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Judgment: approved by the Court for handing down | *Delivered:* **20/01/12**

*(subject to editorial corrections)**

THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

-v-

MARK HADDOCK AND OTHERS

_____

GILLEN J

[1] At the end of the prosecution case, counsel on behalf of each of the defendants made an application that there was no case to answer on each of the counts in this indictment.

Charges

[2] There are fourteen accused on 37 counts on the indictment before me dealing with five different aspects of criminality. They are as follows.

In connection with the murder of Thomas English on 31 October 2000

Mark Haddock, Darren Stuart Moore, Alexander Thomas Wood, Jason Loughlin, John Bond, David Miller, Ronald Trevor Bowe, Samuel Jason Higgins and Philip Laffin have been charged with:

- On Count 1 the murder of Thomas English on 31 October 2000.
- On Count 2 offences contrary to Article 17 of the Firearms (Northern Ireland) Order 1981 with possession of firearms or ammunition with intent to endanger life.

Mark Haddock, John Bond, David Miller, Samuel Jason Higgins and Philip Laffin are jointly charged with:

- the offence of hijacking contrary to Section 2(1)(a) of the Criminal Justice Act 1975 on count 3.
- false imprisonment contrary to common law on Count 4.

- possession of a firearm with intent contrary to Article 19(1) of the Firearms (Northern Ireland) 1981 on the count 6.

Alexander Thomas Wood, Jason Loughlin and Ronald Bowe are charged with:

- grievous bodily harm contrary to Section 18 of the Offences Against the Person 1861 on Count 6.

Neil Pollock is charged with:

- possession of items intended for terrorist purposes contrary to Section 32(1) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 7.

- doing an act with intent to pervert the course of justice contrary to common law on Count 8.

William Hinds is charged with:

- assisting offenders contrary to Section 4(1) of the Criminal Law (Northern Ireland) 1967 on Count 9.

David Samuel McCrum is charged with:

- doing an act with intent to pervert the course of justice contrary to common law on Count 10.

John Bond is charged with:

- doing an act with intent to pervert the course of justice contrary to common law on Count 11.

In connection with an attack on Keith Caskey on 30 January 1996

Mark Haddock, Darren Stuart Moore, Alexander Thomas Wood, Jason Loughlin, John Bond, Mark Thompson, Philip Laffin and David Jason Smart are charged with:

- the offence of grievous bodily harm with intent contrary to Section 18 of the Offences Against the Person Act 1861 on Count 12.

In connection with an attack on Archibald Galway and William James Galway

Mark Haddock, Alexander Thomas Wood, John Bond, David Miller and Mark Thompson are charged with:

- the offence of grievous bodily harm with intent contrary to Section 18 of the Offences Against the Person Act 1861 on Count 13.
- common assault contrary to Section 47 of the Offences Against the Person Act 1861 on Count 14.
- kidnapping contrary to common law on Count 15.
- false imprisonment contrary to common law on Count 16.

In connection with an attack on Alan Webster on 19 December 1996

Mark Haddock, Darren Stuart Moore, Alexander Thomas Wood, John Bond, David Miller, David Jason Smart and Samuel Jason Higgins are charged with:

- wounding with intent to do grievous bodily harm contrary to Section 18 of the Offences Against the Person Act 1861 on Count 17.

In connection with belonging to a proscribed organisation namely the Ulster Volunteer Force.

Mark Haddock is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 18.
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 19.
- contrary to Section 11(1) Terrorism Act 2000 on Count 20.

Alexander Wood is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 21
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 22
- contrary to Section 11(1) of the Terrorism Act 2000 on Count 23.

Jason Loughlin is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 24.
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 25.
- contrary to Section 11(1) of the Terrorism Act 2000 on Count 26.

Darren Stuart Moore is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 27.
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 28.

John Bond is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 29.
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 30.

Samuel Jason Higgins is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 31.
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 32.

David Miller is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 33.
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 34.

Ronald Trevor Bowe is charged with such an offence:

- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 35.

Philip Laffin is charged with such an offence:

- contrary to Section 28(1)(a) of the Northern Ireland (Emergency Provisions) Act 1991 on Count 36.
- contrary to Section 30(1)(a) of the Northern Ireland (Emergency Provisions) Act 1996 on Count 37.

Legal principles governing the applications

[3] In instances where a judge sits with a jury the principles governing submissions of no case to answer are to be found in R v Galbraith 73. Cr. App. R. 124 ("Galbraith") and R v Shippey (1998) Crim. LR. 767 ("Shippey") as applied in R v Courtney (2007) NICA 6 and Chief Constable v Lo (2006) NICA3. See also R v P [2011] NIJB 225 and the helpful comments of Judge LCJ recently in R v F the Tines 25 July 2011 CA. In the case of Galbraith Lord Lane CJ described the principles in determining whether a direction of no case to answer should be made as follows:

> "How then should the judge approach a submission of 'no case'?-
>
> (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.
>
> (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence –
>
> (a) where the judge comes to the conclusion that the Crown's evidence taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case;
>
> (b) where however the Crown's evidence is such that its strength or weakness depends on the views to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then

> the judge should allow the matter to be tried by the jury."

[4] In R v William Courtney the Court of Appeal in Northern Ireland expressly adopted the approach followed in The Chief Constable of the PSNI v Lo when adapting these principles to the context of a non-jury trial. The following passages from Lo were approved:

> "(13) In our judgment the exercise on which a magistrate or judge sitting without a jury must embark in order to decide that the case should not be allowed to proceed involves precisely the same type of approach as that suggested by Lord Lane in the second limb of Galbraith but with the modification that the judge is not required to assess whether a properly directed jury could not properly convict on the evidence as it stood at the time that an application for a direction was made to him because, being in effect the jury, the judge can address that issue in terms of whether he could ever be convinced of the accused's guilt. Where there is evidence against the accused, the only basis on which a judge could stop the trial at the direction stage is where he had concluded that the evidence was so discredited or so intrinsically weak that it could not properly support a conviction. It is confined to those exceptional cases where the judge can say, as did Lord Lowry in Hassan, that there was no possibility of his being convinced to the requisite standard by the evidence given for the prosecution.
>
> (14) The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb of Galbraith. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is a tribunal of fact. It is important to note that a judge should not ask himself the question at the close of the prosecution case, 'Do I have a reasonable doubt?'. The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict."

