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(subject to editorial corrections)

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

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THE QUEEN

v

WILLIAM JAMES FULTON AND MURIEL GIBSON (No. 10)

BILL NO 150/03

_____

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HART J

Introduction

[1] William James Fulton (Fulton) was born on 25 November 1968 and is now 38. Muriel Gibson (Gibson) was born on 29 September 1949 and is now 57. They are jointly indicted, but separately charged, with a large number of offences allegedly committed in Portadown and the surrounding area between December 1991 and 30 September 1999. In addition Fulton faces a single charge (count 43) of doing an act intending to pervert the course of justice between 1 July and 26 July 2001, that is after he was arrested and whilst in custody. Originally Fulton was charged with 64 counts relating to no fewer than 20 separate incidents or groups of charges, and Gibson was charged with 10 counts, relating to a number of separate incidents or groups of charges.

[2] As a result of applications made on behalf of the accused prior to, and also at the conclusion of, the end of the prosecution case I found the defendants not guilty on a number of counts, namely counts 63 and 64 in the case of Fulton, and counts 68 and 69 in the case of Gibson. As a result Fulton now faces 62 counts relating to 19 separate incidents, and Gibson now faces 8 counts relating to 7 separate incidents or charges. Both defendants face charges of membership of a proscribed organisation, namely the Loyalist Volunteer Force (the LVF), (and of directing the activities of the LVF in the case of Fulton) and I include these charges within the term "incidents", although, as will become apparent, these charges are based on the conduct of both accused in the other offences with which they are charged, as well as upon specific admissions which they are alleged to have made as to their respective roles within the LVF.

[3] The defendants were jointly indicted with two other accused, Rain Landry (dob 18 December 1976) and Talutha Landry (dob 11 July 1974). They are two of Gibson's daughters. Gibson's married name was Landry, but she has reverted to her maiden name of Gibson. When interviewed on 20 June 2001 (exhibit C38(b) page 464) she confirmed that she had been divorced in 1999 or 2000. Whilst she was known, or referred to, as Muriel Landry for virtually all of the period under consideration in this case, both in interview and during the proceedings she has been referred to as Muriel Gibson, and I shall therefore to her by that name in this judgment. However, Rain and Talutha Landry continued to be referred to throughout the proceedings by their father's surname. Although the charges against them were dismissed when they were found not guilty when the admissions relating to them relied upon by the prosecution were excluded for the reasons set out in my written rulings of 13 March 2006 in respect of Talutha Landry, and 8 May 2006 in the

case of Rain Landry, as they were at present on a number of occasions when admissions by Gibson relied upon by the prosecution were made, it will be necessary to refer to them from time to time. Another daughter, Aisha Landry, was also present on occasions, and as references were made by Gibson to another of her children, a son named Mahatma, it will be necessary on occasion to refer to them as well, although they do not appear on the indictment, nor were they witnesses in the case.

[4] The prosecution were represented by Mr Gordon Kerr QC and Mr Geoffrey Millar. Mr Seamus Treacy QC and Mr Gregory Berry represented Fulton. Since the conclusion of the submissions Mr Millar and Mr Berry have taken Silk, but I hope they will not take it amiss if, for the sake of consistency with earlier references to them in the transcript, I refer to them as they were during the trial itself. Mr Barry McDonald QC and Ms Karen Quinlivan appeared on behalf of Gibson. Initially Mr Ingram, solicitor, represented both Fulton and Gibson, but at an early stage Harte, Coyle and Collins solicitors, took over the defence of Gibson. They also instructed Mr Lyttle QC and Mr Martin O'Rourke on behalf of Rain Landry, and Mr McCollum QC and Mr Thomas McCreanor on behalf of Talutha Landry.

[5] The charges against the defendants depend upon the inferences to be drawn from accounts they are alleged to have given in conversations recorded during police surveillance carried out whilst Fulton and Gibson were living in Devon and Cornwall. For the sake of brevity I shall refer to these as "the admissions". The surveillance was put in place in the summer of 1999 when Gibson left Northern Ireland and came to live in the west of England, initially in bed and breakfast accommodation in Plymouth, and ultimately in a dwelling house at 19 Clos Trevithick, Cambourne, Cornwall. From time to time her daughters Rain, Talutha and Aisha lived with her at that address, and Rain and Talutha were also placed under surveillance. In March 2000 Fulton returned to the United Kingdom from the United States of America and went to live in the west country. He was also placed under police surveillance, and the surveillance of Fulton, Gibson, Rain and Talutha Landry continued until all four were arrested in June 2001.

[6] The surveillance was put in place because inquiries were continuing into serious crime in Northern Ireland. At an early stage of the proceedings it was elicited via the defence, initially by Mr Treacy in his cross-examination of Detective Chief Superintendent Mawer, that the investigation related to the murder of Rosemary Nelson. It was also elicited by Mr Treacy that prior to Fulton going to Plymouth in March 2000 he had spent time in the United States, and during that period he was in custody for some months at the end of 1999 and January 2000. Whilst Fulton was in custody in the United States he was covertly recorded, and in conversations with a fellow prisoner denied involvement in the murder of Rosemary Nelson. See the transcript of the cross-examination of Mr Mawer on 19 December 2005 between pages 44 and

50. Although a transcript relating to those prison denials was disclosed to the defence, it was not put in evidence, and the contents were not described, other than by Mr Treacy's reference to them as containing denials by Fulton that he was involved in Rosemary Nelson's murder, or in LVF activities, and that he blamed the British Government and the security forces for her murder. The reason for Fulton's incarceration in the United States was not pursued, and why he was in custody is irrelevant to whether he is guilty of the offences with which he is charged, as are the reasons why he was placed under surveillance, and I remind myself that no inference adverse to Fulton should be drawn from either of these matters, just as no inference adverse to Gibson should be drawn from her being placed under surveillance.

[7] The surveillance was carried as the result of authorisations granted by Sir John Evans, then the Chief Constable of the Devon and Cornwall Constabulary, or by senior officers within his force. I have considered the statutory and non-statutory basis for the surveillance at length in a number of rulings I gave during the trial, for example in the ruling of 25 October 2005, and I do not propose to rehearse the arguments addressed to me, or the conclusions I reached, in relation to the various facets of the issues relating to the legality of the surveillance. These can be found in those rulings. However, in order to place the evidence in context it is necessary to refer briefly to the statutory and non-statutory basis of the surveillance and to the results of the surveillance.

[8] For present purposes it is sufficient to say that the admissions relied upon by the prosecution were all obtained by means of one or other of the three forms of surveillance I described in my ruling of 25 October 2005. Surveillance can be (a) "intrusive", involving covert surveillance of premises or vehicles by persons in or on a vehicle or premises, or by using a device. (b) It may be "directed", that is surveillance which is not "intrusive". (c) It may be "covert", that is when it is carried out by what is known as a "Covert Human Intelligence Source" or "CHIS". An undercover police officer in contact with a suspect is a CHIS for this purpose.

[9] As stated earlier, the surveillance operation in the present case extended from the autumn of 1999 until the arrest of the accused in June 2001. During this period the statutory provisions governing the conduct of surveillance changed. Initially the Police Act 1997 (the 1997Act) applied, then the Regulation of Investigatory Powers Act 2000 (the 2000 Act) came into force. Not all the surveillance fell within the ambit of these statutory powers, some was carried out under non-statutory guidelines. These were either guidelines issued by the Home Office which applied until 1 January 2000, or guidelines issues by Association of Chief Police Officers and Others (ACPO guidelines) which applied from 1 January 2000 until 25 September 2000 when Section 26(8) of the 2000 Act came into force. See my rulings of 25 October 2005 and that of 13 March 2006 at pages 10 to 12, 25 to 27 and 32 to 34. As can

be seen from the abstract of authorisations prepared during the case by the prosecution at my direction, the first was granted on 4 October 1999 and the authorisations were cancelled on 21 June 2001 after the defendants were arrested.

[10] For the sake of completeness I should say that both the 1997 Act and the 2000 Act required certain procedures to be complied with before surveillance could be carried out. First of all, a senior police officer had to authorise the use of the particular type of surveillance. In the present case in the majority of instances where such an authority was required it was given by Sir John Evans. The next stage of the procedure required that authority to be submitted to a surveillance commissioner and, (save in some circumstances which did not arise in the present case), until authorised by a surveillance commissioner the surveillance could not be carried out. Somewhat confusingly, both the approval by the senior police officer and the approval by a surveillance commissioner were generally referred to as "authorisations". Finally, in order to be valid the approval by a surveillance commissioner had to be returned in writing to the senior police officer who had approved the application for surveillance.

[11] In a significant number of instances in the present case that did not occur for reasons that were explored at considerable length in the course of the trial. See for example my ruling on 13 March 2006, as well as other rulings relating to the admissibility of the redacted authorisations, and whether the authorisations had been properly approved. In the event I held that the authorisations had been properly approved.

[12] In the present case the surveillance took a number of forms. Devices were placed in cars or premises which picked up conversations and transmitted them to a listening centre where police officers were listening and where the conversations were recorded. These devices were referred to as "probes" during the case. The other means adopted was that undercover police officers carried recording devices on their person which recorded conversations with the accused on tape. The tapes were later handed by the undercover officer to colleagues who listened to the conversation on the tapes. Whichever means was used, the resulting recording was referred to as "product" when it was deemed worthy of further consideration. As a result of this process many tens of thousands of hours recordings were made. Not all consisted of conversation, as there were long periods of silence, or the conversation was of a social or other nature which was thought to have no bearing on any criminal matters. When an officer listened to the tape that officer then prepared a summary of the contents of the tape, referred to as the "typed tape summaries", or TTS for short. It ultimately emerged that there are some 4,068 TTS. See my ruling of 23 February 2006 at page 47 et seq. (For corrections to that ruling see the Addendum at [462].

[13] At the commencement of the case the prosecution relied upon the contents of 99 of the tapes that were obtained as a result of the surveillance, and these have been referred as the "evidential tapes". They have been numbered B1 to B92, and B112 to B118, both inclusive. The evidential tapes have been grouped together so that each group followed the sequence of the counts on the indictment; and within each group the relevant transcripts (which were also referred to by the same numbers) have been placed in chronological sequence. However, as will be apparent from the dates on which the recordings were made, the conversations did not occur in that sequence. Thus B1 to B12 related to counts 1 and 2, the murder of Mrs O'Neill, with B1 relating to 22 March 2000, B2 to 24 March 2000, B3 to 18 May 2000 and so on. Many of the transcripts contain references to more than one incident or set of charges.

[14] Of the 99 evidential tapes or transcripts originally relied on, I have excluded a number of tapes, and so the prosecution have to rely on the remaining tapes and transcripts although it may be necessary to refer to some of the un-transcribed portions of conversations that were connected with the excluded transcripts as the defence sought to rely on portions of those conversations to place the transcribed portions in a different light. In addition, Mr McDonald in particular on behalf of Gibson referred to a number of excluded tapes in support of his closing submissions, as for example at para. 53 of his written final submissions where he argued that the impact of alcohol on any statements attributed to Gibson may have been deliberately underplayed.

[15] A point he made was that there was a risk that I may be sub-consciously influenced against his client by having read and considered during the earlier stages of the trial those evidential transcripts which have since been excluded. As he put it at para. 2 of those submissions ……

> "The Court has the difficult task of excluding completely from its mind the impressions and sub-conscious notions that must have been created by the voluminous material which has now been found to be inadmissible. The Court has heard and read transcripts of literally hours of prejudicial recordings concerning Mrs Gibson which ought never to have been put before the Court. Ten of the original 28 tapes have now been ruled inadmissible."

