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*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **18/2/11**

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

v.

TERENCE GERARD McGEOUGH and VINCENT McANESPIE

STEPHENS J

Introduction

- [1] Terence Gerard McGeough is charged with four offences
- (a) On count 1 of the attempted murder of Samuel John Brush on 13 June 1981
 - (b) On count 2 of possession of two firearms namely a Webley Mark VI revolver and a Colt revolver and ammunition on 13 June 1981 with intent contrary to Article 17 of the Firearms (Northern Ireland) Order 1981.
 - (c) On count 3 of membership of the Irish Republican Army between 1 January 1975 and 1 June 1978 a proscribed organisation contrary to Section 19 (1) of the Northern Ireland (Emergency Provisions) Act 1973
 - (d) On count 4 of membership of the Irish Republican Army between 31 May 1978 and 14 June 1981, a proscribed organisation contrary to Section 19 (1) of the Northern Ireland (Emergency Provisions) Act 1978.
- [2] Vincent McAnespie is charged with three offences -
- (a) On count 5 possession of two firearms namely a Webley Mark VI revolver and a Colt revolver and ammunition on 13 June 1981 with intent contrary to Article 17 of the

Firearms (Northern Ireland) Order 1981.

- (b) On count 6 possession of two firearms namely a Webley Mark VI revolver and a Colt revolver and ammunition on 13 June 1981 in suspicious circumstances contrary to Article 23 of the Firearms (Northern Ireland) Order 1981.
- (c) On count 7 assisting an offender, namely Terence Gerard McGeough, contrary to Section 4(1) of the Criminal Law Act (Northern Ireland) 1967.

Directions

[3] This is a case which I am trying without a jury and before embarking on an analysis of the evidence I expressly remind myself in relation to a number of matters.

[4] *Hearsay evidence.* Some of the evidence against Terence Gerard McGeough and all of the evidence against Vincent McAnespie is hearsay evidence contained in witness statements. There has been no opportunity for the defendants to challenge those statements. I therefore warn myself of the dangers of such evidence and remind myself that the weight which I attach to the evidence contained in those statements would be less than if it were oral testimony subjected to cross examination, see *R v. Stephen Leslie Brown* [2009] NICC 11 at paragraphs [26], [27], [37] and [38]. I also set out two further passages in relation to hearsay evidence.

[5] At paragraph 21(4) of *Grant v. The Queen* [2006] 2 WLR 835 Lord Bingham stated -

“(4) The trial judge must give the jury a careful direction on the correct approach to hearsay evidence. The importance of such a direction has often been highlighted: see, for example, *Scott v. The Queen* [1989] AC 1242, 1259 and *Henriques v The Queen* [1991] 1 WLR 242, 247. It is not correct to say that a statement admitted under section 31D is not evidence, since it is. It is necessary to remind the jury, however obvious it may be to them, that such a statement has not been verified on oath nor the author tested by cross-examination. But the direction should not stop there: the judge should point out the potential risk of relying on a statement by a person whom the jury have not been able to assess and who has not been tested by cross-examination, and should invite the jury to scrutinise the evidence with particular care. It

is proper, but not perhaps very helpful, to direct the jury to give the statement such weight as they think fit: presented with an apparently plausible statement, undented by cross-examination, by an author whose reliability and honesty the jury have no extraneous reason to doubt, the jury may well be inclined to give it greater weight than the oral evidence they have heard. It is desirable to direct the jury to consider the statement in the context of all the other evidence, but again the direction should not stop there. If there are discrepancies between the statement and the oral evidence of other witnesses, the judge (and not only defence counsel) should direct the jury's attention specifically to them. It does not of course follow that the omission of some of these directions will necessarily render a trial unfair, but because the judge's directions are a valuable safeguard of the defendant's interests, it may."

[6] In *Scott v The Queen* [1989] 1 AC 1242 at 1259 Lord Griffiths said

"It will of course be necessary in every case to warn the jury that they have not had the benefit of hearing the evidence of the deponent tested in cross-examination and to take that into consideration when considering how far they can safely rely on the evidence in the deposition. No doubt in many cases it will be appropriate for a judge to develop this warning by pointing out particular features of the evidence in the deposition which conflict with other evidence and which could have been explored in cross-examination: but no rules can usefully be laid down to control the detail to which a judge should descend in the individual case. In an identification case it will in addition be necessary to give the appropriate warning of the danger of identification evidence."