[5] Turner J's wellknown admonition in Shippey's case that "taking the prosecution case at its highest "did not mean "taking out the plums and leaving the duff behind" was an extract from a decision on its own facts laying down no new principle of law. A judge should assess the evidence as a whole and if the witnesses upon whom the prosecution depend were self contradictory and out of reason and all common sense then such evidence was tenuous and suffered from inherent weakness.

[6] Mr Kelly QC who appeared on behalf of Loughlin with Mr Morgan submitted that at this stage I should invoke the principles set out by Lord Taylor in in R v Makanjuola (1995) 1 WLR 1348 where he summarised the relevant principles at p. 1351 as follows:

> "(1) Section 32(1)(*of the Criminal Justice and Public Order Act 1994*) abrogated the requirement to give a corroboration direction in respect of an alleged accomplice or a complainant of a sexual offence simply because a witness falls into one of those categories.
>
> (2) It is a matter for the judge's discretion what, if any warning, he considers it appropriate in respect of such a witness as indeed in respect of any other witness in whatever type of case. Whether he chooses to give a warning, and on what terms will depend on the circumstances of the case, the issues raised and the content and quality of the witness's evidence.
>
> (3) In some cases, it may be appropriate for the judge to warn the jury to exercise caution before acting upon the unsupported evidence of a witness. This will not be so simply because the witness is a complainant of a sexual offence nor would it would necessarily be so because the witness is alleged to be an accomplice. There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. An evidential basis does not include mere suggestion by cross-examining counsel.
>
> (4) If any question arises as to whether the judge should give a special warning in respect

> of a witness, it is desirable that the question be resolved by discussion with counsel in the absence of the jury before final speeches.
>
> (5) Where the judge decides to give some warning in respect of a witness, it will be appropriate to do so as part of the judge's review of the evidence and his comments as to how the jury should evaluate it rather than as a set piece legal direction.
>
> (6) Where some warning is required, it will be for the judge to decide the strength and terms of the warning. It does not have to be invested with the whole florid regime of the old corroboration rules.
>
> (7) It follows that we emphatically disagree with the tentative submission that if a judge does give a warning, he should give a full warning and should tell the jury what corroboration is in a technical sense and identify the evidence capable of being corroborative. Attempts to re-impose the straitjacket of the old corroboration rules are strongly to be deprecated.
>
> (8) Finally, this court will be disinclined to interfere with a trial judge's exercise of his discretion save in a case where that exercise is unreasonable in the Wednesbury sense."

As to the circumstances in which it may be appropriate for the judge to give a warning, in Makanjuola Lord Taylor said at page 135:

> "The judge will often consider that no special warning is required at all. Where, however the witness has been shown to be unreliable, he or she may consider it necessary to urge caution. In a more extreme case, if the witness is shown to have lied, to have made previous false complaints, or to bear the defendant some grudge, a stronger warning may be thought appropriate and the judge may suggest it would be wise to look for some supporting material before acting on the impugned

> witness's evidence. We stress that these observations are merely illustrative of some, not all, of the factors which judges may take into account in measuring where a witness stands in the scale of reliability and what response they should make at that level in their directions to the jury."

[7] The burden of his submission was that the extreme case postulated by Lord Taylor had created a situation in which the court, where it had determined that an accomplice had lied—irrespective of the lie-was now prohibited from allowing a case to a jury unless there was independent supporting evidence which the judge had to identify following the case of R v M B [2000] Crim L.R.181.

[8] I do not accept this contention. The purpose of Article 45 of the Criminal Justice (NI) Order 1996 (the equivalent of Criminal Justice and Public Order Act 1994 Section 32) was to abrogate the requirement whereby a full warning in the case of an accomplice giving evidence for the prosecution was necessary under the position at common law. There were a number of compelling reasons in favour of such reform. They included the fact that a full warning had been required irrespective of the particular circumstances of the case or the credibility of the particular accomplice or complainant. Moreover the highly technical rules relating to the meaning of corroboration had rendered the full warning complex and difficult to understand.

[9] The abrogation of the requirement for full warnings did not deprive the judge of his discretion to warn the jury to exercise caution whenever he considered it appropriate to do so, whether in respect of an accomplice or a complainant or any other witness. That was what Makanjuola made clear. Moreover, after Makanjuola, where the trial judge decides to direct the jury that "it would be wise to look for some supporting material", it is incumbent on the judge to identify any "independent supporting evidence", per the authority of Re B.

[10] Mr Kelly's submission would re-impose the straightjacket which the old common law requirements had imposed and in terms negate the abrogation of such requirement under the 1996 Order.

[11] The nature of any warning will depend upon the circumstances in each case. Lord Taylor emphasised that his observations were merely illustrations of some, not all, of the factors which judges may take into account in measuring where a witness stands in the scale of reliability and what response they should make at that level in their directions to the jury. The

Court of Appeal will be disinclined to interfere with a judge's exercise of his discretion save in a case where that exercise is unreasonable in the Wednesbury sense.

[12] Hence if there is evidence of the witness having told a lie, the judge is perfectly entitled to take into account the circumstances of that lie or the nature of any unreliability and tailor his warning accordingly. In many cases the judge may suggest it would be wise for some supporting material before acting on the impugned witness's evidence but in other cases he may not. Indeed in many cases the judge's warning may be predicated on findings which the jury have yet to make.