This is something that applies equally to Fulton. However, one's judicial experience trains one to compartmentalise and to disregard evidence that may no longer be admissible. In the present case that reasoning process is assisted by the considerable passage of time that has necessarily elapsed since I have looked at the excluded statements. B73 for example was excluded in

my ruling of 13 March 2006 and others were excluded by my ruling of 8 March 2006. The trial did not finish until 14 June, and because of other court commitments I was unable to start preparing this judgment until Monday 3 July, nearly two months after the last relevant ruling. This, and the volume of material remaining to be considered, helped to put the contents of the excluded transcripts out of mind. Nevertheless, before the conclusion of the evidence I removed all the excluded transcripts from my papers and placed them in a separate folder and I have not referred to them again to prevent any risk of my being influenced, whether sub-consciously or inadvertently, by material contained in the excluded transcripts. In so far as it is necessary to look again at the circumstances relating to the excluded tapes, or to refer to them, I am confident that I can do justice to the points made on behalf of Gibson and Fulton without looking at the contents of the excluded transcripts by referring to my earlier rulings and the relevant submissions where necessary.

[16] At this point I should make it clear that the evidential transcripts produced by the transcribers do not purport to be verbatim transcripts of every word that was recorded. What each transcriber sought to do was to accurately transcribe those portions of the tape which appeared to be relevant; to summarise irrelevant material; and to provide an introductory and concluding summary to place the relevant material in context, or to link one passage with another. Although the majority of relevant material purports to be verbatim transcription, some is summarised in the third person rather than in direct, or verbatim, speech. Pages 19 and 20 of B3 illustrate the approach of one of the transcribers, although, as will be apparent from the various evidential transcripts, there are variations in the amount of material that has been summarised, as opposed to being transcribed verbatim.

> SUMMARY TRANSCRIPT OF RECORDED CONVERSATION BETWEEN JIM FULTON AND AN UNDERCOVER OFFICER KNOWN AS NEIL
>
> Neil and Jim leave the Plymouth flat together and travel by car to the local Port `O' Call caf (sic) for breakfast. They have a general conversation during which they discuss the welfare of Jim's wife Tanya, the feasibility of obtaining Phillip McLean's services, and Jim's brother Mark's parole. The discussion goes on to Mark's children and the Landry family.
>
> On leaving the caf (sic) they return to the vehicle and continue their days work with Fulton driving.

> They talk of Gary Fulton's sister Michelle who is married to an RUC officer. They discuss Drumcree. Jim talks about his first Drumcree when SWINGER was in Jail and Billy (Wright), was dead. Jim explained that he had a meeting with the Orangemen and they told him that he would be kept up to date with what happened at Drumcree, on the condition that he gave an assurance that there would be no weapons brought in. Jim talks about extensive preparation made by the Security Forces because of events of the previous year.
>
> Jim: They got their faces reddened the year before when we got the machine guns and all out like.
>
> Further general discussion about Drumcree and Northern Ireland and about Billy WRIGHT. Jim talks about Billy WRIGHT's finances. After a long period of quiet FULTON says
>
> Jim: (Inaudible) time, Swinger Billy and Tony and Jamesy went out and stiffed the Boyle brothers, 2 of them, both Provies, out, fucking just out the other side of Lurgan. And they stiffed them that quick, what do you call it, er, got back in the car. The weapons were took away but they were still covered for, know forensic, drove, drive into Lurgan, they drove, into a check point. And Billy says right everybody's drunk, quick, they hadn't even, they hadn't got word about the shooting. They had, no reports had come in.
>
> Neil: Oh right.

[17] The passage just quoted provides a convenient opportunity to refer to the nature of the undercover operation, and to some of the dramatis personae who appear in the evidence. The surveillance operation was named Operation George and involved not just the use of what I refer to at paragraph [12] as "probes", but undercover officers who struck up an acquaintance with the accused and gained their confidence to such an extent that the accused were prepared to talk at length, and in considerable detail, about their respective alleged criminal activities to the undercover officers on many occasions. In addition, as will become apparent, the evidential transcripts also record Fulton and Gibson discussing these activities with each

other from time to time, as well as on occasions when the other was not present. Thus for example B2 relates to 24 March 2000 when the only other person present is someone who is referred to in my redacted set of edited papers as A, but who is plainly very familiar with the events and persons being discussed and who, to judge by page 10 and other transcripts where it is now clear from the evidence that she was present, is Aisha. B2 was recorded by a probe, as was B112 where Fulton is speaking to a friend called Gabriel Yellow. In B71 Gibson is said to be speaking to an English woman called Vanessa Howarth. However, so far as Fulton is concerned, the greater proportion of the conversations relied upon occurred when he was in the presence of undercover officers.

[18] Whilst it will be necessary to examine what happened in greater detail later, in Fulton's case the subterfuge used was that the undercover officers pretended to members of a criminal gang or "firm" who appeared to be engaged in stealing lorries, although no violence was involved. Fulton was employed by them as a driver, and most of the conversations occurred as he was driving one or other of the firm to and from London, or other places such as Bristol, as required. For these services he was paid, and it was accepted by the undercover officers and their superiors that he was allowed to believe that he might be able to gain some advancement in this firm. The undercover officers involved with Fulton were known to him, and were permitted to be referred to in court, as Neil, Robbie, Max, David, Gary, Dave and Liz. There was little contact between the group of undercover officers who dealt with Fulton, and those who dealt with Gibson. Liz's role was with Gibson, and she only had slight contact with Fulton, appearing in only one evidential tape, B27 on 16 March 2000.

[19] A different group of undercover officers were in contact with Gibson. Whilst Gibson was living in bed and breakfast accommodation, Liz, who was also living in the same accommodation, struck up an acquaintanceship with her and, as Liz said on 13 March 2006 at page 44 of the transcript of her cross-examination, her job was to befriend her and see if Gibson would talk to her about things. What Liz did, and how she did it, will be referred to later, but it is sufficient to say at this stage that she dropped out of the picture so far as the evidential tapes are concerned after 16 March 2000 having been involved with Gibson since October 1999. Two other undercover officers then became friendly with Gibson, namely Sam (a female officer) and Dave S. Sam only features in B74 and B75 but it would seem that Dave S had much more contact with Gibson over the period between early June and late August 2000 when he and Sam were involved with her, at least so far as the evidential tapes were concerned. Dave S purported to run a market stall where Gibson helped out on occasions, for which she was paid, and David S also did various DIY building jobs at Gibson's house, such as putting down paving on her patio. It will be necessary to refer to the activities of Liz, Sam and Dave S in greater detail later. Gibson was also provided by them with cigarettes and alcohol at

low prices for resale, the impression being given that these had been come by illegally, or at least in dubious circumstances.

[20] Apart from the business or financial relationship between Fulton and Gibson and the respective groups of undercover officers, there was social contact between them and drinks and meals were consumed, something that will be considered in greater detail later. The amounts expended by the undercover officers from which the defendants may be said to have benefited, or which may indicate whether either Gibson or Fulton was materially affected by alcohol on occasions when admissions were made, or which could be argued to show that either became dependent upon undercover officers, and hence anxious to ensure that the financial or other benefits each was receiving would continue, are set out in a 54 page document headed "Transaction Master Sheet" prepared by the prosecution and provided to the defence. It is exhibit D5.

[21] Both the prosecution and the defence submitted very detailed, comprehensive and helpful written submissions at the end of the case, and I will refer to these in due course were necessary, although I will not refer to every point made in the oral or written submissions. I have reviewed them all and taken them all into account, and where necessary I have referred again to the submissions made at the conclusion of the voir dire, the abuse of process applications, and the application to exclude evidence, as well as at the end of the prosecution case. Whilst I propose to consider the case against Fulton first, and then turn to Gibson's case, the evidence against each other overlaps on occasions, and it will be necessary from time to time when considering the case against one accused to make reference to parts of the case in relation to the other. In addition there are some issues which are common to both defendants, and it is convenient to refer to them at this stage before turning to the case against Fulton.

[22] The first is that at this stage the burden is upon the prosecution to prove that the defendants are guilty beyond reasonable doubt. A defendant does not have to prove his or her innocence. Proof beyond reasonable doubt does not require every peripheral fact, and every jot and tittle of the evidence, to be established up to this standard. What has to be proved is the body of material facts which make up the charge or charges against each defendant. If, having considered all of the evidence in relation to a particular charge or group of charges, I consider there is a real possibility that the defendant is not guilty, then I must give him or her the benefit of the doubt and find him or her not guilty. Secondly, I must consider each count separately. That is not to say that there may not be some evidence in relation to one count, or group of counts, which may be relevant to another count, or group of counts. However, even if that should be the case, I must still consider each count separately and return a separate verdict on each count. When I say "satisfied" in this judgment I mean that I am satisfied beyond reasonable doubt.

[23] At the conclusion of the prosecution case (as required by the Practice Direction of the Lord Chief Justice of 11 April 1997) I addressed counsel for both defendants in turn and reminded them that the stage had now been reached at which their clients could give evidence, and that if they chose not to do so the court may draw such inferences as appear proper from his or her failure to do so. Counsel for each defendant informed me that their client did not intend to give evidence. When I consider the case against each defendant I will consider whether I should draw an adverse inference against that defendant as a result of his or her failure to give evidence.

The case against Fulton

[24] The prosecution case depends entirely upon the alleged admissions by the defendants whilst they were under police surveillance, and the inferences to be drawn from those admissions. So far as Fulton is concerned, during the second interview the relevant tapes were played to him. See C2(b) at pages 15 and 17. He did not respond, and the third interview was cut short to allow him to consult with Mr Ingram. In the fourth and subsequent interviews, Fulton accepted that it was him talking. This has not been challenged, and so I am satisfied that he uttered the words attributed to him in the transcripts. It is noteworthy that, unlike Gibson, no suggestion was made to any of the undercover officers or transcribers that the transcripts were an inaccurate record of what Fulton said, although, as we shall see, there were issues about whether everything relevant to the issues in the case had been recorded. As I am satisfied that Fulton uttered the words said to him, for the sake of brevity I will henceforth simply refer to them as the "admissions".

[25] The prosecution case is that throughout the many evidential transcripts that remain in evidence against Fulton he has described his role in the events giving rise to the 19 groups of charges in such a wealth of detail and in such terms that these admissions amount to unequivocal confessions by him which prove the offences with which he is charged. In short, the prosecution say that he stands condemned out of his own mouth.

[26] After the first of the evidential tapes were played to Fulton, in the fourth interview at pages 28 and 29 in the following exchange he advanced the explanation why he had said he was involved in these offences, an explanation which, with some elaboration, he maintained in relation to all of the tapes and his admissions.

> OK, do you want to say anything about that.
>
> FULTON Like what.

Well what do you want to say bout it.

FULTON It was just a bundle of bragging.

It was you, explain that to us Jim.

FULTON Just me bragging, trying to make out I'm bigger than I was.

Uh-huh. Go ahead, explain more to us.

FULTON That's more or less it, I mean I thought I'd got in with a big firm in England and I just wanted to make myself more important, make myself seen that I was a big man.

Uh-huh, what do you mean by a big firm.

FULTON A firm as in gangsters.

Right.

FULTON So I wanted to make myself out to be a big man.

Right and so you decided what.

FULTON Just waffle.

Waffle.

FULTON Uh-huh.