[7] *Accomplice*. The evidence against Vincent McAnespie consists of the written statements of Joseph McCann and Bridget McCann who are husband and wife. A neighbour of theirs in 1981 was Peter Russell who has been convicted of possession of the two firearms. It is suggested that Joseph McCann is an accomplice in the possession of those firearms with Peter Russell or alternatively that he was guilty of assisting an offender in tipping off Peter Russell. The prosecution accept that both Joseph McCann and Brigid McCann were suspects and were originally interviewed under caution in that capacity rather than as potential witnesses. It is also accepted that I should proceed on the basis that Joseph McCann was an accomplice. I warn myself

that Joseph McCann may have a purpose of his own to serve in implicating Vincent McAnespie and deflecting blame and attention away from himself and his wife. That his wife may also have an interest in protecting her husband.

[8] *Approach to evidence of identification.* This is a trial where the case against the defendant, Vincent McAnespie, depends wholly on the correctness of identifications of him by Joseph McCann and Bridget McCann which the defence alleged to be mistaken. I must warn myself of the special need for caution before convicting the defendant Vincent McAnespie in reliance on the evidence of identification. It is possible for honest witnesses to make a mistake in identification. There have been wrongful convictions in the past as a result of such mistakes and apparently convincing witnesses can be mistaken. So can a number of apparently convincing witnesses. I am required to examine carefully the circumstances in which the identification by each witness was made. How long did he or she have the person he or she says was the defendant under observation? At what distance? In what light? Did anything interfere with that observation? Had the witness even seen the person to be observed before? If so, how often? If only occasionally, had he or she any special reason for remembering him? How long was it between the original observation and the identification to the police?

[9] *Character of the defendants.* Both defendants are of good character and in deciding whether the prosecution has proved the charges against them beyond reasonable doubt I take it into account in their favour in the following ways. The defendant, Vincent McAnespie, has given evidence and as with any man of good character it supports his credibility. This means that it is a factor which I will take into account when deciding whether I believe his evidence. In the second place the fact that they are of good character may mean that they are less likely than otherwise might be the case to commit the crimes with which they are now charged.

[10] *The passage of time since the alleged offences.* The majority of the charges in this case relate to matters that are alleged to have occurred on 13 June 1981, some 30 years ago. The defendant Terence Gerard McGeough faces charges of membership of the IRA from 1 January 1975 some 36 years ago. It is essential that when I consider whether the prosecution has proved beyond a reasonable doubt that one or other or both of the defendants is guilty of any of the charges against them that I take into account that because of the passage of time one or other or both of the defendant's may be prejudiced in defending himself. Accordingly at all stages I take into account the length of time that has elapsed and the impact of that period on the cogency of each and every part of the prosecution case. I also take it into account by considering its impact on the evidence available to both of the defendants and the cogency of any evidence that they may give or may be called on their behalf. For instance in relation to the availability of any evidence as to

whether there is any evidence which it is known could have been available to a defendant at an earlier stage but which is no longer available or indeed whether there is any conceivable evidence which is not only not now available but is not now recollected.

Factual findings in relation to the Shooting incident

[11] Samuel Joseph Brush joined the Ulster Defence Regiment in 1970 as a part-time member. He commenced employment as a Postman in 1977. He remained a part-time member of the Ulster Defence Regiment and a Postman in 1981. His regular postal delivery round, which he undertook on his own, included the home of Mrs Mary McGarvey which was approximately 4½ miles from Aughnacloy and in the townland of Cravenny Irish. Her home was accessed by a narrow country laneway off the Armalughey Road. She lived there with her sister Margaret. As is apparent from the photographs and the map it is a remote and isolated country location.

[12] Mr Brush was authorised to carry a personal protection weapon. The weapon which he always carried on his post run, in a shoulder holster on his left hand side, being right-handed, was a Smith & Weston revolver loaded with 5 rounds of .38 ammunition. He also had further rounds on his person with which to reload the revolver.