[13] Mr Kelly sought to invoke the analogy of the guidelines in R v Turnbull [1977] QB 224 where the Court of Appeal laid down rules to guide trial courts faced with contested identification evidence. I find this a false analogy when dealing with cases, as in this instance, where one is dealing with the much wider context of the judge's discretion to consider what, if any, warning he considers appropriate in respect of accomplices or complainants or any other witness in whatever type of case even in the extreme circumstance postulated by Lord Taylor. Of course once the judge has decided to direct the jury it would be wise to look for some supporting evidence it is incumbent on the judge to identify any independent supporting evidence.

[14] Accordingly I do not find the Makanjuola admonition particularly helpful at this stage. It constitutes guidelines for a jury couched in terms where a judge has obviously allowed a case to go before the jury. My task is as set out in paragraph 3 above. I am not considering whether I have a reasonable doubt at this time or what directions I shall give to a jury.

[15] I must look at all the evidence whether supportive of the Stewart brothers or otherwise and ask myself whether that evidence is not so weak or so discredited that it could not conceivably support a guilty verdict. I must be wary of trespassing on the role I may have to play if, in order to establish if I have a reasonable doubt as to guilt, I must make determinations of fact eg has the witness lied, if he has lied how significant are the lies, what is the extent of his unreliability and how significant is it in the context of the case and human experience.

[16] If I proceed then to the stage where I must consider if I have a reasonable doubt (similar to the role of the notional jury), that is when I would have to consider whether the various frailties in the evidence in that context would require me to give myself (or the notional jury) the Makanjuola warning. The judge does not need such a warning at that stage. His task is clear. On all the prosecution evidence, are the witnesses so lacking in

credibility and thus so unworthy of belief that I should reject it on the basis it could not conceivably support a guilty verdict.

[17] Since as a judge sitting alone, I will ultimately have to determine the outcome of this case both on fact and law, it is inappropriate at this stage that I should go into detail particularly on issues of credibility. I am satisfied that the approach to be adopted in non-jury cases is for the judge to give only a brief summary of reasons where he is refusing an application. He will give a fuller explanation in those cases where he is acceding to defence submissions and dismissing the case so that the public have a true access to justice and understand why such a step has been taken. In such instances however care should be taken not to trespass on issues of credibility or other matters which may still fall to be determined in the remainder of the case.

The Caskey Case—Count 12

Evidence

[18] The primary evidence on this count emanated from Robert Stewart and Keith Caskey.

[19] Robert Stewart described giving a "terrible beating" to Keith Caskey at the end of January 1996. He outlined the circumstances as follows:

- Caskey had done something "not morally acceptable" but he did not remember what that was.

- He was called to Wood's flat where there was a kangaroo court. He knew that he would get a kicking. The flat in Ballycraigy Gardens contained a large number of people present. He described in examination-in-chief himself being there, Loughlin, Alex Wood, definitely Haddock and definitely Moore but he was not 100% certain that Miller and Bond were there. He thought "maybe Philip Laffin" and "maybe D Smart but he was not 100% sure". Later in his cross-examination he still said that he was not 100% certain about Bond but was sure about Miller.

- Caskey was questioned about things that had been done. He was sitting beside Haddock with Haddock and Wood speaking to him. He was getting a kicking no matter what. He was told he would be given a few digs. The witness described getting bats. There could have been weapons in the flat but he could not remember getting any.

- Caskey was then taken from the flat by Haddock and Moore to the shops where Wood, the witness and Loughlin were waiting. The witness had a balaclava, hood and a bat or some weapon. He

described Wood having the hammer, Jason Loughlin had something else.

- He indicated that Haddock and the Mount Vernon people were simply there to "okay it". Those who did the beating were from New Mossley.

- The witness said that he broke Caskey's leg/arm. He thinks he was hit on the head with a hammer by Wood. It was a frenzied beating and was too much. He said the lane had been renamed "Toots Lane" because he got it so bad.

- Robert Stewart was interviewed about this on three occasions namely June 2009, October 2009 and 5 November 2009 and he made a statement about the matter in April 2010. It was the police who brought the matter up initially it having been overlooked.

[20] I have decided to acquit all the accused on the charges surrounding the attack on Mr Caskey on the grounds that the evidence on these charges at the end of the prosecution case is so weak that I am convinced that there are no circumstances in which I could convict for the following reasons.

[21] First, as the prosecution properly concede, there is clearly no case to be met on these charges re:

- Miller in circumstances where Caskey never mentions him and Stewart's narrative reflects a recurring uncertainty as to his presence.

- Bond where uncertainty about his presence again courses through the evidence of Robert Stewart and Caskey does not name him.

- Thompson who is not placed at the relevant scene by either witness in evidence.

[22] So far as the remaining accused are concerned, and without making any finding on the overall credibility or trustworthiness of Robert Stewart in this or any other of the charges before me, I find that the passage of time has had too great an effect on Robert Stewart's memory of this incident in order to permit me to place any or sufficient reliance on his account even at this stage.

[23] This offence allegedly occurred in 1996. Robert Stewart was first asked to recall this incident in an interview of 2 June 2009 i.e. over 13 years since the incident occurred. I must remind myself that the passage of time is bound to affect memory. In particular it affects the inability of a witness to recall detail. This must not interfere with the fact that the burden of proof remains on the

prosecution throughout the trial. I must also bear in mind that specific lines of enquiry and cross examination of witnesses may have been closed to the defence as a result of the passage of time. Thus the exigencies of delay need to be carefully considered by me even at this stage of the trial and accordingly I have done so.