And you decided to waffle about a particular incident.

FULTON No just stories I've picked up.

Right, well tell us about the stories you've picked up, give us examples of those.

FULTON Just stories I've heard in pubs and parties and what not, people saying what they'd done what not and then I just repeated that, put myself in as being the big man.

Uh-huh and how many times would you have done this.

FULTON I don't know. You know if I'm stuck in a car driving for twelve hours you know what I mean up and down the country like so God knows.

Do you remember this conversation.

FULTON No.

Well you said that you were doing it because you wanted to brag.

FULTON Oh aye, to put myself out to be I mean I was under the impression this was a big, top notch firm so wanted to make out that I was a big man.

So you decided to talk to them about an incident that happened in a remote village in Hilltown.

FULTON No I just repeated a story that I'd heard.

Right.

FULTON No heard certain people chatting about it so I mean I just put my twist to it.

Well tell us who these people were that you were talking about.

FULTON Listen, I might be a bragger and what not but I'm not stupid, I'm not naming no names.

Well you said a minute ago you heard this in several places.

FULTON Oh aye.

Well you seem to know an awful lot of detail about it.

FULTON Well that's exactly what I've been, what I heard.

And it was very accurate.

FULTON Obviously who I've heard it from knew what they were talking about.

[27] His explanations are summed up in the following extract from his defence statement dated 22 September 2003.

> Furthermore, as indicated in the accused's interviews hereinbefore referred to, the accused states that the admissions allegedly made by him as summarised in the covert recordings are matters which he is not criminally culpable for and which he stated for the following reasons:
>
> - To ingratiate himself to a perceived "firm".
> - To bolster his credibility with the "firm" to become a member of same.
> - He was simply acting "the big man", that is, he was placing himself in a position and attributing (sic) himself a role which was untrue and lacking in any factual foundation simply to seek adulation from those around him.
>
> The accused was able to present the factual matters which are the subject of his purported admissions on the basis of -
>
> - His being privy to stories in Northern Ireland in pubs, clubs or at loyalist gatherings.
> - His contact with persons who were or would have had connections with loyalist

paramilitaries, even though the accused himself was never involved in paramilitary activity.

- His knowledge of the acts through facts which would have been in public domain through television, radio and newspapers etc.
- From discussing some of the acts which form the basis of the charges against him with other persons who were interviewed, charged or tried for same.
- From having been interviewed for some of the offences now alleged against him in the past and having had allegations put to him at that time about the factual background for the said offences.

[28] There is no doubt that Fulton was correct when he said he was "bragging" in the conversations recorded in the evidential tapes. Amongst the meanings given for "brag" in the New Shorter Oxford England Dictionary are "arrogant and boastful language", and "swagger, show off". There can be no doubt whatever that that throughout the evidential tapes Fulton was using arrogant and boastful language and showing off. He appears to have no hesitation in describing in great detail the part he claims to have played in many crimes of the greatest gravity. However, as the exchange quoted above, and the defence statement clearly imply, his case is these boasts were untrue, quite apart from any argument whether the admissions may or may not fulfil all of the necessary ingredients of a particular offence.

[29] As will be seen when the interviews in relation to some of the episodes are considered, as the interviews progressed Fulton reverted to either making no reply, or simply saying that he was not involved. The interviews are contained in Part C of the papers. During the 20th interview at page 254 his solicitor said that his response to any further recordings that would be played would be the same, and that he didn't wish to make any further comment. In the event he did respond on some occasions after that, either to deny involvement, as at page 381 where he said the account he gave about involving his wife in transporting a Webley 45 to Drumcree was "totally fictitious", and at page 415 when he described his statement that he was one of the two "OCs" as a "fairytale". On other occasions he gave a somewhat less terse, though still brief, response when denying involvement in a particular allegation. Thus at page 434 when asked was an account he gave about taking over a particular house true he replied:

> FULTON No. I'm just repeating a story I've heard.

Can you remember where you heard this story.

FULTON Not specifically no and even if I did I wouldn't repeat it to yourself.

Right I'll ask you again Jim can you remember it but you can't repeat it.

FULTON Not specifically no.

So you can't remember.

FULTON No.

[30] On some occasions he became impatient at being questioned, as at page 435 when he was asked could he remember speaking to the undercover officers, to which he replied "Aw, its getting boring".

[31] Whilst I will have occasion to refer to Fulton's responses in the interviews that relate to particular offences, it was mainly in the 4th – 10th interviews (C4(b)-C10(b)) that he explained how he came to have the information contained in his admissions in terms that provide the flesh on the bones of his defence statement. In order to understand his explanation it is useful to refer to them in some detail at this stage.

[32] He claimed that he had the opportunity to glean this information because he frequented bars, clubs and parties where loyalist terrorists discussed various crimes in detail. At page 72 he said:

> I've always wanted to be a wannabe, but I am nobody. But I've always been able to, because of knowing Billy, being able to sit in the right company, have a drink, sit with my chest out trying to be a big man, but being a nobody, I have heard lots of stories.

The Billy he referred to was presumably Billy Wright, to whom Fulton referred on many occasions in the evidential tapes as being the leader of the LVF in Portadown and the surrounding area before his death. At page 41 he claimed that all he ever did was to go on parades and drink in loyalist clubs.

[33] He repeated, and elaborated on, these explanations in the following exchange between himself and one of the interviewers at pages 84 and 85

towards the end of the 6th interview when he was being asked about Mrs O'Neill's murder.

> Of Mrs O'Neill and the story that you've made up where you talk of Rory, Dale, Philly, Mahatma, implicated on the, those, that night's events, just fabricated.
>
> FULTON Just complete fabrication of me building stories to impress these boys.
>
> Yeah.
>
> FULTON Uh-huh.
>
> OK. We've just gone on to another very serious matter and again you're saying it's fabrication, we've just, in the other interviews we talked about Mr Murnan. Attempted murder, again you fab, you're saying you fabricated it.
>
> FULTON Uh-huh, like I say, I spent all this time trying to climb the ladders in this firm. I couldn't do that there being who I really was, which was a nobody, two bit hood in Portadown. So I had to build myself up, I had no choice. This was an international firm. They were dealing with people, in other firms in Belgium, Germany, States, they had seemingly apartments in Spain, all the rest of it, they were into everything.
>
> You see you're saying or you referred to a two bit hood from Portadown, what does that mean.
>
> FULTON Just a hood, a Loyalist, just a young fella, with a chest out, getting into trouble of drunk and disorderly,

throwing stones at the police, know what I mean I was a wannabe.

A wannabe what.

FULTON I want to be a big man, I want people to know who I was but I never was.

And what, what did you want people to know you as then.

FULTON A big Loyalist.

Well expand on that for me.

FULTON I can't, I just wanted everybody to think I was a big man, but I was never, I never allowed anywhere into anything, all I got was drinking round the bars, I was like a bar fly.

So why would you not allowed near anything.

FULTON Because they probably knew me for what I was.

And what was that.

FULTON A no mark.

Earlier on you said you were in all the right places.

FULTON Yeah.

With Billy Wright.

FULTON Yeah, because he was good, best friends with my brother. So that's how I could walk into bars and sit and drink in the right, in all the companies, you know when people get drunk, loose lips, so they start telling stories they love to tell stories.

So.

FULTON I remember this happening, I remember that, do you remember this, do you remember that, I had a life time of that.

So when you say Loyalists, are you talking about terrorists.

FULTON Loyalists, of course, yes, of course, some of would have been terrorists.

So you were in the company of the Loyalist terrorists.

FULTON You go into any Loyalist bar in Portadown, any Loyalist bar in Portadown and you would have ex paramilitaries from jail, people who I would surmise were heavily involved, obviously Billy.

OK but I don't want to detract too much from the transcript, is there anything you'd like to say. I have only a couple of questions to ask and its about the tape in its entirety, you've told us during this conversation it was really you boasting, bragging, trying to create an image for yourself.

FULTON Yeah.

In the presence of these people.

FULTON Uh-huh.

[34] In this passage Fulton emphasised that he recounted all these things to make himself seem more important than he was, "a big man" in order to impress Neil and the others in the "firm" he believed he was part of and so become a more important member of it. When asked at page 85 why he had recounted a story in which he described putting on a bullet-proof jacket back to front, something that made him appear foolish, he said that

> I was just putting in funny twist to it. I mean none of it was true. So I can add and subtract anything I want from it, these are English guys, they don't know what goes on where I come from.

At page 55 he had already made a similar response when asked about the same point, saying:

> These guys are, as far as I knew these guys were fucking Englishmen, they hadn't a clue about anything back in Northern Ireland so anything I could waffle to them obviously I was thinking they were believing it, to make me out to be fucken.

[35] Not surprisingly the interviewers pressed him to explain of the details he had included, such as at page 56 when the questioner said "you're talking about priming grenades in this one and wearing a flak jacket back to front", to which Fulton replied "it is all about the same story I, I'm embellishing everything, trying to make myself out to be the big man." This was not the only occasion when he said that he had added details of his own to the accounts he had heard from others. At page 31 of the interviews he was asked why he had said that he had used his wife's car to travel to and from Mr Murnin's home near Hilltown, and he replied "just as I was talking, I was just ad libbing". When asked why he told them that he "used a clapped out Renault 5 that wouldn't go over 60 mph", he replied "Aye well it was only, it was a jovial part of the story", explaining in the later answer "they had, I mean they had no idea what it was like in Northern Ireland so anything I told them I mean they hadn't a clue what it was like over where I came from".

[36] He also explained on a number of occasions that he had added the names of others because he needed names to make his story "look authentic" (see page 83), so he included the names of people he drank with, referring specifically to "Philly", "Dale" and "Rory". He also referred to Mahatma as one of those he had included. He also said that he had included relatives in his allegedly fictitious accounts. At page 217 he said that amongst the names he used were those of his brother Mark, who is usually referred to in the admissions as "Swinger", and his cousin Gary Fulton.

[37] In the 13th interview (see 13(b)) at pages 190 and 191 when asked about Gibson he explained in the following passage that he used the names of people he knew because then it was easier to remember the names he had used, and so avoid the people in the firm comparing notes and realising that his stories were inconsistent.

> Who's Muriel.

FULTON My friend.

Muriel.

FULTON Yeah Muriel Landry or Gibson.

This is Muriel Landry you're talking about.

FULTON Muriel Gibson. She used to be Landry.

Right. So you've used your friend.

FULTON Aye know what I mean. They knew I was a friend of Muriel's so it made it more believable.

So you've used your close friend Philly, you've used.

FULTON I've used, know what I mean when you're telling stories you use something that you're going to remember, you use people you know.

So you've used your close friend Philly, you've used a relative Gary, you've used another friend Dale Weatherhead and Rory, Rory Robinson.

FULTON You just use names that you know. When you're telling a story you need names to put into it. The most easiest thing to do is say somebody you know.

Make up a name.

FULTON Then its hard to remember. When you use a name you already know.

What.

FULTON Then you can remember it.

What do you mean by that.

FULTON Know what I mean if you tell a story you use a name you know. I mean (inaudible) know what I mean so you use a name you know.

Uh-huh. So you involve all your close friends and relatives.

FULTON They're just the quickest names to come to head when I'm telling a story.

In serious crime.

FULTON No telling stories not serious terrorist crime.

You're consistent in that.

FULTON What.

In that, whenever you name them each time you keep telling consistently the same story that the same people played throughout.

FULTON You see I had to. I mean because all these guys are in the same firm. I didn't want them telling each other the same story and then using different names. Then they know I'm going to make a cunt of myself.

