to happen in Northern Ireland after the 1998 Agreement and the findings of the Committee on the Administration of Justice which had published a report on the activities of the security services. This article was published on the Saoradh website.

- On 5 January 2018, another piece on the Saoradh website attacked Sinn Fein and its support for policing.

- On 17 January 2018, the defendant wrote a further piece on the Saoradh website about alleged efforts of MI5 to recruit a young north Belfast man who had been returning from France and was stopped at an airport in Nice. In addition, there was further contact with him by phone and by text when he completed his journey back to Northern Ireland.

[34] These entries and many more were reported on by the VM Group who conducted an analysis of the desktop computer which had been seized, examined, and returned by the police. The conclusions drawn by the VM Group from their analysis are as follows:

- "VM Group can confirm that 224 files were identified on the desktop PC that contained political content including references to PSNI and MI5.

- VM Group can confirm copies of the 224 files were provided to Phoenix Law for review. Phoenix Law confirmed that the contents of the files do not appear to contain any material which is subject to legal professional privilege.

- VM Group identified a total of 26 articles that appear to have been written by Mrs Perry published online on various publications including Irish Republican News, the Pensive Quill, the Irish News and Belfast Media.

- VM Group noted that the content in 19 of the 26 articles was the same or similar to the content of files identified from the desktop PC review.

- VM Group believe that, based on the review of the desktop PC and published material online, it is evident that Mrs Perry engages in journalistic/political writing with a particular interest in political issues in Northern Ireland.

[35] Reliance is also placed by the defendant on a note found in her home, a Post-it type note, referring to two named individuals who were said to have been approached by the security services. One was said in the note to have been offered £20,000 while in respect of the other person it is indicated that all the relevant details can be provided by an individual who is named on the Post-it.

[36] The defendant also introduced in evidence a print-out which was in her home of an exchange of text messages in January 2018 involving an individual who was said to have been approached by the security services at an airport. That individual had been distressed and had visited the Saoradh office to report the approach. It was as a direct result of that episode that the defendant said she had written the piece on 17 January 2018 referred to above.

Analysis of the Evidence

[37] The defendant's case that she writes regularly as a commentator on political and security issues, taking a view which is different to the republican mainstream, is clearly made out. She is very critical of the police/security services and of Sinn Fein for its support for them. She believes or alleges that this is why she has had her home searched and has been prosecuted. If that was, in fact, the position, the charges would inevitably be dismissed.

[38] But is that actually what the prosecution alleges? It is not. The prosecution case relates only and specifically to the notes found in the perfume box in the bedroom. The Crown says, in effect, that those notes are entirely different in their nature and content from the materials referred to in the VM Group report, examples of which are set out above.

[39] The prosecution says that these notes can only be read and interpreted as a debrief or a review of the events which led to the seizure of weapons in 2015 at Ballymurphy. In addition, they are a debrief or review of those who were arrested in connection with the arms find and what they said under questioning by the police.

[40] The defendant said that the notes were left in her home anonymously, that most of them meant nothing to her but that she spent about a week copying them out in her own handwriting. She then destroyed the original notes.

[41] When asked why she had rewritten the notes on small pieces of tobacco paper, she replied that this had been done to help her make sense of them e.g. by moving the difference pieces around to see if, when placed in a different order, they made any more sense. In response to Mr Steer suggesting that this did not make sense because in some cases she had written on both sides of the tobacco paper, she claimed that was done out of necessity because she had run out of paper.

[42] The defendant's explanation for not having used the notes as the basis for a story as she had done in other cases which are referred to above was that there was nothing for her to use because she had no idea what the notes meant beyond the reference to "Big Eyes", no idea who the people referred to (by initials) were, and she had no permission from anyone to use the notes.

[43] For a number of reasons I do not believe the defendant's account. I do not believe that it might even possibly be a truthful account. In my judgment it is directly contradicted by all of the evidence including the following:

(i) In her defence statement at para (n) cited above, she stated she believed that any relevance or currency in the information contained in the notes had long since dissipated. The obvious meaning of that portion of the defence statement is that she knew well that the notes related to the arms find in 2015 and the conviction of Mr Nolan in 2017 but thought that the information was no longer of use or value. That is definitively not the case which she made in her oral evidence during which she said that she made "a bit of sense" of parts like "Big Eyes" but that it was otherwise meaningless.

(ii) Her description of rewriting the notes in the way and manner she claimed is simply not credible. That explanation is further undermined by her decision to keep the notes, a decision which makes no sense at all. It is also worthy of mention that none of this information was stored on her laptop unlike other pieces referred to above.

(iii) The notes were secreted in her home. It may be that the notes were not very well hidden, but it is undeniable that they were hidden.

(iv) She claimed in cross-examination that she made lots of other notes on tobacco paper, but none was found during the police search, nor were any produced in evidence at the trial.

(v) If the defendant had given oral evidence along the lines previewed in her defence statement, she would inevitably have been questioned about knowing a lot about the Kevin Nolan matters and why she thought there was

no longer any value in the notes. It seems to me that those questions would have been exceptionally difficult for her to answer. In my judgment, she gave a new and different account in order to avoid such questions. The new account is simply false.