[24] I am aware even at this stage of the trial that the evidence of Robert Stewart in regard to this incident may well be true in some, or even large measure but false in its implication of one or more of the accused. The burden lies on the prosecution to prove, rather than the defence to disprove, the reliability of this accomplice evidence. It has to be remembered that, on his own admission, he been involved in a plethora of terrorist offences many of which may have similar hallmarks to this incident. The danger of confusing similar incidents with similar personnel is very much present in my mind in this instance given the passage of time.

[25] It is an easy assumption to make that memory equals events plus time. But it must be obvious to all that time does not necessarily act as a fixative but at times as a solvent. Even doing the best that this witness could, the passage of time and the number of incidents that he may have been involved in could have, and in my view has, flawed and confused his recollection of individual circumstances.

[26] The evidence about this incident is dripping with such dangers, including the following:

- At the outset of the first interview on this crime when he was discussing this incident it seemed as if Robert Stewart may have been confusing two incidents when he said "the last time when I was over I told you about another one that was on the lane, that's maybe what's confusing me and I haven't mentioned the two of them … but one was as bad as the other".

- Revealingly in an interview of October 2009 in the Caskey debriefing the police again asked Robert Stewart about the arrangements for the beating of the victim and the following exchange occurred:

> "And can you remember any of the arrangements being made, you know where, where this guy is being taken to, where it is going to happen, had they a plan.
>
> Stewart – There is no, there wouldn't be much planning necessary you know what I mean, sure where we are, it's the lane as I say is only across … I mean see any as I say all these

> kneecappings and beatings and all and even with the taxi for the murder it all went off in that area."

- What concerned me about this exchange was that the regularity of use of that area for this kind of offence could lead to Robert Stewart to elide the various crimes and unwittingly become confused about the differing events and personnel involved in each incident.

- Again in an interview in October 2009 on the Caskey incident when speaking of what would have happened to the balaclavas and weapons after the incident he said "what I am saying is exactly what would have happened cause it happened maybe on other occasions".

- When the police in an interview of June 2009 informed him that Caskey had claimed that Haddock was there as well the following exchange occurred between the police and Stewart:

> "Police – And he said that Haddock was there as well, would you have any recollection of that?
>
> Stewart – He could have been there, see at that time as I say we were we were young at that time and he would have come up to near everything you know to get us at the start. … To get it sort of started if you want to put it like that you know what I mean. … He would have come up him and there was always him and Moore and Reggie … and Bonzo.
>
> Police – Well he said that throughout the attack he can recall Haddock shouting instructions.
>
> Stewart – That's probably quite right.
>
> Police – You know to do what or whatever.
>
> Stewart – I wouldn't say he's lying cos I don't remember. … I honestly don't remember, but I just remember that I was, I took part in it like.

[27] I remind myself that in evidence before me when describing the scene in the community house in Mount Vernon on Sunday prior to the murder of Thomas English he had said "There were quite a few guys like Haddock, Moore, Bonzo and Miller, the usual crowd. They were always together".

There was police evidence of various sightings of several of these accused regularly being in each other's company.

[28] This has served to further trigger my concern that in the instant casehis memory has clearly been flawed at least in the early stages of his interviews by the passage of time as to central figures. His recollection has been punctuated by uncertainty throughout the interviews. Thus there is a danger that unwittingly he may be placing people in the frame on the basis that they have been present at similar incidents and he is unable to effectively distinguish between one incident and another of that genre of beatings.

[29] In general terms Robert Stewart made copious references to the difficulties in recollection occasioned by the passage of time in this incident. In the first place, he had not recalled it during the litany of offences that he was admitting to the police. It was only when they drew it to his attention on 2 June 2009 that he claimed to remember his and the involvement of others in the crime.

[30] The incident was discussed in debriefing interviews on 2 June 2009 ("Caskey 1") and on 15 October 2009 ("Caskey 2"). In outlining his recollection in Caskey 1 his recollection is punctuated throughout with references to "I do not have a clear memory of what happened in the flat", "I do not have a great memory for the flat", "The whole thing is patchy in my mind", and "I was hitting the razzle at the time", "it might have been X", "possible X could have been there too", "Fuck it's a long time ago. I just remember I was there".

[31] He readily acknowledged to police that Caskey's recollection is "probably quite right, he's probably got a clearer recollection of it than I have", "I am not exactly too sure who was there, its donkeys ago you know". As I have already indicated indeed at the outset it seemed as if he may have been confusing two incidents.

[32] Similarly in Caskey 2 his recollection, although containing more particulars, resonates with the same uncertainty with phrases such as "the whole thing is very patchy in my mind", "I don't have a good memory for the flat", "as I say it's too long ago now at that time I was taking a lot of fucking Es and more … would have been Es and drink especially over Christmas".

[33] In the course of a searching and productive cross-examination by Mr Adair QC before me, Mr Stewart did accept that his memory of the Caskey incident was maybe "not as clear as other things, because it is a long time ago, and I was taking a lot of drugs all around that time but its best recollection I have of it". In that cross-examination Stewart accepted that drink and drugs did have an effect on his memory.

[34] Turning to particular examples of uncertainty involving specific personnel a troubling observation was that when speaking of the incident in June 2009, he canvassed that three men (whom I shall anonymise) namely T, M and G were involved whereas now he is satisfied that they had nothing to do with the incident and he was erroneous in raising their names. "Well there was me, Alex Wood, Jason Loughlin, I think [T] or I think he brought him to the place but he never hit him … there was definitely me, Alex Wood, Jason Loughlin, might have been [G]. At that time I'd say there wasn't I don't think Ian was there. I am not exactly too sure who was there it's donkeys ago you know" adding later:

> "There would have been me, [M] [G], anyone I have said there. I am not too sure about David Smart. I can't exactly remember who was there it was that long ago but I was definitely there and Wood was definitely there and I think Loughlin was definitely there."

[35] In this interview at this stage he failed to mention people whom he subsequently said were there namely Haddock, Moore, Bond and Reggie Miller. This was notwithstanding the fact that the police had explicitly put to him that Caskey had said that he was brought in a car with Haddock driving and Moore and Wood in the car. I was surprised that this did not jog his memory even at this early stage about these three men having been there.