These are the boys you're trying to impress.

FULTON Yeah.

Uh-huh.

FULTON Know what I mean if any of them fucking found out I was telling lies it would have made me look fucking stupid.

[38] In their closing and earlier submissions Mr Treacy and Mr McDonald each addressed a number of general matters before turning to consider the individual count or groups of counts, and I propose to adopt the same course in respect of those matters that concern issues that are common to all of the counts. As is apparent from the description of Fulton's explanation for making these admissions, and from the extract from the defence statement quoted above, on closer analysis there are a number of distinct aspects of the defence case.

[39] The first is that Fulton was bragging in order to impress the members of the firm so as to ingratiate himself with them, bolster his credibility with them so that he would become a member of firm, and by doing so "attributing [to] himself a role which was untrue and lacking in any factual foundation simply to seek adulation from those around him".

[40] I have already referred to Fulton using boastful language and showing off throughout the evidential tapes, and I am satisfied that his motive for telling the undercover officers about these matters was to impress them; that he believed as a result his credibility with them would be enhanced; that this would help him to become a member of the "firm", and then improve his prospects of being given a more important position in the firm in due course. However, this cannot be the explanation for those admissions he made to Gibson or Gabriel Yellow when the undercover officers were not present, because there has been no suggestion that on these occasions he expected these people to repeat the admissions to members of the firm. It is clear from the tenor and content of these conversations with Gibson that Fulton was prone to reminiscing with her about his terrorist exploits in Northern Ireland, and Gibson's responses show that she took part in some of the episodes, or at least had contemporaneous knowledge of them and the personalities involved. An example is B28. This relates to a conversation between Fulton and Gibson on 16 March 2000 between 0857 and 1310 in Gibson's home at 19 Clos Trevithick in Cambourne and it appears from the reference to A at page 500 that a third person, obviously Aisha (see page 504), was also present. Between pages 500 and 502 Fulton and Gibson describe how she would have a hot bath ready for him and he would strip and jump in immediately after he arrived at the house, the inference being that he would be able to wash as rapidly as possible after a crime he had just committed in order to remove any forensic evidence to connect him with that crime.

[41] Later in the same conversation between pages 502 and 508 they discussed the shooting of a man alleged to be William Fletcher, which is the subject of incident 6, counts 26-29. At this point it is unnecessary to go into the details, save to say that at page 506 Fulton refers to going to Gibson's house afterwards and having difficulty getting over her fence because he was "that shattered and that stoned". Gibson is then recorded as saying "and then the sitting up the stairs waiting on the fucking radio".

[42] As B28 relates to 16 March 2000 it predates all of the evidential tapes relating to Fulton's conversations with the male undercover officers, and although he met Liz who came to the house that day, the conversation in B28 occurs before Liz arrived at the house and therefore she was not party to it. The timings given at page 481 state that B27 covered the period between 1310 and 1633; whereas the arrival of Liz, and her introduction to Fulton, are referred to at page 481 as occurring after 1310. The period covered by B28 finished at 1310 and therefore preceded B27. Liz gave evidence on the voir dire and was cross-examined by Mr Berry on behalf of Fulton on 15 March 2006. Although she was asked about her knowledge of Fulton's drinking and drug habits (see the transcript of her cross-examination on page 14), no suggestion was made to her that she had tried to elicit any information from Fulton.

[43] As can be seen from the contents of the unredacted portions of B27, Fulton spoke at length about himself and his criminal activities in Northern Ireland to Liz and the others, describing in particular moving an AK47 (page 491); visiting victims in hospital (page 492); and the kneecapping of individuals, including three who were shot in the grounds of his children's school in terms that suggest he was referring to the punishment shooting of Buchanan, Birney and Doran at Edenderry Primary School on 6 January 1997, incident 7, counts 26-29. The uncontradicted evidence relating to the conversation recorded in B27 demonstrates that Fulton was prepared to talk at length about his criminal activities in Northern Ireland on his first meeting with a person he had never met before, but who had been introduced to him by Gibson, and who he was therefore obviously prepared to trust, presumably because he regarded Liz as vouched for by Gibson.

[44] Another instance of Fulton's unwillingness to discuss some of his criminal activities with someone other than the undercover officers he believed to be part of the firm is the conversation with Gabriel Yellow on 8 June 2001, which was transmitted by a probe and is contained in B112. It would seem that Fulton and Yellow were old friends, and that Yellow was either brought up in, or at least had lived for some time in, Northern Ireland to judge by some of his remarks during this conversation. These remarks show that Yellow had considerable familiarity with various individuals in the Portadown area with whom Fulton was also associated. In the additional evidence portion of the papers containing B112 to B118, and the witness

statements relating to them at page 4 (the first page of B112), Yellow mentions a Paul Liggett, and he and Fulton discuss Liggett tormenting Swinger and an encounter between Liggett and Swinger. At page 25 Yellow talks about his brother joining the UDR. That Fulton and Yellow had been close associates, and engaged in various activities, had been asserted by Fulton to the undercover officers on other occasions. See B5 on 16 August 2000 where he described Gabriel's prowess as a burglar between pages 57 and 61, and B6, 30 August 2000, at pages 78 and 80.

[45] That the relationship between Fulton and Yellow was a close one may be inferred from the following extract from B112 at pages 15 and 16 where they discuss an occasion they visited a pub associated with a man called Lyness.

> Gabriel: That's not that geezer we went out to see, thon was a fucking another thing to keep in mind to ask you.
>
> Jim: That was, that was Lyness (overtalking).
>
> Gabriel: We drove out there, I drunk two pints while you gamble on the machine, I have still yet to come across what happened.
>
> Jim: (Inaudible) because just letting them know we had already sent him a letter.
>
> Gabriel: (Inaudible).
>
> Jim: Know what I mean so I was just.
>
> Gabriel: And I was the full stop.
>
> Jim: That's all it was, was just putting pressure on.
>
> Gabriel: And I was stopped by the fucking police into the bargain, I don't know, you'd like to be told where you're going sometimes. Sharon says what were you doing in that pub.

Jim: The only reason we were stopped was because Lyness has ah police bodyguards.

Gabriel: Does he.

Jim: He got them once we.

Gabriel: It's nice to fucking know that too.

Jim: (Overtalking).

Gabriel: One of these cunts could have plugged me.

Jim: (Inaudible) brick wall we were getting stopped like no (inaudible).

Gabriel: I knew if it wasn't for the driving getting us stopped something would have stopped us. I think the person just driving was enough.

Jim: Ah no, no, no we were stopped because we were in Lyness's, dead simple.

Gabriel: I (inaudible) cop me down as now (inaudible) as a thief like.

[46] During the conversation recorded in B112 Fulton referred to a number of matters in terms that, at face value, purported to demonstrate a considerable knowledge of, and practical involvement with, explosive devices and weapons. At pages 8 and 9 he described how he and Mahatma made the metal parts of an explosive device which used a spark plug, the purpose of such a device being that it could be used in a car to create a simple car booby trap device that would explode when the ignition was turned on. At pages 10-12 he described how to construct a bomb using what he refers to as "carbine", presumably a mistake for "carbide" to judge by the reference to "carbine lamps". Fulton is not charged with any offences relating to either of these matters, but pages 12 and 13 of B112 are relied upon by the prosecution as containing an admission which it is argued relates to incident 4, counts 14-23 which concern the attempted murder of four RUC officers at Drumcree on 9 July 1998. Fulton's references to these matters in particular during this long conversation recorded between 0052 and 0443 hours provide further evidence

that on occasions he was prepared to talk at length about criminal activities he claimed to be involved in.

[47] In those instances to which I have referred Fulton was describing his role in various events to Gibson, Aisha, Gabriel Yellow, and Liz in a fashion that shows he is quite willing to reminisce about criminal offences he had been involved in, irrespective of whether there is any apparent advantage to him in doing so or not, and on these occasions it cannot be the case that these admissions were made by him to impress members of the firm. Not only is that the case, but the conversation with Gibson on 16 March 2000 in B28, and then with Gibson and Liz in B27, occurred at a very early stage of Fulton's period in the West Country, and antedate all of the evidential transcripts relating to him. His first meeting with Neil took place on 24 March 2000 when Dave was also present. See page 10 of Neil's cross-examination of 3 April 2006, and the first evidential transcripts in chronological (as opposed to numerical) sequence are B19 and B35, which relate to 30 March 2000. No doubt as part of Operation George an undercover officer had initiated contact with Fulton before 24 March 2000, but Fulton's conversations with Gibson and Liz at least indicate that Fulton's loquaciousness was unlikely to be induced or influenced by his contacts with the undercover officers. These matters do not fit well with his explanation that his motive for boasting about crimes was to impress the members of the firm.

[48] It is also Fulton's case that he falsely attributed a role to himself in these offences. He recognised that an essential element in the success of such a process was that his audience had no knowledge of Northern Ireland, and so he could lie about his involvement because they would not be able to catch him out. As he said at page 31 of the interviews in the passage cited at [35] above "… I mean they had no idea what it was like in Northern Ireland so anything I told them I mean they hadn't a clue what it was like over where I came from." He repeated this point at the end of the passage from pages 190 and 191 set out at [37] above where he said "no what I mean if any of them fucking find out I was telling lies it would have made me look fucking stupid".

[49] However, the risk of his being exposed was not confined to those occasions when he was talking to the undercover officers who he believed were members of the firm. Whilst it was plainly the case that he had no reason to believe Liz could catch him out in a lie, the same could not be said of Gibson. In B28 on 16 March 2000 he described his activities to her in terms which incontrovertibly infer that he was asserting she was involved in, or at least had considerable knowledge of the circumstances of, the very offences he was describing to her. If Fulton's assertion that he was telling lies is credible, then why did Gibson not challenge him and say that he was telling lies? Can it be that she did not realise that he was telling lies about things she was agreeing with him that they had both been involved in?

[50] At pages 497 and 498 they discuss Fulton moving weapons and when he heard police sirens he put the guns in the home of a man called Alan or Aaron, who Fulton claimed then told his sister-in-law. This was immediately corrected by Gibson.

> Jim: He fuckin told his sister, his sister-in-law.
>
> Muriel: He didn't.
>
> Jim: Course he did, well got in touch with me the next day.
>
> Muriel: I told him to tell you that.

She then proceeded to describe her role in the incident.

[51] At pages 500-507 they both describe how Fulton and others would come to Gibson's house to have a bath. Aisha, and later in the same conversation Fulton, describes how he came to Gibson's house after he had shot Fletcher, having originally intended to shoot Derek Wray. At page 506 the following is said:

> Jim: I dandered across and I dandered across, there was Swinger. He'd left the car on up the walk a wee bit to block the road. Says he where to fuck will ye hurry up. Here's me, right, right, right. I was that shattered and that stoned I could hardly get over the fence. `Sargy' he was shaking like that (inaudible) you know waiting to take the gun and all. Time I got over the back I was fucked, I mean, I was destroyed, I swear to fuck, that's me, smoking that fucking blow.
>
> Muriel: And then the sitting up the stairs waiting on the fucking radio.
>
> Jim: On the hour every hour then at 12 o'clock a report came in man shot dead. Ah, here was Philly, oh, ho. Oh I'm going to crack up.