[13] At approximately 6.00 a.m. on Saturday 13 June 1981 two men arrived at the home of Mrs Mary McGarvey. One of the men told her not to be alarmed that they were the Irish Republican Army and they wanted her house until after 1.00 p.m. They were carrying handguns. They said they would not harm her but if she did not give permission they had other means. They both came into the house in which at that time there was also Mrs McGarvey's sister, Margaret. The men did not talk very much and they let Mrs McGarvey about her business but one of them always came with her.

[14] At approximately 10.30 a.m. William Hall, a neighbour, came to Mrs McGarvey's house. Shortly thereafter Michael Russell also arrived in a green VW motor vehicle. Both Mr Hall and Mr Russell were let into the house and detained by the gunmen.

[15] Meanwhile at approximately 9.00 a.m. on Saturday 13 June 1981 Mr Brush commenced his post round in Ballygawley in his Post Office van. He was wearing his Post Office uniform consisting of grey trousers and a grey jacket. Underneath his jacket he was wearing a shirt, then light body armour and then a vest. Included in the items to be delivered was a white 9x4 envelope with a first class stamp addressed to Mary McGarvey of Cravenny Irish. In order to deliver this letter Mr Brush eventually drove along the Tullyvar Road from Aughnacloy, turned left into the Armalughey Road, and then left again into "McGarvey's laneway". He arrived there at about 1.00pm.

[16] The access to Mary McGarvey's house involved driving approximately 300 yards up a single track gravel laneway. The current photographs of the laneway show grass growing in the middle of it. There are hedges and then fields on either side of the laneway. One of the gable ends of Mrs McGarvey's house abuts the edge of the laneway and in order to deliver a letter to the front door of the house a driver passes the gable end and turns sharp right onto a hard standing or parking area in front of the house ("the parking area"). This is the route that Mr Brush followed on 13 June 1981.

[17] Mrs McGarvey's house is single storey. As I have indicated one gable end abuts the laneway. As one turns into the parking area there are two windows then the front door and then another window. In 1981 there was a lean-to at the gable end of the house furthest away from the laneway and this was an outbuilding. Accordingly after passing the two windows, the front door and the third window there would have been a doorway into the lean-to opening onto the parking area.

[18] Upon arrival Mr Brush stopped the van, put on the handbrake, left the engine running, opened the door and got out leaving the door open.

[19] As Mr Brush drove into the parking area he recognised the VW motor vehicle which he knew belonged to Michael Russell. He noticed, through the window of the house, that there were people inside. He also noticed that the front door was closed. He thought it strange that the door was closed as it was normally open on a good sunny day and the weather on this occasion was fine.

[20] Mr Brush having got out of the Post Office van posted the letter through the letterbox in the front door of the house. As he was turning to get back into the van a gunman appeared from the lean-to and from a distance of 10-12 feet started to fire at him with a revolver. He could see that the gunman was wearing a black/dark coloured anorak with something covering the lower part of his face. As he was being fired at Mr Brush felt a thump in his left chest, 6 inches - 8 inches below his shoulder blade. He then felt a sting in his right shoulder. He turned and ran from the parking area onto the laneway turning right in a direction further up the laneway away from the Armalughey Road. Shots were still being fired at him and he was hit twice in the back above his waist.

[21] As Mr Brush ran up the laneway he was trying to draw his personal protection weapon with his right hand but each time his hand came away without his revolver. In retrospect this was in view of the injuries to his right shoulder. He kept on going with shots still being fired at him. He managed to draw his revolver with his left hand. He had formed the assessment, and was convinced, that there was more than one gunman in view of the number

of shots being fired at him and the different footsteps. At this stage he was feeling quite breathless and breathing was very difficult. He knew that he had been badly injured with blood on his breath. He decided that if he stayed there he was going to die and accordingly he turned around to go back to his Post Office van. As he did so he saw the second gunman on the laneway adjacent to the parking area. This gunman had a lighter coloured anorak. He was pointing a revolver at him holding the revolver with two hands. Mr Brush fired two shots at this gunman who then moved onto the parking area out of the line of sight of Mr Brush.

[22] Mr Brush then heard rustling in a hedge and believing that the other gunman had tried to get around behind him he fired two shots into the hedge. Having expended 4 out of his 5 rounds he reloaded his pistol and was able to get back to his Post Office van and drive to Ballygawley Police Station. From there Constable George Gilliland took him in a police car to South Tyrone Hospital in Dungannon.