[36] He has expressed a lack of certainty in interviews of June 2009, October 2009 and indeed before me in September 2011 about the presence of Miller, Bond, Laffin and Smart. In June 2009 he expressed doubts about Higgins.

[37] Whilst in Caskey 1 and before me in September 2011 he asserted certainty about Loughlin, he had experienced similar doubts about him in October 2009 when interviewed by the police.

[38] Even though I place no blame on the police for this, there is a danger such was the vagueness initially of his recollection that the information given to him by the police has subconsciously fed his recollections to the point where he may have imagined – or is now genuinely convinced – that certain people were there whereas they may not have been. Illustrations of this include:

- In Caskey 1 throughout the entire interview, he made no mention of Caskey's arrival at the flat. His only recollection appeared to be what happened to Caskey during the beating in the laneway. Indeed when the police put to him that Caskey would say that he was taken up to the flat where there was a crowd of people numbering about 14 inside and he saw balaclavas, gloves, baseball bats, pick axe handles – and

the police ask Stewart if he remembered that his reply was "its, as I say it, probably".

- However in Caskey 2, having been told about this by the police in Caskey 1, he was able to describe such a meeting in the flat albeit he said he did not have a clear memory of what happened at the flat.

- The police then indicated to him in Caskey 1 that the victim had allegedly recognised Jason Loughlin, Smart, Mark Thompson, himself and Bond. In relation to Bond he said "That's very possible". In relation to Laffin he said "It is very possible".

- When the police in Caskey 1 informed him that Caskey claimed Haddock was there also, as indicated earlier in this judgment, he expressed a lack of certainty about his presence.

[39] He informed police in Caskey 2 that after the questioning of Caskey, whilst he did not have a clear memory, he would "probably have been driven by Haddock to the top of the lane" where Stewart et al were waiting. He betrayed a readiness to assume events that happened – a readiness revealed again in his evidence before me – which once again undermined my confidence in his real recollection of what had happened. The following exchange occurred:

> "Police – So after questioning the flat, you guys are getting gathered up, yourself, Wood and Loughlin with weapons and with balaclavas and gloves.
>
> Stewart – As soon as Haddock had left with them to drive him round. He drove down Ballycraigy Park, down past the Presbyterian Church, out the top of the estate, along the Ballyclare Road, turned on the roundabout onto the Manse Road and then halfway down, just at the stop, start of the Manse Road you turn into the New Mossley in the lane. He can be dropped off at the entry there and told to walk up the lane.
>
> Police – And Haddock, Haddock's in the car with Darren Moore and Reggie Miller.
>
> Stewart – Yea."

[40] It emerged in cross examination that this was entirely speculation or assumption on his part since he had neither seen the car nor the route that they had taken. Whilst this is a trap into which many people fall when trying to remember events a long time ago my fear was that this was another instance where unconsciously perhaps Stewart was introducing into his hazy recollection of this incident norms of behaviour which had occurred on other occasions. Describing in detail the route, however logical that route may have been, that he had not observed being used again gave me cause for concern as to the reliability of his recollection overall of this incident. Indeed it seemed extraordinary that this lengthy car drive would have occurred at all when he could simply have been walked a matter of yards to the scene of the beating.

[41] I observe at this stage that his evidence about Moore's involvement was clouded in uncertainty in other respects. Robert Stewart claimed to remember in evidence Moore being in the flat but could not remember him doing or saying anything (other than asserting he drove the car) or what he was wearing.

[42] He failed to mention Moore initially in the interview when it was first raised by the police (he having forgotten about this crime) in June 2009. Robert Stewart's reason for this was because he was thinking only of the beating at that stage and this did not include Moore. He was trying to remember something years ago and in this first interview he was doing the best he could to recollect as he went along.

[43] However in the course of his evidence at one stage he said "I am 99% sure he was there and drove the car".

[44] So far as Smart was concerned the height of the case that Robert Stewart made against Smart was that he could not be sure that he was in the flat when he made his statement on 20 April 2010 and his evidence is now that maybe Smart was there but he was not 100% certain.

[45] In the interview of 5 November 2009 he said that possibly Smart might have been involved or been in the flat at 22 Ballycraigy Gardens when Caskey was there.

[46] In the statement he signed on 20 April 2010 he again said that possibly Smart was in the flat during the court martial kangaroo court but could not be sure. "Maybe David Smart, I am not 100% sure was there". He accepted in cross-examination from Mr Barlow that he was "simply not sure whether or not David Smart was inside that flat". He definitely was not there when the beating was inflicted on Mr Caskey.

[47] I have already touched on his uncertainty before me as to the presence of Miller and Bond and in cross-examination by Mr Macdonald on behalf of Miller he conceded that he was not really sure if Miller was there at all because it was now 15 years since the incident happened. He told counsel for Bond Mr Berry QC that he could not remember Bond there now because there has been "that much".

[48] I fully understood Mr Stewart's assertions that when this was first sprung on him by police in the interview of 2 June 2009 all the details may not have come back to him and that as time has passed his recollections have been repaired. However the uncertainties punctuating his recollections and the stark differences that emerged between his various recollections have been so great in this instance that I could not conceive of me ever being satisfied as to the guilt of any of the accused in this case to the requisite standard including those for whom he now proclaims certainty.

[49] Mr Caskey gave evidence before me. In the course of his evidence in chief he made the following points about this incident:

- He recalled a beating on 31 January 1996 when he had been picked up in a car on the Carnmoney Road by Woods, Haddock and Moore with Haddock driving the car.

- He knew that he was being picked up for a punishment beating having fallen out with the UVF in the course of a fight with Jason Loughlin. He had spoken on the telephone to Mark Haddock who had told him to arrange a meeting with the UVF in order for him to get "a few slaps and kicks".