Gibson's remarks during the discussion at the very least suggest that she knew a great many details of the episode; and her interjection in the extract above about "sitting up the stairs waiting on the fucking radio" clearly refers to Fulton waiting in her house to hear if his victim had died. Irrespective of whether Gibson's description of her role in those events is true, a matter to be considered when dealing the charges against her, her contribution to the conversation suggests that she knew at that time that what Fulton was saying about himself was true, or at the very least she had very good reason to believe it to be true. Gibson's reference to her belief that "they [obviously the police] are going to try and get Jim on a directing charge here", and to the prosecution of Johnny Adair on the same charge, in B2 (a probe recording on 24 March 2000), are surprising remarks for her to make to Fulton about his activities if he was simply a bar fly as he claims. See page 17.

[52] Another occasion when Fulton described his criminal activities to someone he could expect to contradict him if he was telling lies occurred in B18 when a conversation between himself, his brother Mark "Swinger" Fulton, and Louise Fulton was recorded by a probe on 16 May 2001. In this conversation Mark Fulton and the defendant decry the activities of a man they refer to as "Mutley", and his relationship with Gary, who is presumably their cousin Gary Fulton. "Mutley" (whose proper name was Ian Stewart) was a cousin of Fulton's, see B39, page 680. At page 295 Swinger says that he is going to try to mediate between rival factions in Portadown, saying "… See if I don't Jim there is one side gonna lose that's their side". The conversation then continues.

Jim:	And it ain't us.
Swinger:	Know but you know that anyway Jim they know it as well but nobody wa… Jim I cannot watch Portadown being tore apart like that.
Jim:	Ah, they've already tore it apart.
Swinger:	I know but I'm not saying that Jim if I can (overtalk Jim and Swinger).
Jim:	The only worry about that there the only thing I'd worry about there …
Swinger:	See that's what I'm watching, see the way I say that Louise and do that that's what will happen.

Jim:	Well its as well I'm not there.
Swinger:	Know somebody like me can talk to both sides.
Louise:	But you tried talking to him, know he …
Swinger:	No, I'm talking about bringing him to a meeting, clashing their heads, then step back from it all, now.
Jim:	Isn't it good I'm not there.
Swinger:	No, you know what I'm talking about Jim.
Jim:	I know what you're taking about.
Swinger:	It takes somebody with standing, you know to stand in to try to break that up and stop it.
Jim:	I'm sorry I'm not for stopping it.
Swinger:	No well I am Jim to be honest.
Jim:	Mutley, Mutley.
Swinger:	It's for the town.
Jim:	To me Mutley, Mutley crossed the line.
Swinger:	Oh he did Jim I tried to go …
Jim:	He tried to he tried to whack a member of the family.

[53] The defendant's statements to the effect that it is as well he is not there imply that if he were in Portadown he would take a less conciliatory line than his brother. If the defendant never played any role in the LVF one might expect his brother, who throughout this and later parts of the conversation was attributing to himself a leading role in Loyalist crime in that area, to have made some contradictory comment about the defendant's lack of involvement.

[54] The same point can be made about their discussion of the collection of money for "the organisation" at page 300.

Swinger: We collect a lot of money, a lot of money, big money, I'm not talking about scraps I'm talking about money, for the organisation you know that.

Jim: Oh aye.

Swinger: Big time and we got it our own way.

Jim: Aye we did get yes.

Swinger: I got a bad name for it but we were nailed with the other as well.

Jim: Aye but when, but what everybody else doesn't know, we were forced.

Swinger: (Inaudible) I'm afraid I can't do it with that, I won't do it with anything.

Jim: But I remember one thing.

Swinger: We were (inaudible).

Jim: At the very start.

Swinger: See from that you and me was bad children.

Jim: At the very start we were forced to take that money, we had no other way to do it.

Swinger: Brigade staff ordered us to do it.

Jim: Yes we were ordered, only one man went against the whole thing and what did he tell us to do if we didn't go with it, take him away from it.

Swinger: Right.

One of the conclusions that could be drawn from the defendant's references to "we" is that he and his brother were engaged in collecting large amounts of money at the behest of their "Brigade Staff", a plain reference to their involvement in terrorist activity on the financial side, something that is inconsistent with Fulton's case that he fabricated accounts and included his family in those accounts to give them added authenticity. For that to be the case Swinger would have to be doing the same thing in this conversation. No doubt it might be argued that another interpretation of this passage is that the use of the term "we" by the defendant merely indicates that he was describing "his" side in the sense that he was a supporter, but not involved in the activities of, the organisation they were discussing, just as a supporter of a sporting team identifies with the team, as in "we won the game". However the tenor of this passage suggests this is not the case.

[55] At pages 305 and 306 they again discussed their position in Portadown, and in this passage the defendant describes his activities in terms that incontrovertibly suggest he was involved in various crimes, and that his brother knew that at the time.

Swinger: The first time I went to jail, sure Louise you know this, in Portadown sure there was an atmosphere, all heart, all one.

Louise: Hmm.

Swinger: That was, see now Jim.

Jim: You telling me before I, just before I left you telling me I hadn't got it all sorted. Before I left was everything, I'd fucking UVF in their own fucking …

Swinger: Jim when I went to jail it went hay-wire, hay-wire.

Jim: You telling me before I left was, there was, I hadn't got Portadown whatever way I want it.

Swinger: All I'm saying Jim, when I went to jail it went hay-wire.

Louise: It would have been settled a bit probably …

Swinger: I'll tell you one thing.

Louise: Then Jim went to (inaudible).

Swinger: See if I hadn't been in jail your man Jameson wouldn't have been dead, there you are.

Jim: Put it this way.

Jim relates a story of a meeting with Richard Jameson. And sorting trouble out between the LVF and the UVF.

Jim: Louise, Louise I took that all on myself, Louise I was the one went round every single place in County Armagh and Swinger is standing there he knows it because I was the last one to talk to him.

Swinger: There's a team in Belfast …

Jim: I put every single door.

Swinger: And Gary (overtalking).

Jim: In County Armagh and I hurt a lot of people I kneecapped a lot of people in the end there was about fifty people hurt for that then I told Rich … got Richard.

Swinger: Gary's attitude is …

Jim: And after that there that's when I, now I walked away.

If the defendant's assertions that he had taken it on himself to go round putting in doors, and that he was responsible for kneecapping a lot people were untrue, then he was brazenly asserting a role for himself that his brother would have known was untrue if Swinger was himself telling the truth, yet Swinger did not contradict him. The cumulative effect of these conversations

is significantly at variance with the defendant's case that he just repeated stories he had picked up and put himself in as being the big man.

[56] At this point it is appropriate to refer to a passage that supports Fulton's case that he was merely recounting what he had heard from others. In my ruling of 23 February 2006 on an application for a stay of the proceedings I refer to an entry in a document which is now tab 9 in defence exhibit F22. This is one of the entries made in his working notes by Detective Sergeant Frost as part of his analysis for disclosure purposes of the typed tape summaries. The entry relates to TTS TSL 500, and appears to refer to a recording of a conversation between Fulton and Robbie on 13 January 2001 between 0857 and 1310. This conversation is not contained in any of the evidential tapes, and therefore the entry is the only evidence of this remark. It is in the following form:

> Jim makes comment. `Anything I say, its third hand, its hearsay (conversation dries up)'.

Whilst the entry has been made a defence exhibit, Robbie was not asked about this when he was subsequently cross-examined on 15 March 2006 during the voir dire. Nevertheless, whilst it is a self-serving statement by Fulton and not evidence of the truth of the assertion contained in it, had Fulton given evidence and been cross-examined about the veracity of his case that he was in fact recounting accounts of events he had heard from others, he could have pointed to these remarks to show, in the words of Phipson on Evidence 16th; at page 358 "consistency and rebut allegations of concoction". He has not given evidence, nor was the entry put to Robbie.

[57] The clear rule is that a witness cannot engage in self-corroboration, that is to call evidence that after he had been charged with an offence he told a number of persons what his defence was going to be. See Humphreys J in R v Roberts 28 Cr App R at 105. However, that rule is subject to exceptions, as Lord Radcliffe pointed out in Fox v General Medical Council [1960] 1 WLR at page 1025.

> There are, however certain special exceptions, or at any rate one head of exception from this general rule. If, in cross-examination, a witness's account of some incident or set of facts is challenged as being a recent invention, thus presenting a clear issue as to whether at some previous time he said or thought what he had been saying at the trial, he may support himself by evidence of earlier statements by him to the same effect. Plainly the rule that sets up the exception cannot be formulated with any great precision since its

> application will depend on the nature of the challenge offered by the course of cross-examination and the relative cogency of the evidence tendered to repel it. Its application must be, within limits, a matter of discretion, and its range can only be measured by the reported instances, not in themselves many, in which it has been successfully invoked.

Lord Radcliffe then referred to three decisions, two of them Irish cases, R v Coll (not R v Cole as erroneously spelt in the report of Fox v GMC) (1889) 24 LRIr 522, and Flanagan v Fahy [1918] IR2KB 361. These cases repay careful study. In both, as in Fox v GMC, the nature of the cross-examination of the defendant raised the issue whether the defendant's explanation for his conduct was a recent fabrication. What constitutes recent fabrication? In R v Williams (David) [1998] Crim LR 494 it was held that because it was alleged by the prosecution that the defence account was fabricated from the outset it was not a recent fabrication. See the commentary at page 496.

[58] However, in R v Okai [1987] Crim LR 259 it was held that if it is suggested that the defendant only made up his version of events because of, or after, a certain event occurred, then evidence to show that he was saying the same thing before that event is admissible, subject to the safeguards set out in the Nominal Defendant v Clements (1961) 104 CLR 476. The safeguards referred to are to be found in the following extract from a judgment of Dixon CJ at page 474, cited with approval in R v Oyesika (1971) 56 Cr App R 240.

> If the credit of a witness is impugned as to some material fact to which he deposes upon the ground that his account is a late invention or has been lately devised or reconstructed, even though not with conscious dishonesty, that makes admissible a statement to the same effect as the account he gave as a witness, if it was made by the witness contemporaneously with the event or at a time sufficiently early to be inconsistent with the suggestion that his account is a late invention or reconstruction. But, inasmuch as the rule forms a definite exception to the general principle excluding statements made out of court and admits a possibly self-serving statement made by the witness, great care is called for in applying it. The judge at the trial must determine for himself upon the conduct of the trial before him whether a case for applying the rule of evidence has arisen

> and; from the nature of the matter, if there be an appeal, great weight should be given to his opinion by the appellate court. It is evident however that the judge at the trial must exercise care in assuring himself not only that the account given by the witness in his testimony is attacked on the ground of recent invention or reconstruction or that a foundation for such an attack has been laid by the party, but also that the contents of the statement in fact to the like effect as his account given in his evidence and that having regard to the time and circumstances in which it was made it rationally tends to answer the attack.

[59] The reported cases refer to the issue being raised by cross-examination, and in the present case that has not happened as Fulton has not given evidence, nor, as I have pointed out, was Robbie cross-examined. Does this mean that the passage in Detective Sergeant Frost's notes should be held to be inadmissible and disregarded because Fulton did not given evidence and not cross-examined? In Flanagan v Fahy there was cross-examination in the fashion described by Dodd J at pages 373-376 after he said at page 373 that "the right to tender the evidence and the right of the judge to accept it depend solely on the cross-examination, and this makes the matter one of considerable difficulty". However, in the Court of Appeal at page 388 Ronan LJ addressed the question, first saying "in my opinion there is no difference between an unreal pretended cross-examination and the total absence of cross-examination". At page 389 he observed:

> This is not a question of an omission from a prior statement, as in The Queen v Coll. It is a much wider question, viz., if a witness is charged with having invented and fabricated a story in consequence of a certain transaction is it not open to him to show that this charge is false by proving that he had told the story long before the transaction in question? Surely there can be no doubt that in any rational system of law he must be allowed to do so.