[23] Mrs McGarvey's evidence is that shortly after 1.00 p.m. when she heard, what I find was Mr Brush's van arriving, one of the gunmen was outside at the lean-to and the other was inside at the front door. She saw the one inside running out of the door and then she heard shooting. Mrs McGarvey ran to an upper room and stayed there hearing a number of shots. She subsequently came downstairs and saw Mr Brush leaving in his van. A few seconds later the two gunmen returned to her door and one of them said to her that he was shot. The uninjured gunman told Michael Russell to take the injured gunman to hospital. Michael Russell then left with both of the gunmen in his motor vehicle.

[24] I find that during the shooting incident one of the two gunmen was shot in self defence by Samuel Joseph Brush with a .38 round of ammunition fired from his personal protection weapon a Smith and Weston revolver.

The charges against Terence Gerard McGeough of attempted murder and possession of two firearms with intent

[25] The shooting by the two gunmen of Samuel Joseph Brush on 13 June 1981 was a clear attempt to murder and each gunman was in joint possession of the two firearms used in the incident with intent to endanger life.

[26] The prosecution seeks to establish that the defendant Terence Gerard McGeough was one of the two gunmen on the basis that

- (a) On 13 June 1981 he was shot with a .38 round of ammunition receiving initial treatment at a nearby hospital

(b) He applied for asylum in Sweden and in his asylum application he made unequivocal admissions in respect of the charges.

(c) He wrote a book in which he described in substance the shooting incident.

(d) Adverse inferences should be drawn from his failure to give evidence and his failure to explain scarring on his torso.

Factual findings in relation to the identification of Terence Gerard McGeough as the wounded gunman

[27] The accused Terence Gerard McGeough was born on 2 September 1958. In 1981 he lived at 2 Cullenrammer Road, Greystone, Dungannon, Co. Tyrone. His father's name is John McGeough, known as Sean and his mother is Philomena McGeough. On 8 March 2007 he was arrested and on 10 March 2007 photographs were taken of him at Antrim Serious Crime Suite. These photographs show

(a) a large tattoo of an eagle on one of his arms and

(b) scars on the left side of his chest and upper abdomen consistent with a gunshot wound on the left lower posterior part of his chest between the 10th and 11th ribs and the subsequent operation to remove a bullet from his chest.

[28] On Saturday 13 June 1981 a male patient who gave his name as Gerard McGeough, his age as 22 and his address as Clones Road, Monaghan, was admitted to the male surgical ward at Monaghan County Hospital. No check was carried out at the hospital in relation to his name, age and address. The patient was seen at about 3.45 p.m. by a surgeon, Mr Maloney. He examined the patient and found the entry wound of a bullet on the left lower posterior part of his chest between the 10th and 11th ribs. There was no exit wound. There was no scorch mark around the entrance wound. X-rays showed the bullet had lodged at the left side of the 12th dorsal vertebrae. Mr Maloney contacted Mr Vincent Lynch of St. Vincent's Hospital Dublin. They discussed the patient's condition and it was decided between them that it was best to transfer the patient to St Vincent's.

[29] The patient was transferred by helicopter from Monaghan County Hospital to St Vincent's Hospital, Dublin. He arrived at St Vincent's Hospital at 7.45 p.m. on 13 June 1981. The patient was accompanied in the helicopter by Nurse Sherry of Monaghan General Hospital who took the x-ray films of the patient with her and by Detective Garda Peoples. During the course of the transfer from Monaghan General Hospital to St Vincent's Hospital Detective Garda Peoples did not speak to the patient as he seemed to be in

considerable pain and very ill. He did however notice a large tattoo resembling an eagle extending a considerable distance up one of his arms. Detective Constable Peoples accompanied the patient to the Intensive Care Unit in St Vincent's hospital. He was then relieved by Detective Garda McGrath at 7.45 p.m.

[30] In the records of St Vincent's hospital the patient's name is given as Gerard McGeough, his age as 22 and his address as "Clones Road, Monaghan".