- He was taken to a flat which he believed was in Ballycraigy. At the flat he saw at the end of a hallway a living room with balaclavas, pick axes, baseball bats and walkie talkie radios.

- There were 12 to 14 people in the living room and he recognised Philip Laffin and David Smart as well as Robert Stewart with whom he used to work in a butcher's shop in Glengormley. He claimed to have known Laffin for about 2 to 3 years.

- Wood was giving the orders and told him he was to be taken up an alleyway, to have a pillow case over his head and then to be beaten.

- He was taken behind some flats by Wood but could not see who the other men were as they were wearing balaclavas.

- He was told to put the pillow case over his head and then he received "an almighty hammering". He assumed it was with pick

axe handles and baseball bats. People were calling him different names and he heard a couple of people being sick.

- The only voice he heard at the end was that which he took to be Haddock who told him and he was going to take the pillow case off but that he was not to open his eyes until they had all gone. He did open his eyes and Haddock hit him with a hammer.

- He did not remember anything else until a lady with a dog found him and an ambulance was summoned and he was taken to Whiteabbey Hospital.

- After the incident he recalled speaking to one of the miscreants in prison who told him that it should not have gone so far as it did.

- After the incident he was in a wheelchair for some weeks and had injuries to his arm, legs and head.

[50] In cross examination, however, Mr Caskey asserted that these words had been put into a statement by police and he had signed it. I found this to be an unlikely scenario given that the police had spoken to him in April 2009 and Stewart had not given his account until June 2009. Where did the facts then come from? He declared that he never wanted to make these allegations and they would not have been made had the police in 2009 not made the statement for him which he signed. He claimed he had been "trying to get out of this for years".

[51] He recognised that in an entry from a police complaints book date 30 January 1996, it recorded simply that –

> "Walking through forest at rear of Manse Rise confronted by five males, assaulted with baseball bats".

[52] He asserted that what he had just told the court had been wrong and that the entry in the complaints book was more in accord with the history of what happened. Thereafter in cross examination he claimed that he did not recall Haddock, Moore, Wood, Smartt, Laffin, Loughlin or any of the others being there.

[53] Mr Kerr QC on behalf of the prosecution then made an application for Caskey to be treated as a hostile witness to which I acceded. (See my judgment on this matter). This was on the basis that Caskey had made a statement to police in 2009 which implicated Wood, Haddock, Moore, Laffin and Smart in a similar way to that of his evidence before me.

[54] It is right to say, however, that in another statement of 24 August 2010 made by him to Detective Constable Davis he referred to the 2009 statement made to the historical investigation team when he was at Bible Study College in Wales as follows –

> "They wrote out a statement for me detailing what had happened to me. They sort of knew more than me about what happened and refreshed my memory on certain things. They had statements from two brother who had told them about their involvement in my assault . . . When I made the statement and signed it I believed it to be true and they had told me it was true. I had forgotten a lot of what had happened to me and they sort of jogged my memory about things. I still can't fully remember what happened to me as I have a drug and alcohol addiction and have tried to forget about what happened as it was so traumatic and has ruined my life . . . I now feel that I do not wish to co-operate with the investigation or any court proceedings. I have a lot of family living in Northern Ireland and in the Newtownabbey area and I am frightened for their safety if I am asked to give evidence in court. I am also fearful of my own safety if I return to Northern Ireland."

[55] When cross examined by Mr Kerr, with one or two small variations, he accepted that all the references he had made to Wood, Haddock, and Moore. Laffin and Smart were all true.

[56] However, upon being cross examined again by defence counsel, he once more completely reversed himself making the following points –

- He was unsure of what had happened to him during this incident and, in particular, he was unsure about his reliability in relation to any of the allegations against Haddock or any of the other accused.

- He freely admitted that he was an alcoholic and now a drug addict and had been so over a number of years. He recognised and accepted that it had affected his ability to remember incidents. In 1996 he had been drinking very heavily at that time and taking a wide variety of drugs including cannabis, e-tablets, speed, acid and heroin within 3 weeks of the assault upon him.

- He asserted that when the police had come to see him in 2009, they had given him £50 after he had made a statement and allegedly asserted

that they were going to put these men "behind bars as they were animals". He alleged that he was given £50 on a further occasion by the Historical Enquiries Team in the presence of his mentor from the church.

- He stressed that he was not reliable given his current consumption of drink and drugs adding "If they go down for my evidence, it may not be true".

- He had been a petty criminal for a long time since the age of 14 and had a very long record of offences, including many of dishonesty, between 1987 and 2005.

- His statements had been entirely the wording of events written out by the police in the first statement. In the second statement he had telephoned Detective Constable Davis and told her what had happened.

- He stressed that he did not have any memory of the assault as he sat in the witness box before me. He recognised that this incident could have become mixed up with others in which he had been involved in punishment beatings.

[57] It may well be that the fears that he expressed in his statement of 2010 drive the real motivation behind his changes in evidence before me and from his statements. However, given his extensive criminal record, his drug and alcohol addiction which may well have affected his memory, and his contradictory assertions before me I could not conceivably arrive at a point where I considered his evidence sufficiently credible to constitute appropriate supportive evidence for Robert Stewart on this Caskey incident.

[58] Mr Kerr QC sought to rely on supportive evidence arising from convictions of Haddock and what he alleged were untruths told by Wood and Laffin to interviewing police. I am not satisfied that this evidence is sufficient to deflect me form the conclusion to which I have arrived on the state of the evidence now before me on this charge.

[59] I therefore have come to the conclusion that there is too much uncertainty surrounding this incident that had occurred in 1996. The evidence is so weak and discredited that it could not conceivably support a guilty verdict.