[60] If one substitutes for "a certain transaction", and "the transaction in question", the words "being charged with these offences", and "he had reason to believe he would be charged", then I consider that it applies to the highly unusually circumstances of the present case. Here there is evidence that Fulton said well before he had any reason to believe that the person he was speaking to, in this case Robbie, was an undercover police officer, that anything he said was third hand and hearsay, which is the defence he

advanced when questioned. The prosecution have to prove beyond reasonable doubt that was not the case, and although the prosecution have been prevented from putting the allegation of recent fabrication to Fulton as he has not given evidence, he must be allowed to rely on this as evidence of consistency and to show that his case has not been a late fabrication, and so this is admissible. If it is a matter of discretion for the evidence to be admitted, I am satisfied that it is appropriate to admit it, agreeing as I do with the rhetorical question posed by Ronan LJ, and that I should exercise my discretion in favour of the defendant.

[61] However, what weight should I give to this? There is no evidence as to the circumstances in which it was made, and hence to what it may relate. Was Fulton referring only to those episodes where he expressly described how he had sent others to carry out crimes but was not present himself, and where he learnt later what happened, as in Incident one, the murder of Mrs O'Neill, or incident 17, the conspiracy to rob Martin Phillips in December 1996, count 56? Or was he referring to all the accounts he had given? Were the latter the case, Fulton was disavowing what he had earlier said to Robbie, for example (1) that he had been the provost marshal for Mid Ulster when he was about 24 or 25 (27 May 2000, B36, page 644); (2) being offered £10,000 by Special Branch and £250,000 and a bar bought for him anywhere in the world (19 September 2000, B8, page 126); or (3) that he has shot "Ron" and two others in the legs to save their lives (3 January 2001, B39 pages 682 and 683). Given that he had so frequently asserted to Robbie that he had committed various offences, the latter seems improbable to say the least. How were members of the firm to be impressed by what he had said and was continuing to say until his arrest in June 2001, if he expressly, or impliedly, accepted that he had been exaggerating his role?

[62] Further material to which I should refer at this stage is to be found in B91 and in documents disclosed by the prosecution. Fulton was arrested under S. 41 of the Terrorism Act 2000, by Constable Pierce of the Devon and Cornwall Constabulary on 12 June 2001 in Plymouth. It appears that at the time of his arrest Gibson was on holiday, because in B91 she is recorded to returning to 19 Clos Trevithick on 18 June 2001 from holiday in Portugal, and learning that Fulton had been arrested and charged. Between 1513 and 1813 she speaks to Aisha, Rain, Fulton's wife Sylvia, Swinger and finally Fulton himself, the last three conversations being by telephone. During that time she expresses her views about Fulton having committed the offences he had been questioned about, saying (a) that he was innocent; (b) that it was impossible that he could have committed the murder of Mrs O'Neill as he had been in bed; (c) that he had been bragging; and (d) that Swinger had told her that his brother was "a Walter Mitty". She also said (e) that she was partially responsible for his arrest, and (f) talked about the likelihood of being arrested herself. Finally (g) she received a phone call from Fulton, and when the call was over is recorded as saying that he had said that he had boasted and

bragged, and told the undercover police officers things that he didn't do. There is nothing in B91 (which resulted from a probe) to indicate that she knew at that time that her conversations had been recorded, although her reference to the likelihood of her being arrested might suggest that she did know that. What Gibson said is only evidence against her, and is not admissible for or against him, and her observations, or indeed those of others present such as Rain and Aisha, do not assist Fulton.

[63] Defence Exhibit F22 Tab 13 (and not page 12 as I mistakenly said at page 56 of my ruling of 23 February 2006) is an entry from Detective Sergeant Frost's disclosure notes which records that on 18 June 2001 between 1513 and 1813 "Muriel states she only repeats things that she has heard on the news". This refers to TTS AWH 356, and on 23 February 2006 I recorded that Mr Kerr had stated that further examination of the tape revealed that what was said was that "he" (meaning Fulton)- not "she" - only repeats things that "he" has heard on the news. This has not been subsequently challenged or contradicted. This entry relates to the conversation in B91, but for the reasons I have given relating to that conversation, it is not admissible so far as Fulton is concerned and does not assist him.

[64] In his closing submissions Mr Treacy referred to submissions that had been made on Fulton's behalf on a number of earlier occasions during the trial, and asked that they be reconsidered at this stage. These relate to alcohol, drugs, inaccuracy, inconsistency, fantasy, lack of forensic evidence to connect the defendant to the charges, as well as a lack of corroborative material. Circumstances which relate to the weight to be given to the admissions, whether in general or in respect of particular admissions, are relevant at this stage when considering whether the prosecution has discharged the onus of proof. I propose to deal with them in turn, starting with alcohol.

[65] At paragraph 5-11 of the written submissions dated 23 May 2006 made on behalf of Fulton at the direction stage the points made in respect of his drinking are set out, and the central thrust of these submissions is to be found in paragraph 10.

> This focus on criminality and on the evidential aspect has clearly led to references to drink and drugs on the recordings being missed and not included in the SETS [Summary Evidential Transcripts]. This factor, coupled with the acknowledged difficulty in the transcribing officers being able to detect if the Accused was or had consumed more than a modest amount of drink or was or had consumed drugs, means that the Court cannot exclude the possibility that the Accused was under the influence of drink

> and drugs during the time that the alleged admissions were made.

[66] As I pointed out at page 38 of my ruling of 23 February 2006, Fulton's case in his defence statement was that he was bragging in order to impress, not that he was under the influence of drink or drugs when he made these admissions. I also considered the evidence relating to his consumption of alcohol at pages 7 and 8 of my ruling of 8 May 2006, and pointed out that "there is evidence to suggest that on occasion he would drink heavily, for example on 24 August 2000 when he arrived hung over and was not fit to drive". Defence Exhibit F25 is a TTS JPRW 137 which refers to Fulton joining Talutha, Rain, Aisha and a friend called Sally. Aisha is heard saying that Fulton is drunk. As he waits downstairs for the three girls his attitude to Sally is described in the TTS as "drunken and belligerent". Defence Exhibit F26, TTS JPRW 138 records that when the party returns Fulton "is very drunk and falls asleep upon returning", and "Jim wakes up. He is argumentative and belligerent". This drinking session plainly resulted in Fulton's arrival for work on the morning of 24 August 2000 in the hung over condition already referred to.

[67] Another instance when Fulton engaged in heavy drinking is referred to in the same exhibit where the following entry appears in connection with a deployment of Dave and Sam, which it seems occurred on or about 27 May 2000. "As had happened on many occasions a drinking session on the Tuesday night has resulted in Jim spending all of the following day in bed".

[68] No doubt there were other such episodes during the fifteen months he was under surveillance. On several occasions Mr Treacy pointed to Part (iii) of a disclosed extract headed "(F) Socialising and Related Issues", Defence Exhibit G2.

> What kind of problems is alcohol consumption going to cause, ie Jim's documented behavioural problems in drink; the knock-on effects such as Jim being unavailable for work; previous incident of Sam and Dave being late for a de-brief following an evening of socialising (10/5/00); the value of any information obtained; future corroboration etc?

As Mr Treacy observed, it has never been explained what exactly was meant by "Jim's documented behavioural problems in drink".

[69] Robbie accepted (see transcript 15 March 2006 at page 120) that Fulton told him that he used to drink a lot of vodka, although it is unclear whether he meant that Fulton was referring to the past or to his current practice. Be that as it may, this is further evidence that Fulton drank a lot on occasions.

[70] I have excluded a number of the evidential transcripts relating to Fulton, in some instances because there was evidence that he may have consumed more than a moderate amount of alcohol where admissions were recorded. See my ruling of 8 May 2006. Although I admitted the remaining evidential transcripts, I bear in mind throughout my consideration of the case against Fulton that there may be other occasions where consumption of alcohol by him occurred and that this may affect the reliability of the remaining admissions. Mr Treacy referred to this issue in the context of the probe tapes at para. 11(i) of the final submissions.

> (i) The Probe Tapes - (B 1, 2, 4, 10, 18, 26, 27, 28, 48, 54, 112 & 113). These mainly involve situations where no undercover officers are present and the Accused is being recorded in a private residence. It is submitted that this is precisely the type of situation where a heavy drinker and a habitual user of drugs would engage in these activities. The evidence adduced by the Prosecution from the transcribers has done nothing to dispel this submission and, indeed, the Prosecution evidence would support it.

[71] However, the evidence was that a great many of the evidential transcripts related to occasions when the undercover officers said that Fulton was driving them, and the inference the prosecution submit should be drawn is that on those occasions he could not have been under the influence of alcohol to any material degree as that would have been evident to the undercover officers with him. I am satisfied that is the correct inference to draw. The officers' evidence that Fulton was employed to drive them, and that he drove them on many long journeys, was not challenged. For example, Robbie gave evidence on 15 March 2006 and described several journeys when he believed Fulton drove. Thus B8 related to a journey from Plymouth to Reading and back to Plymouth on 19 September 2000 (page 19 of transcript). On 30 November 2000 Fulton drove him from Plymouth to Bristol and back, a journey he thought took 1½ to 2 hours from Plymouth to Bristol, making a total journey of 3-4 hours. These are just two of many journeys which the undercover officers described. To suggest that on those occasions the officers either did not observe signs that Fulton's driving ability was affected by drink, or ignored their signs, is to imply that either they were remarkably unobservant, or they were prepared to endanger themselves. Either seems improbable in the extreme.

[72] Not only that, but there was evidence, which I accept, that it was made very clear to Fulton that Neil, who was the ostensible head of the firm, took a strict approach to anything that might affect anyone's driving ability. On 16

March 2006 Gary dealt with this at some length whilst he was cross-examined, as can be seen from the following extract from pages 52 and 53 of the transcript. This came after a discussion about three rounds of drink being purchased in the Abbot's Way and other public houses in Plymouth on 9 September 2000 when Gary, Robbie and Fulton visited four public houses, and a taxi had been arranged for Fulton afterwards. See the Transaction Master Sheet. Gary had referred to purchasing soft drinks.

> Q. What was the reason behind that?
>
> A. Just to manage our own, there was a possibility of us, you know, in circumstances where we might have to drive or you didn't know what you were going to be called upon, so it was [up] to the individual to appear to be one thing and yet make sure he was in control of his self to his personal levels and with what he consumed, what he was comfortable with.
>
> Q. Well you were hardly going to drive after the Abbotts Way public house where there were three rounds of drink?
>
> A. As I say, you are talking about the policy, why we did it. The policy, why we did it, was to generally manage your consumption of alcohol to a level that was appropriate to the circumstances you found. On this case in particular obviously driving wasn't an option, but that was why.
>
> Q. What about Mr Fulton, were you just going to let him drink away?
>
> A. At the end of the day, Mr Fulton was constantly and persistently told of the importance that he did not break the law with regards to drink and driving.
>
> Q. Why was it necessary to do that?
>
> A. Because at the end of day, again in my experience, drinking and driving in a criminal fraternity is not directly looked upon as a serious offence and is accepted and encouraged in a lot of these environments. It wouldn't be unusual for someone from this type of criminality to be a party to that behaviour, so it was considered a possibility and

consequently we tried to, you know, policy that and stop him.