[31] The patient was operated on that evening by Mr Vincent Lynch for the purpose of removing a bullet which was lodged in his chest area. In addition to removing the bullet which was found to be lodged on T11 the patient's spleen had to be removed as there was a hole through it. There were also holes in his diaphragm and the lower lobe of his left lung. The operation left permanent scars. Mr Maloney described the scarring that would have occurred after an operation of the type undergone by the patient. The photographs of Terence Gerard McGeough taken on 10 March 2007 at Antrim Serious Crime Suite show scars of precisely the shape and location described by Mr Maloney.

[32] The scrub nurse during the course of the operation was Staff Nurse Lang. During the course of the operation Mr Lynch removed the bullet from the patient and passed it to Staff Nurse Lang. She in turn passed it to Staff Nurse Comiskey (nee McKay). Staff Nurse Comiskey left the theatre with the bullet in a container which she had labelled with the patient's name, Gerard McGeough. She obtained his name from his chart. She gave the container with the bullet in it to Detective Garda Cadogan who was outside the operating theatre. He confirms that the container was labelled with the name Gerard McGeough. He initialled the label on the container on the bottom left and top right and included the date and time on the label. On 15 June 1981 at 2 pm he gave the container with the bullet in it to Detective Sergeant O'Fiachain of the Ballistics Section, Garda Technical Bureau at the Garda Technical Bureau.

[33] Detective Sergeant O'Fiachain's duties include the examination, testing and identification of firearms and ammunition and the giving of evidence in courts in relation to such work. He not only received the bullet retrieved at operation from the patient but also on Friday 19 June 1981 he received Samuel Joseph Brush's .38 Smith & Wesson personal protection weapon together with 4 live rounds of .38 ammunition. He fired the 4 rounds from the Smith & Wesson and compared those with the bullet retrieved from the body of the patient. The rifling pattern on the bullet retrieved at operation from the patient was that associated with Smith & Wesson revolvers. He concluded that a comparison established the consistency of the bullet retrieved from the body of the patient having been fired from the personal protection weapon of

Samuel Joseph Brush but that due to a lack of sufficient individual characteristics it was not possible to positively identify the bullet as having been fired from that pistol.

[34] The patient remained in St. Vincent's hospital until his transfer back to Monaghan General Hospital on 22 June 1981. He was under guard by members of the Irish police force both in St Vincent's hospital and in Monaghan General Hospital. On 27 June 1981 Detective Garda John McCoy and Detective Garda John Brennan were on duty in the corridor outside the ward in which the patient was receiving treatment. They were there to protect him but also if he attempted to leave the hospital they were to arrest him. The patient received a number of visitors and as they left he, without the knowledge of either of the police officers was able to surreptitiously leave the hospital. He had not been medically discharged.

[35] At interview on 10 March 2007 the defendant Terence Gerard McGeough was cautioned under Article 5 of the Criminal Evidence (Northern Ireland) Order 1988 in respect of the scarring to his torso. He made no comment.

The firearms used in the shooting incident

[36] I find that the two guns the subject of count 2 were the guns used in the shooting incident on 13 June 1981. One of those guns is a 1912 revolver.

Conclusion in relation to counts 1 and 2

[37] I am satisfied to the requisite standard that the defendant, Terence Gerard McGeough, was the gunman who was shot in self defence by Samuel John Brush on 13 June 1981. I do so for the following reasons:-

- (a) The shooting incident occurred at 1.00 pm on 13 June 1981. The patient was admitted to Monaghan General Hospital at approximately 3.30 pm. There is an association in time between the shooting and the admission of the patient to Monaghan General Hospital.
- (b) The shooting occurred approximately 4 ½ miles from Aughnacloy and the patient was admitted to Monaghan General Hospital which is in close geographic proximity.
- (c) The name of the patient who was admitted to Monaghan General Hospital was given as "Gerard McGeough" and his age as 22. The defendant is known as Gerard McGeough and he was then 22 years of age.

- (d) The patient who had been shot had a large eagle tattoo on his arm as does the defendant Terence Gerard McGeough.
- (e) The bullet removed from the patient was consistent with bullets fired from the personal protection weapon of Samuel Joseph Brush.
- (f) The defendant Terence Gerard McGeough has scars of precisely the shape and dimensions to be expected from the operation performed on 13 June 1981 to extract a bullet from the patient's chest.
- (g) The adverse inference to be drawn from the failure of the defendant Terence Gerard McGeough to give evidence and to account for the scarring to his torso.