The Webster Incident

The Facts

[60] Robert Stewart described an incident in December 1996 in Ballycraigy Park, New Mossley making the following points:

- Alan Webster, who lived in flats near to where the witness lived with his girlfriend, held a noisy all night party. At about 4.00 am in the morning, at a time when his girlfriend was pregnant, it was very noisy. Upon Stewart complaining, Webster agreed to lower the music but another fellow came out and grabbed the witness saying something like "fuck the UVF".

- Stewart got in contact with Alex Wood who lived close by and believed he contacted Haddock possibly on the phone.

- The next day Haddock turned up with a car load of men who he identified as Reggie Miller, David Miller (not one of the accused), John Bond and Darren Moore. In the boot of the car there were hammers, baseball bats and gloves. Haddock opened the boot and asked the witness what he wanted to do about it. The witness responded that he could not live beside that with his girlfriend pregnant. Haddock then said "right come on" with bats and hammers and sledge hammers going to Webster's flat. There were about ten in all.

- The witness said that there was himself, his brother, Alex Wood, Small and he was not 100% certain about Sammy Agnew. David Miller sledge hammered the door down and they went into the flat. Webster's brother was there below the flat.

- The men wrecked the flat breaking the TV and windows etc. Webster was shouting up that he was in the UVF and it was his brother who owned the flat. The men then went down to the garden area. Moore or Haddock said "What did you say, fuck the UVF?". Webster's brother was then hit with the sledge hammer. The witness thought it was Haddock or Moore who did this. They then walked into Ballycraigy Park.

[61] Ian Stewart in his evidence about this claimed as follows:

- That Mr Webster had been selling cheap vodka and had not had the approval of the UVF in the area.

- He recalled the noisy party and his brother asking for the music to be lowered.

- However the people in the party came into the street to beat him up and chased him calling "black necked bastards" which apparently is a name for members of the UVF.

- They did get in touch with Alex Wood and told him what had happened. The next morning the party was still in being. Alex Wood came up and told them that he would get in touch in Haddock and get the matter sorted out.

- Agnew and Smart arrived.

- About 11.00 am Haddock arrived in his BMW. He was with Moore, Miller, David Miller and John Bond who had just been to a funeral, they being dressed in suits and ties.

- His brother, Agnew, Wood and Smart went out to meet the people in the car. Haddock opened the boot which was full of sledgehammers and baseball bats. He started giving out baseball bats, hammers and sledgehammers. Most people got baseball bats. David Miller (not Reggie Miller) had a sledgehammer and Haddock had a baseball bat. He said "Kick the shite out of these". They had no masks.

- They then proceeded to the flat where Davy Miller put the door in, and started beating everyone up in the flat. There were at least 20 people in the flat. Some started jumping out over the balcony. A large television was smashed.

- The witness gave evidence that he thought the Websters' brother had been hit by Mark Haddock and Wood with baseball bats.

- When everyone tried to leave they went downstairs and got some of the others. He recalled himself and Moore starting to stamp on the head and body of a man who was on the ground. Moore had said "What did you say, fuck the UVF". Agnew, Smart, Wood and Haddock had another person in the muddy field beating him on the leg with a sledgehammer causing him to scream. It was a frenzied attack. Haddock then said they had better stop as the police would be coming.

[62] The three Websters and James Lovett refused to give evidence on this matter though they were called to the witness box and sworn. Save for the statement of James Lovett and a small extract from John Webster's statement I refused to admit their statements in evidence (see judgment).

[63] James Lovett's statement was to the effect that he was in the flat when the incident occurred but had no information as to the miscreants. He recalled seeing Alan Webster after the incident obviously injured.

[64] John Webster had not identified Reggie Miller as being involved in the attack on Alan Webster but rather another Miller namely an albino man also named Miller.

[65] This incident occurred in 1996 and so the general points which I have made in relation to the Caskey case about the vicissitudes of memory through the sweep of time at paragraphs 21-25 apply equally in this case.

[66] For ease of reference I repeat what I have said at paragraph 22. I must bear in mind even at this stage of the trial that the evidence of Robert Stewart and Ian Stewart in regard to this incident may well be true in some, or even large measure but false in its implication of one or more of the accused. The burden lies on the prosecution to prove, rather than the defence to disprove, the reliability of this accomplice evidence. It has to be remembered that, on their own admission, they have been involved in a plethora of terrorist offences many of which may have similar hallmarks to this incident. The danger of confusing similar incidents with similar personnel was therefore a consideration in a case such as this especially when it has occurred so long ago.

[67] That danger crystallised in this incident because the unchallenged evidence, led by the prosecution, is that at this time Bond was in prison ie between 1 October 1996 and 30 December 1996.

[68] A fundamental problem with the prosecution evidence on the Webster incident therefore is that throughout the police interviews and in their evidence Robert Stewart and Ian Stewart put Bond as one of the 5 people who drew up in the car and participated in the assault.

[69] In his interview of 28 October 2008 Robert Stewart said:

> "I contacted Alex Wood who rang Mark Haddock. Haddock, Darren Moore, David Miller, David Reggie Miller and John Bond, I think came up."

[70] In his statement of 5 November 2009 he said:

> "I have a clear memory of them coming up. Reggie Miller, Mark Haddock, Darren Moore and John Bond arrived up in a car. They all had suits on as they had been at a child's funeral."

[71] Robert Stewart accepted in cross examination that he could have confused Bond with someone else and that there were either 4 or 5 men in the car in suits. In answer to me he said he "probably believed he was there until I was informed he was in jail".

[72] Ian Stewart was even more adamant that Bond was there. He remained wedded to this belief throughout his cross examinations, unmoved in any respect by the independent evidence suggesting Bond was in prison at the time.