Q. Did you speak to him in relation to drink driving yourself?

A. I considered him on numerous occasions. It wasn't just drink driving, it was speeding, it was the maintenance of the car, it was parking tickets. It was basically, as I recall, the policy was Neil was very conservative about these things and very fussy about them because he relied on his drivers to such a great degree that he really was very intolerant of anyone putting themselves in a situation where they could lose or have penalty points on their licence. This was reiterated to Mr Fulton on numerous occasions.

Q. Numerous occasions by you and do you know by others as well?

A. Again that was a policy decision so it was --- whilst I'm sure it did take place in my company when I was there, in fact, I know it did, I cant give exact, but I know certainly it was considered to be something that it had to be impressed upon Mr Fulton.

Q. Did you ever find any behavioural problems with Mr Fulton when he had consumed alcohol?

A. Again, to be fair to Mr Fulton, I think there was an occasion when he said that he had been a bit depressed because of his circumstances, he was melancholy, you know, as I can say with all candidness I have been before when I have had a drink. So yeah, there were times when I was sitting there I might bring that to the attention of the persons above me, but I never was in a practical situation with Mr Fulton where I felt he wasn't capable of deporting out the task he had been given or he wasn't in control of his faculties, but yes, to be fair to him there was a time when he was less happy than ours.

[73] Although, as we shall see Gary's evidence was challenged in relation to another matter, no issue was taken with his emphatic evidence that Fulton was well aware that he must not break the law with regards to drinking and driving. Gary's evidence on this was corroborated by Neil, who said in his

evidence on 29 March 2006 that he would have made different plans so that Fulton was not in a position to drive if he appeared intoxicated, or he saw evidence of Fulton being involved in illegal drugs. See pages 30 and 31 of the transcript. On 28 March 2006 Dave was asked about an incident when Fulton damaged a car he had been given, and he accepted that there may have been drink involved. He was emphatic that except for some occasions when he drove Fulton because the latter was tired, or because he was instructed to do so, Fulton drove and was sober on each occasion. As he said at page 36 "… I would not get into a vehicle with somebody who has been drinking and allow them to drive me, even if I was instructed to do so by an SIO [Senior Investigating Officer]". I accept the evidence of Robbie, Gary and the other officers that Fulton was not affected by drink when he was driving, and I am satisfied that the reliability of any admissions he made whilst driving which are contained in the remaining evidential transcripts have not been affected by alcohol.

[74] However, these considerations do not apply on those occasions when Fulton was not driving, or had been drinking and was going to drive. I have already referred to paragraph 10 of the written submissions on behalf of Fulton dated 23 May 2006 made at the direction stage, and the argument about the unreliability of the tapes as an indicator of whether Fulton was affected by alcohol when he made the decisions was developed at para. 11 in the context of the probe tapes and the undercover tapes (that is the tape covertly recorded by the undercover officers during conversations with Fulton). Para. 11(i) has been set out at [70]. Para. 11(ii) is as follows.

> (ii) The Undercover Tapes — the Court has heard evidence that the Accused could have consumed drugs and the undercover officers may not have been aware of it (see the evidence of Neil). It was also apparent that the undercover officers did not fully and accurately record all of the alcohol which the Accused consumed [see p.8 of the Ruling of 8 May 2006]. Furthermore, on occasions during their cross-examination, when asked about the Accused's consumption of alcohol the undercover officers sought refuge in inviting the Court to listen to the covert recording. It is now apparent from the evidence of the transcribers that the Court cannot rely on the transcripts or indeed on the recordings themselves (had the Prosecution asked for these to be played) with the requisite degree of certainty in terms of the Accused's consumption of drugs or drink.

[75] These submissions apply equally to the consumption of drugs by Fulton. As I pointed out in my ruling of 8 May 2006 at pages 8 and 9, the evidence of Max and Robbie shows that on occasion Fulton consumed

cannabis. On 16 March 2006 at pages 9 and 10 of his cross-examination Max described how Fulton smoked some cannabis when they were on the move together in a car, although Max could not say whether Fulton or himself was driving at the time. Max was not surprised by this, and did not remonstrate with him, saying that it was not take significant because "the vast majority of the public smoke cannabis nowadays". Robbie took the same view when Fulton told him that he had smoked cannabis whilst having a drink at Gibson's house. See transcript of 15 March 2006 at pages 116 and 117. This admission by Fulton is to be found in B60, 28 September 2000 at page 892.

[76] That on one occasion Fulton smoked cannabis whilst he and Max were traveling together lends support to the suggestion that Fulton may have used cannabis on occasions when he was traveling in a car, although I consider it most unlikely that on the occasion Max described Fulton smoking cannabis in the car Fulton was driving at the time because of the obvious risk to Max from such conduct. Whatever risks Fulton may have been willing to run, I do not believe that Max would have allowed himself, and other road users, to be endangered. It would also go against the strict policy laid down by Neil to which Gary referred. I remain of the view that I expressed at page 9 of my ruling of 8 May 2006, namely "that Fulton was anxious to show that he was reliable and conscientious individual in order to retain the favour of the undercover officers who he believed were employing in their criminal enterprise." That is a factor which would have influenced Fulton against driving under the influence of drink or drugs whilst he was with a member of the firm.

[77] Whether Fulton was affected by cannabis on any other occasion when he made admissions is a separate issue. If he was smoking cannabis when undercover officers were present, or had been smoking beforehand, I am satisfied that would have been obvious to them because their previous experience as uniformed officers would have enabled them to recognize the signs of someone having taken drugs or alcohol. For an example see Dave's evidence on 28 March 2006 at pages 86 to 89 where he described various symptoms of drug or alcohol use. On those occasions where they were not present, the only people who can say whether Fulton was affected by drugs or alcohol are Fulton and those who are present. Only if something is said, or there is something about the way people spoke, or there is some other evidence which would alert listeners to the conversation to this possibility, could the recording throw light on whether he was affected by drugs or alcohol. Any listener is dependent upon the recording in order to determine whether or not Fulton was affected by alcohol or drugs at the time. In my earlier rulings I have considered, amongst other things, whether there is any reason to believe that this is, or may be the case, in each evidential tape, and I excluded a number of tapes because the prosecution were unable to show that Fulton was not, or may not have been, affected by alcohol and/or drugs. So far as the remaining tapes that were admitted are concerned there is no

evidence to suggest that Fulton was affected by drink or drugs in any of them, and therefore no reason to doubt their reliability on that score. Had there been such evidence no doubt defence counsel would have asked me to listen to the tapes, as was done in relation to several of the tapes relating to Gibson.

[78] Another point made on behalf of Fulton is that there is no forensic evidence to connect him with any of the charges. However some of the admissions are made a long time after the offences, in some cases several years later. Fulton frequently refers to the steps taken to avoid the discovery of forensic material that would link him to the crime in question, such as the taking of hot baths that has already been discussed, or the wearing of Marigold gloves. He also describes how he went to great lengths to avoid being stopped by the police, or giving them a reason to arrest him, as for example when he got back to his wife's home after the attack on Mr Murnin's house, but before the attack on the homes of Mrs O'Neill and Janelle Woods, all on the night of 4 and the early hours of 5 June 1999. In such circumstances it is unlikely that there would be any forensic evidence to connect him with any of these offences, and the absence of such evidence is neither significant, nor inconsistent with guilt.

[79] Some emphasis has been placed on the absence of corroborative material. Mr Treacy understandably stressed the evidence on this of Detective Chief Superintendent Mawer and the other senior officers, or "managers" as they were described, who oversaw Operation George. The evidence of Mr Mawer in particular touched on this. On 9 January 2006 he was asked on several occasions about the desirability of corroboration, and as can be seen from the following passages he agreed that it was important because as he said at pages 87 and 8 for example, "people often say things to boost their own position or people's perception of them", adding "… which is why the point of corroboration is so important". In two other passages from his evidence that day the same point was made. The first is to be found at page 43 of the transcript where he is being cross-examined on behalf of Fulton by Mr Treacy:

> Q. And what are the kinds of things that make a person want to boast or brag?
>
> A. Em it's part of perhaps building themselves up, or to appear to be something that they're not necessarily, in terms of their character.
>
> Q. I mean, you could well understand (I take it) that somebody who had left Northern Ireland out of fear, finds himself in a strange place, ie Devon & Cornwall, who has met new friends who are apparently members of a. . . what he believes

is a criminal firm, who are prepared to pay him huge sums of money, that, in order to keep that money coming, you would obviously want to ingratiate yourself with the firm?

A. Yes, I would accept that, my Lord, yes, and that's how crucial corroboration becomes around this type of issue.

Q. I mean, people in those circumstance would be, they would have an obvious incentive to boast and exaggerate in order to increase their credibility with the firm?

A. Yea, that is possible, my Lord, yes.

At page 125 during his cross-examination by Mr McDonald on behalf of Gibson the issue is addressed again.

Q. Now were there any safeguards to protect against the possibility that Mrs Gibson was simply fabricating stories, or exaggerating her role in various matters?

A. No, the issue for the evidential gathering from the UC's and from the other methods of gathering was to then sift through it an seek corroboration, and in these circumstances corroboration is absolutely essential to any of the product that was obtained.

Q. Yes. I think that's because you've already recognized that fabrication and exaggeration were entirely reasonable possibilities in this situation?

A. Yes, I do, as I've outlined earlier in my evidence.

Q. Yea. And, of course, you have accepted that - quite happily acknowledged that undercover officers were encouraged to simulate amusement or fascination when they were listening these stories; isn't that right?

A. Yea, as part of the process, yes.

Q. And that was done to encourage ... well you could see how that could actually encourage a suspect

to give ever more colourful accounts of their role in particular episodes; isn't that right?

A. Yea, that's possible, my Lord, yes.

[80] There has been no suggestion that corroboration is required as a matter of law, or even that the tribunal of fact be warned of the danger of acting on uncorroborated evidence. Corroboration in the strict, technical sense, is evidence which must be (a) relevant and admissible, (b) credible, (c) come from a source other than the witness requiring corroboration, and (d) implicate the accused. See the discussion in Blackstone 2006 at F.5.1.-3. Therefore, if it is being suggested or implied that the admissions made by either defendant requires to be corroborated in this sense that is not required by law, and Mr Mawer's evidence is incorrect because, as a general rule, courts may act upon a single, out of court assertion such as a confession. See Phipson on Evidence 16th Edition at page 376. However, I consider that he was using the term "corroboration" in another sense in which it is frequently, perhaps generally used, that is evidence from another source which confirms or strengthens a conclusion. It is an understandable, indeed desirable, process of reasoning to look to see whether there is anything which would strengthen the conclusion that both Fulton and Gibson were telling the truth when they purported to describe their roles in the offences with which they are charged, but that process does not require there to be corroboration in the technical or even general sense that I have described it.

[81] However, so far as Fulton is concerned, although there is no evidence which comes from someone other than himself which provides support for his guilt on all the charges, other than inferences that can properly be drawn from the circumstances in which the admissions were made, the content of the admissions and his failure to give evidence (to which I shall refer later); in respect of some of the charges, there is other evidence which supports the conclusion that he is guilty of some of the charges. I refer to the contents of the letter to his wife which he is alleged to have given her after his arrest, and in which he tells her what she is to say if she is ever asked about two things he told Neil. The first relates to his telling Neil that she had brought the gun that killed the taxi driver at the first Drumcree up to him. The second relates to his telling Neil that she carried a gun up to Drumcree for him. He then set out in considerable detail an elaborate explanation designed to show that what he had said to Neil was untrue, whilst not containing an admission by his wife that she had possession of either weapon. The reference to the weapon that killed the taxi driver is plainly to the gun used to murder Mr McGoldrick which is the subject of Count 36. The reference to the other weapon appears to relate to the gun which is the subject of Count 44.