[38] In arriving at the decision that the defendant, Terence Gerard McGeough, was the gunman shot in self defence by Samuel Joseph Brush on 13 June 1981 I have taken into account, amongst other matters, that individuals who have been shot can give false names on admission to hospital, that the address given by the patient was not the defendant's then address, and that no identification was produced at either Monaghan General Hospital or St Vincent's Hospital. However I consider that it is beyond all credulity for there to be another individual on 13 June 1981 who was shot with a .38 bullet consistent with that fired by Samuel Joseph Brush with both geographical proximity and association in time who has an eagle tattoo on his arm and who has the same scars as those of the defendant.

[39] I therefore convict Terence McGeough on counts 1 and 2.

[40] In addition to the evidence which I have outlined the prosecution relied on documents relating to an asylum application made by a Terence Gerard McGeough in Sweden on 14 August 1981.

[41] I am satisfied that the person making the asylum application was the defendant, Terence Gerard McGeough. The particulars of the name of the applicant for asylum, his date of birth, 2 September 1958, his place of birth Tyrone, his next of kin Mr and Mrs Sean McGeough of Cullenrammer, Greystone, Dungannon, County Tyrone, Ireland are all the same as the defendant's particulars. The defendant's Irish passport accompanied the application. Furthermore there is also strong support for the proposition that the handwritten letters and the signatures on the Swedish asylum file are in the defendant, Terence Gerard McGeough's, handwriting. For those reasons I am satisfied that this was an application for asylum made by the defendant, Terence Gerard McGeough.

[42] In a handwritten letter submitted in support of his asylum application, the defendant, Terence Gerard McGeough, admitted his involvement in the incident. In it he admits he shot the "British army officer" in the chest using a 1912 .45 calibre revolver, in an ambush in Ballygawley. He describes himself being wounded and making his escape to hospital in Monaghan. He writes of being given the last rites which is consistent with the seriousness of the injuries he received. He described being flown by helicopter to Dublin for an emergency operation. He describes the bullet as being deep inside him and that he lost his spleen and part of his left lung as a result. He said that he escaped from hospital in Monaghan.

[43] A further typewritten summary was submitted on his behalf by his lawyer Mr Wasterson, for the appeal in relation to his asylum application. It speaks of the decision of the IRA to assassinate a local Unionist who was an officer in the UDR, a "country (sic) council member" and a postman. It contains the following relevant features:-

- (a) The assassination was to take place while the intended victim delivered post.
- (b) McGeough was accompanied by a new recruit.
- (c) He used a .45 calibre hand gun from 1912.
- (d) He and the new recruit took the occupants of the house hostage.
- (e) The postman came to deliver the letter at 1300 hours.
- (f) McGeough came out of the barn and then shot him to the chest before running after him as he tried to escape.
- (g) The postman was wearing a bullet proof vest.
- (h) McGeough crossed the border to Monaghan and was transported to St Vincent's hospital under guard.
- (i) He was given the last rites which is consistent with the seriousness of his injuries.
- (j) His spleen had been destroyed by the bullet.
- (k) The bullet had deflected through his left lung.
- (l) The bullet stopped half an inch from his spine.

(m) He had numerous visitors whilst in hospital.

[44] Also on the Swedish asylum file and included with a letter dated 3 October 1986 on his behalf was a newspaper cutting which contained a description of how a wounded provisional IRA suspect Gerard McGeough tricked his way past an armed police guard to walk out of Monaghan County Hospital.

[45] I am satisfied to the requisite standard that the account given by the defendant in his Swedish asylum application is a true account of his involvement in the incident on 13 June 1981. I conclude on that alternative evidence that the defendant, Terence Gerard McGeough, is guilty on counts 1 and 2.

[46] In addition the prosecution rely on a book entitled "Defenders" by Gerry McGeough born in Brantry near Dungannon, County Tyrone in 1958. I conclude that the book was written by the defendant, Terence Gerard McGeough. The book was published in 1998 and it declares that:-

"All characters in this publication are fictitious and any resemblance to real persons, living or dead, is purely coincidental."