[73] I observe that this was not the only occasion in this incident when Ian Stewart erroneously identified a person as being present who clearly was not. In an interview of 18 2 09 he said that Haddock arrives with Reggie, Moore, Bond, Davy Miller and a man called Stocky arrived. I noted that Stocky according to his brother Robert was the father of the boy who had been the subject of the funeral they had been attending. Initially in this interview Ian had named 10 people including Stocky but left Agnew out. Shortly after he gave the names again including Stocky but adding Agnew"was there as well ".

[74] The Bond error alone immediately creates the real danger that such is their flawed memory of this event through the passage of time that they could both conceivably implicate another innocent person. This crucial matter was in itself sufficient to make me doubt whether I could conceivably convict the accused because of the risk of a miscarriage of justice. However other evidence only served to fuel this concern.

[75] On 18 February 2009 Ian Stewart claimed himself and Moore had Michael Webster on the ground beating him with a baseball bat and were stamping on his head. However the evidence of a police officer at the scene was that Michael Webster had approached him to report the incident, summoned his presence immediately after it occurred and was uninjured.

[76] Ian Stewart had described Miller, Moore and Haddock battering a Webster – I believe they were referring to Alan Webster - Miller held him whilst Haddock battered his legs with a sledgehammer so much that they were sinking into the ground.]. He was very close at the time. However the medical records before me from Dr McConkey an Accident and Emergency doctor who attended on Alan Webster immediately after this incident describe an open wound on the forehead and contusion with bruised ribs and rib fracture i.e. no evidence to support beating about legs as described.

[77] It is clear that the alleged attack on Michael Webster appears to be yet another aspect of this case where either it is an entirely false memory on the part of the Stewarts or the memory is so distorted that it fundamentally challenges the reliability of the whole recollection. When coupled with the

Bond incident I was compelled to the view that the evidence was so weak or so discredited that it could not conceivably support a guilty verdict.

[78] The remaining unsatisfactory aspects of this case were such that had they stood alone—without the Bond and Webster errors - I might have been persuaded to refuse a direction on the basis that I should consider them in my role as a notional juror. However given the context of these errors they took on a different hue and served to add further weight to my decision to accede to the defence application. I can mention some of them in short compass:

- I found the evidence of Robert Stewart in relation to Smart's involvement in the Webster incident to be too vague and uncertain throughout his interviews and evidence before me to form any weight in ascertaining his guilt or innocence. In evidence on 7 September 2011 he said of Smart that he had something in his memory but "it is vague and it wouldn't be enough to say yes for definite he was there".

- Although Ian Stewart was adamant before me that Smart had been there this had not always been his stance. In an interview of 18 February 2009 he said "and I think Davy Smart was there "at the arrival group before the funeral group arrived and later that he "thought "he had been engaged in one of the attacks outside the flat, reservation which found their way into the initial police draft of his statement which overnight he had amended to suggest certainty.

- Robert Stewart exhibited similar uncertainties about Higgins. He mentioned the attack on Webster in two interviews on 28 October 2008 and 14 October 2009 but made no mention of Higgins. On 5 November 2009 he made a statement about the incident and again did not include Higgins. However in his statement to the court on 7 September 2011 he said Higgins "I think Sammy Agnew was there but I am not sure**".**

- Both Stewarts at different moments in the attack outside the flat had Moore changing roles attacking different people in varying ways.

- Ian Stewart claimed to remember sirens and the presence of an ambulance arriving after the attack finished but this was contrary the evidence of Constable Brown who came on the scene immediately afterwards.

- Ian Stewart claimed that approximately 4 other people had been badly beaten outside of the flat but there was no evidence of this from Constable Brown when he came on the scene.

[79] In conclusion the evidence in this Webster case is so thoroughly unsatisfactory that I am satisfied the test set out in paragraph 3 et seq above is met and I accede to the defence application and dismiss the charge set out in count 17 against all accused.

[80] There is no evidence against Bond on count 11 and I dismiss that charge.

[81] Turning to all the remaining counts I recognise that as a judge sitting alone I must take into account those parts of the evidence in the Caskey and Webster cases relevant to the remaining charges particularly on credibility and reliability. I must also approach with some caution the evidence of the primary witnesses in the remaining charges in so far as that evidence may have manifested weaknesses which include for example instances of:

- Lying.

- Bad character, their medical condition and history and drug and alcohol abuse.

Potential unreliability in areas such as:-

- Why they handed themselves in.

- A confusion of crimes committed.

- A confusion of participants.

- A confusion of roles and words imposed on alleged participants with attendant embellishment.

- Collusion.

- Inconsistency and contradiction with one another and with independent evidence.

- Their demeanour.

[82] Nonetheless much depends on my assessment of their reliability and overall truthfulness on the main issues which make up the charges set in the context of the vicissitudes of memory over the sweep of time.

[83] I repeat what I have said at paragraph 14 of this judgment namely that since as a judge sitting alone, I will ultimately have to determine the outcome of this case both on fact and law, it is inappropriate at this stage that I should go into detail particularly on issues of credibility. I am satisfied that the approach to be adopted in non-jury cases is for the judge to give only a brief summary of reasons where he is refusing an application.

[84] I do not propose at this stage therefore to ask myself if I have a reasonable doubt as the guilt of the accused on the counts before me. Asking myself the question whether I am convinced that there are no circumstances in which I could properly convict and recognising that I can only reach that conclusion where the evidence has been so weak or so discredited that it could not conceivably support a guilty verdict I have concluded that the credibility of the witnesses and the state of the evidence is not in such a state at this stage in relation to the remaining charges and accordingly I reject the remaining applications in these instances. At the conclusion of the trial if the need arises I shall dilate further on this reasoning.

[85]For the removal of doubt I confirm that I refuse the applications in the case of Pollock also on counts 7 and 8 as amended. As far as count 7 is concerned it will be a matter for my later consideration whether the issue of duress has been raised and in so far as it may have been at this time (which I have not yet determined) I am not satisfied at this stage that the prosecution will be unable to rebut it.