[44] At no point in the trial was it suggested on behalf of the defendant that the notes do not carry the meaning attributed to them by the prosecution. The police were speaking from an informed position. In my judgment, the defendant was equally well informed. I do not believe that the notes were left anonymously in her home. On the contrary, I am satisfied beyond a reasonable doubt that the notes are in her handwriting because she made them as others spoke, discussed and reviewed how the weapons came to be found, whether someone was at fault, who might be a security risk, how individuals responded during police questioning etc.

[45] From this sort of record and scrutiny, people who continue to be committed to terrorism are assisted in committing or preparing further acts. For instance, they form a view or impression of who can be trusted in future planned activities. Alternatively, they can form a view on whether anyone should be punished for the loss of the weapons. Of course, any punishment would be an act of terrorism if it involved murder or a punishment beating/shooting or even a threat. In addition, terrorists could use the information gathered in order to develop a better understanding of how the security forces operate. That, in itself, contributes to further terrorist acts.

[46] When a direction of no case to answer was made, Mr Hutton submitted that the information contained in the notes lacked an essential ingredient because in 2018 when they were found it could not possibly be said that they might be useful to anyone planning or committing *future* acts of terrorism. And he emphasised that in this context section 1 of the Terrorism Act 2000 requires that the act must involve serious violence or damage to property rather than lesser acts such as fundraising or publicity. In my judgment the hidden notes kept by the defendant comfortably satisfy that test. To take just one example, terrorists need to know where they can store weapons safely before they are next used in an attack on so called legitimate targets. That is part of planning such attacks. Exploring the question of who can be trusted is an essential part of that planning.

[47] In this context it is not necessary that the defendant herself is involved in future acts of terrorism. It is sufficient that she has made or collected information which is likely to be useful to others committing or preparing such acts.

Adverse Inference

[48] Article 3 of the Criminal Evidence (NI) Order 1988 allows for an adverse inference to be drawn against a defendant in certain limited circumstances. In this case the prosecution has suggested that I should draw an adverse inference against the defendant because of her failure to disclose at interview, the defence which she

advanced at trial i.e. the defence that the notes were copies of notes left anonymously through her door by persons unknown and that she copied and kept them, notwithstanding that she did not understand what the notes meant or who the people referred to in them were. During the defendant's police questioning, the police referred briefly to her journalistic activities. The defendant expected, perhaps not unreasonably, that the police would return to that topic at a later point, but they did not do so. This is of no consequence because she acknowledged in direct evidence that, even had they done so, she would still have followed her solicitor's advice and not answered questions.

[49] In resisting any adverse inference being drawn it was submitted on behalf of the defendant that:

- She was not very well during interviews, being symptomatic of what was later confirmed to be multiple sclerosis.

- She was advised by her experienced solicitor to remain silent.

- The true question is whether she remained silent not because of the legal advice she received but because she had no satisfactory explanation to give.

- A jury should only consider drawing an adverse inference when they are sure that the defendant has no defence and hid behind the legal advice

[50] I have extreme difficulty in understanding why an inference should not be drawn against this defendant in the circumstances of this case. On her own case at trial, she is a journalist with a track record in whose home an individual might therefore leave information anonymously. That being so, she could reasonably have been expected to mention how they came to be in her possession when she was questioned. Instead, she withheld that assertion until she made a defence statement. Even then, she advanced a defence orally which was quite different from the written statement of her case.

[51] It would have taken only a few minutes for her, with her solicitor, to set out the so-called innocent way in which she came to be in possession of the notes which the police found secreted in her home. She did not do so. From her silence I draw an adverse inference that the defence which she later advanced is false. I am satisfied that the defendant has no defence and that, during police questioning, she hid behind the legal advice.

[52] For the record, I do not believe that in this case, in reaching my ultimate judgment, I need to rely on any adverse inference because I am so persuaded that the prosecution case has been proved beyond a reasonable doubt, but I draw such an inference in any event.

Conclusion

[53] In light of the findings set out above, I am satisfied beyond any doubt that the defendant is guilty on count 1 of collecting or making a record likely to be useful to a terrorist, contrary to section 58(1)(a) of the Terrorism Act 2000, in that on a date between 16 September 2015 and 21 February 2018, she collected or made a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism.

[54] Specifically, I find it proved that the defendant herself made the record rather than copying it from notes made by someone else and then left at her home. I also find it proved beyond a reasonable doubt that the information in the notes was likely to be useful to terrorists and that the defendant knew that to be the case.

[55] I further reject entirely the defence which has been advanced under ection 58(3) of the 2000 Act. That defence was that she had a reasonable excuse for her action or possession of the information. While I accept that the defendant has a record as a commentator and journalist, as is evident from the Saoradh website and from her laptop, these notes, which were neither on her laptop nor on any website, are of an entirely different and quite sinister nature. I do not believe that in respect of these notes, as opposed to other activities, she was working as a journalist. To the extent that the defendant raised a case that she is a journalist, I am satisfied that the prosecution has proved beyond a reasonable doubt that she was not acting as one in respect of her collecting or making these notes.

[56] In light of my finding of guilt on the first count, I make no finding in respect of the second count under section 58(1)(b). If, however, I am wrong in some respect in the first count, I record that I would have found the defendant guilty on the second count. She was undoubtedly in possession of the information as a result of the fact that she was holding the notes and those notes contained information of a kind likely to be useful to terrorists.