However despite that declaration and in Part V entitled "The Red Heart of Ulster" from pages 129 to 135 there is an account bearing a number of remarkable similarities to the facts of the shooting incident involving Samuel Joseph Brush on 13 June 1981 and also a number of remarkable similarities to the facts as set out by the defendant, Terence Gerard McGeough, in his Swedish asylum application. For instance that a single storey house was up a laneway in a secluded area, the intended victim was a "UDR man" and a postman, that he carried a service revolver under his jacket and that another person arrived to see the old woman as the gunman lay in wait and was not allowed to leave. There are also differences, the most striking of which is a difference in the outcome. I consider that the evidence of this part of the book supports the conclusion to which I have arrived in relation to counts 1 and 2. This account in the book is consistent with it having been written by a person who was actually involved in the incident though if it had been the only evidence it could not have led to a conviction on either count.

[47] Finally in relation to counts 1 and 2 I draw adverse inferences against the defendant Terence Gerard McGeough as additional support for the prosecution's case against him.

[48] Under Article 4 of the Criminal Evidence (Northern Ireland) Order 1998 (1988 No. 1987 (N.I.20)) I draw an adverse inference from the failure of the

defendant to give evidence. I am satisfied beyond reasonable doubt that the prosecution's case clearly calls for an answer by the defendant, Terence Gerard McGeough and that there is no adequate explanation for his absence from the witness box. I consider that the appropriate inference from his silence is that he has no answer to these counts or none that would bear examination and I am satisfied that it is proper to take into account that adverse inference as additional support for the prosecution case against him.

[49] Under Article 5 of the Criminal Evidence (Northern Ireland) Order 1988 I draw an adverse inference from the failure of the defendant to account for the scarring on his torso. I am satisfied beyond reasonable doubt that the interviewing police officers on 10 March 2007 reasonably believed that the scars on the left side of his chest and upper abdomen were consistent with a gunshot wound on the left lower posterior part of his chest and the subsequent operation to remove a bullet from his chest, that in terms the police officers told him of their belief, asked him to account for the presence of the scarring on his torso and told him that if he failed or refused to account for the presence of the scarring then a court may treat his failure or refusal as supporting any relevant evidence against him. I am satisfied beyond reasonable doubt that the defendant Terence Gerard McGeough made no reply. I am also satisfied beyond reasonable doubt that his failure to reply can only sensibly be attributed to his having no innocent explanation for the scarring on his torso or any explanation that would stand up to scrutiny. That is the adverse inference which it is appropriate to draw and I consider that it is proper to take into account that adverse inference as additional support for the prosecution case against him.

Membership of the Irish Republican Army

[50] On counts 3 and 4 the defendant, Terence Gerard McGeough, is charged with membership of the IRA effectively between 1 January 1975 and 14 June 1981, the day after the shooting. In the asylum application made by the defendant, Terence Gerard McGeough, a document was submitted describing that he joined Sinn Fein in early 1975 and was approached later that year to become a member of the IRA to which he agreed. He became operational in early 1976. He formed and led an IRA group in the Autumn of 1977. The unit received some light weapons and ammunition. It is apparent from the defendant's account that he was given increasing levels of responsibility and was being assigned more and more responsible tasks within the Republican movement including the IRA.

[51] On the basis of the documents contained within the Swedish asylum application I am satisfied to the requisite standard that the applicant was a member of the Irish Republican Army, a proscribed organisation between late 1975 and 14 June 1981 and that he is guilty on counts 3 and 4.

[52] Finally under Article 4 of the Criminal Evidence (Northern Ireland) Order 1998 and in relation to counts 3 and 4 I draw an adverse inference against the defendant Terence Gerard McGeough from his failure to give evidence. I am satisfied beyond reasonable doubt that the prosecution's case clearly calls for an answer by the defendant, Terence Gerard McGeough and that there is no adequate explanation for his absence from the witness box. I consider that the appropriate inference from his silence is that he has no answer to these counts or none that would bear examination and I am satisfied that it is proper to take into account that adverse inference as additional support for the prosecution case against him.

Vincent McAnespie

[53] The shooting incident occurred at approximately 1.00 pm on 13 June 1981. The prosecution had no direct evidence as to where Vincent McAnespie was, what he was doing, whether he was with anyone, whether he met anyone and if so who and in what circumstances until half an hour later at 1.30 pm on 13 June 1981. The evidence upon which the prosecution rely are statements from Joseph McCann and from Bridget McCann.

[54] In his statement Joseph McCann recounts that at approximately 1.30 pm on Saturday 13 June 1981 he noticed a man walking towards him along Tullyvar Road. Mr McCann lives at 122 Tullyvar Road. This is approximately 2 ¼ miles by road from Mrs McGarvey's house though approximately 1 mile in a straight line. The man enquired as to the whereabouts of Peter Russell. The man said that there had been a shooting incident though he denied being involved. The man ordered Mr McCann down to the main road between Ballygawley and Aughnacloy and Mr McCann was standing directly in front of Peter Russell's house. Mr McCann recounts that he saw the man enter Peter Russell's house using a key to open the front door and that he went inside. Subsequently the man gave the keys of the house to Mr McCann telling him that he had left two guns and two bullets in Peter Russell's house. That the guns were in the hot press and the two bullets were the flower pot. The man asked for a lift to Aughnacloy. Mr McCann states that the man was "Vincent McAnespie" whom he had known for about 10-12 years.

[55] The statement from Bridget McCann recounts that the man named by Mr McCann as Vincent McAnespie was given a lift by her in her car to Aughnacloy. She states that she realised that he was "Vincent McAnespie" who she knew and knew that he lived near Aughnacloy. He was wearing a red sweater and blue trousers. When she came to his home she was going to stop and drop him off but he said "Don't let me off here. Let me out at the chapel gate up here at Ailish's". Mrs McCann knew that Ailish was a sister of Vincent McAnespie and that she lived opposite the chapel. She continued on to the chapel gate where she stopped and before he got out he said, "Don't

you say that you saw me. You are threatened now don't say that you saw me". He then got out and she went on down the street.

[56] The evidence on behalf of the prosecution is also that later that evening the police came to Mr McCann's home and searched it. Mr McCann states that the police left his home after about 15 minutes and went to Peter Russell's house. A few minutes later after the police left Peter Russell's house Mr McCann went to Peter Russell at his home and told him what he had been told by Vincent McAnespie. He also gave Peter Russell back the key of his house and then left and went home.

[57] The two guns and ammunition were subsequently recovered from a cistern of a disused toilet in Hadden's Quarry which is near to Peter Russell's house. The guns and ammunition were compatible and viable.

[58] On 28 May 1982 Peter Russell was convicted of the offence of having in his possession two revolvers and two rounds of ammunition under such circumstances as to give rise to a reasonable suspicion that he did not have the same in his possession for a lawful object, contrary to Article 23 of the Firearms (Northern Ireland) Order 1981.

[59] At the conclusion of the prosecution case counsel on behalf of Vincent McAnespie applied for a direction which I refused. Thereafter Vincent McAnespie gave evidence. He explained that he did not know the McCanns personally but knew them to see and that he knew Peter Russell to see. That in 1981 he did not know Terence Gerard McGeough. In 1981 he had been working in Dublin in the construction industry coming up and down to his family's home in Tyrone. He couldn't say where he was on 13 June 1981, whether in Dublin or Tyrone. In assessing that part of his evidence I take into account the passage of time that has occurred since 13 June 1981. He denied any encounter of the kind described by the McCanns. He specifically denied ever being in a car driven by Bridget McCann or ever having a lift to Aughnacloy. He was never he said in possession of any firearms.

[60] Vincent McAnespie was subjected to cross examination which the McCanns have not been. Mr McCrudden QC on behalf of Vincent McAnespie highlighted the various discrepancies in the statements of the McCanns, emphasised the hearsay nature of their evidence and also the role played by Mr McCann in relation to these two weapons. I remind myself again of the frailties of hearsay evidence. My assessment of Vincent McAnespie as a witness leaves me with a doubt as to the evidence against him, that doubt is reinforced by the hearsay nature of the evidence against him, the fact that both of those witnesses were suspects and for the purposes of this judgment one of them in possession of the two weapons and playing a role in tipping off and thereby assisting an offender, Peter Russell. In such circumstances

where I have a real doubt as to the guilt of Vincent McAnespie I find him not guilty on counts 5, 6 and 7.

Conclusion

[61] I find Terence Gerard McGeough guilty on counts 1, 2, 3 and 4.

[62] I find Vincent McAnespie not guilty on counts 5, 6 and 7.