[82] I shall examine the evidence relating to this letter when dealing with the charges to which it relates. But if the letter was written by Fulton it has a bearing on the defendant's case in other ways. Firstly, it shows that Fulton

was attempting to provide a false explanation for what he had told Neil, and did so with some skill. Secondly, the details of his explanation for saying to Neil that his wife carried a gun up to Drumcree for him do not fit well with his defence that he was merely a wannabe and bar fly who used stories he had heard from others to make himself out to be a big man. He said that Billy (obviously Billy Wright) brought a gun to his house for his wife to bring to the hill at Drumcree for Fulton. Why if Fulton was such a person would he want a gun to be brought to him at Drumcree? He also told his wife to say that he would never bring any trouble near the family home because of his wife and children. "Any time someone phoned or called he would always go off with them they would never be brought into the house. He kept us separate from his secret life. And I just never asked any questions." What was the "secret life" that Fulton was telling her to say he had if he was just a wannabe or bar fly? The prosecution submit that, in Mr Millar's words "the letter also serves to provide the clearest possible corroboration for the admissions made and, we submit to further undermine the defence assertion that Fulton was a fantasist".

[83] If Fulton wrote the letter, and I have to be satisfied that he did, then it would be open to me to draw the inference that he lied when he denied involvement in the events which are the subject of Counts 36 and 44. At this point it is appropriate that I remind myself that, as laid down in R v Lucas 73 Cr. App. R. 159 and other cases, a lie is not of itself evidence of guilt as a defendant may lie for innocent reasons, and it is only if I am satisfied beyond reasonable doubt that Fulton did not lie for an innocent reason that the lie can support the prosecution case. It could be argued on Fulton's behalf that the letter was written because he was afraid that he would not be believed, and was trying to bolster his true defence. However, I have to bear the warning in mind in relation to all of the charges against Fulton.

[84] Central to the prosecution case is the assertion that the wealth of detail Fulton gave about the offences he said he was involved in, and the extent to which those details conform to the facts of those offences, prove that he was truthfully describing his activities. It is also submitted that this proves that his defence, namely that he did not take part in any of the offences, but made himself out to be a big man to impress the members of the firm by falsely attributing to himself a role in the offences, details of which he had learnt from other sources, is untrue. To this assertion the defence respond by pointing to matters which are inconsistent with the known facts, as can be seen from the closing submission on this aspect of the case, under the general heading "Riposte to the Crown Case".

> 6. The Crown makes two general submissions which underpin their entire case. First is their noteworthy heavy reliance on the "detail provided by Fulton in the various recorded admissions, such as to justify his

conviction on the various counts on the indictment." Secondly, is their contention that the detail 'could **only** come from someone who had actually participated in the various attacks and raids' (see pp33 & 34 of the Crown's written final submissions).

7. As to the first, it is submitted that examination of the detail has in fact revealed major inconsistencies. Examples (and they are just non-exhaustive examples) of these have already been furnished eg the Murnin incident, the McGoldrick incident. Indeed these examples were supplemented by the Court itself during the Crown's closing submissions on 13 June 2006 in relation to Count 56 (Martin Phillips). These examples demonstrate that far from the detail provided by Mr Fulton being such as to justify his conviction they merely exemplify the real difficulty and danger about convicting on the basis of these uncorroborated covert 'admissions'.

8. It is also highly significant that the Crown did not in their 34-page written closing or in their oral submissions advert to or attempt to deal with the many fundamental inconsistencies between the known and objective facts and admissions.

9. Since the Crown places such heavy reliance on detail then they cannot keep the plums and throw out all of the duff. In other words, if the Crown rely on detail and the detail is inaccurate, inconsistent with the evidence of witnesses or inherently inconsistent it is submitted that this goes to the sufficiency of the covert recordings generally. Furthermore, the Court should not be compelled and cannot in fact legitimately choose between competing versions but rather, should find the Accused not guilty.

10. As to the second point, and completely contrary to the Crown submission, Mr Mawer

accepted in cross-examination that Mr Fulton could have been innocently privy to the information provided in the covert recordings as a result of:

(i) his being privy to stories in Northern Ireland in pubs and clubs and stories being told:

(ii) his contact with persons who were or would have had connections with loyalist paramilitaries, even though the Accused himself was never involved in paramilitary activity;

(iii) his knowledge of the acts through facts which would have been in the public domain through newspapers etc;

(iv) from discussing some of the acts which form the basis of the charges against him with other persons who were interviewed, charged or tried for same;

[Indeed, this was one of the reasons why Mr Mawer emphasised the need for corroboration before even bringing a prosecution — corroboration which indisputably simply does not exist against Mr Fulton. In other words the case made by Fulton at interview and in the Defense Statement is supported by the evidence of Mr Mawer].

[85] Whilst the details of Fulton's admissions, the extent to which they correspond to the facts proved in relation to the various incidents, as well as the nature and significance of any inconsistencies that there may be between his admissions and the facts proved, are all matters that have to be considered when arriving at a verdict on each charge; nevertheless there are a number of general matters which have to be borne in mind when considering each charge against Fulton.

[86] Throughout the fifteen months or so that he was under surveillance Fulton described a great many crimes. He did not say that he was involved in every crime, some of his accounts were descriptions of the actions of others, which sometimes he admired, and on other occasions he was critical of, or uncomplimentary about, those involved. On some occasions, whilst he said he was involved in particular crimes, he said that he was some distance away. Thus in relation to Counts 24 and 25, the attempted robbery of Mr McAleavey

and the Ulster Bank in Newcastle, County Down, Fulton said that whilst he planned it he was not allowed to go on (page 424) although he was waiting elsewhere in the town when it all went wrong, so he returned to Portadown where the others told him what happened. (Page 443). On occasions such as these he was dependent on what those involved told him had happened, and therefore his knowledge was second hand, with the potential for misunderstandings or incomplete accounts that involves.

[87] A matter of greater significance is the wealth of detail he gave, often including details which, on the face it, give greater authenticity to his account. An example is the attack on Mr Murnin's house, Counts 8-13, where he described how he had to pull out the firing pin of the grenade because the man he had instructed to throw it through the window was unable to get the pin out. See B3 pages 31 and 32, and B5, page 49. Mr Treacy has pointed out that Mr Mawer accepted that the defendant could have acquired the details of these offences from various sources, but how likely is that in the context of the present case, where Fulton described many different events in great detail? Implicit in both the prosecution and defence case is that Fulton has an excellent memory, whether he was recounting what he had done and had been involved in, or was pretending he had done. If his defence is, or might be, true, he also had the ability to remember the details of things he had not been involved in, a much more demanding exercise than to remember what he had been involved in. An actor can learn his lines, but somebody has to write them for him. On his case, not only must Fulton have a capacious memory (which he plainly has), but he must have the ability to acquire and marshall the facts of many different incidents that he has heard about to such an extent that his pretended involvement conforms to the known facts to such a substantial degree. There have been individuals who have acquired a bogus identity, or falsely pretended to have particular skills, or a particular history. Nevertheless, it is much easier for an individual to remember something that he or she has been involved in, than to remember the details of something they were not involved in. The latter is not impossible, but it much less likely because it is a difficult exercise to carry out successfully, and to sustain, over a long period of time in relation to a large number of different offences.

[88] I have said that Fulton's involvement conforms to a substantial degree to the known facts, but his accounts do not do so in every respect, and it is therefore very important to examine each inconsistency to see what the significance of that inconsistency may be. Is it a minor matter which is understandable, or a more significant one which is more difficult, perhaps impossible, to reconcile with his admissions, thereby at the very least giving rise to a reasonable doubt as to his guilt? When considering the significance of a particular inconsistency one has to remember that Fulton was recounting these matters in circumstances were there was generally no one present who could put him right if he made a mistake or his memory failed him.

[89] When there was, he was corrected by Gibson on at least two occasions when he referred to Mrs O'Neill. In B1 on 22 March 2000 at page 2 he referred to her as "Rosemary O'Neill" and "Rosie O'Neill". He was immediately corrected by Gibson

> Muriel: Elizabeth Mary O'Neill.
>
> Jim: Sorry I couldn't remember all the names.
>
> Muriel: For fuck sake did you not hear it often enough. Elizabeth Mary O'Neill.

For whatever reason, Fulton appears to have had difficulty in remembering Mrs O'Neill's name correctly, because in B4 on 13 July 2000 at pages 38 and 39 Gibson again corrected him. Fulton, his wife Tanya and Gibson were discussing various topics, one of which was that "Bug" (Philip Blaney, see page 119 of exhibit C9) had been charged in connection with Mrs O'Neill's death.

> Jim: Aye, Bug's charged with attempted murder or was it murder? (overtalking).
>
> Tanya: Is that what he's charged with, murder?
>
> Jim: Your woman McNeill is it, or O'Neill.
>
> Muriel: O'Neill, Elizabeth O'Neill 59 year old grandmother the 59 year old grandmother.

[90] It is also relevant to remember that when Fulton was recounting these matters he was doing so in casual conversations, not in circumstances where his powers of recollection might be assisted by the nature of the occasion, as were he was being questioned during interview when he was asked to give his account of what had happened and why. Nor, in the very nature of things, did he have available to him any documentary or other material from which he could refresh his memory. In addition, he talked about many episodes, some of which occurred years before, such as the false imprisonment of the McCrea family in order to rob the Northern Bank in Crossgar in December 1991 (counts 45 – 49), and the hi-jacking and false imprisonment of Mr McCallum after the car crash in March 1992 (counts 50 – 52). In these circumstances, whilst on any showing he displayed remarkable powers of recollection, it would not be surprising if there were some inconsistencies between his description of events and the known facts. That there were inconsistencies is not, therefore, necessarily inconsistent with guilt.

[91] Apart from inconsistencies, Mr Treacy referred to a number of things said by Fulton which he placed under the heading of "Fantasy/Exaggeration", and it is convenient to refer to paragraphs 19 and 20 of the written submissions dated 27 April 2006 made on the application to exclude evidence at the voir dire stage.

> 19. The evidential transcripts represent a tiny fraction of the number of hours of recording and are themselves merely summaries of much longer conversations. There are, however, many examples within the evidential transcripts of the Accused giving accounts which are clearly rubbish/drivel. It is impossible for the Court to be selective about the accounts that he gives. On what basis can the Court differentiate between accounts? The Prosecution cannot pick the cherries and ignore the duff.

[92] Mr Kerr, in his reply to that submission, accepted that some of the things Fulton had said were fantastic, but pointed to the difference between accounts Fulton had given about his own activities, and things he did not know about. In paragraph 19 of his written submission of 1 June 2006 at the voir dire stage Mr Kerr put the matter as follows:

> 19. It is accepted that some of the accounts given by the defendant appear fantastic. It is notable that none of the examples cited in para 20 of the skeleton argument relate to his own wrongdoing but are opinions and or tall tales about events in Northern Ireland. Some, such as the Quinn family, are explicable as being part of a culture where it is not unknown for a considerable group of people of a persuasion to believe conspiracy theories even if far fetched. Some are clearly tall takes told to persons who the speaker knows are not familiar with Northern Ireland. Whatever the reason for them it is submitted that these matters go to the weight that may later be given to admissions not excluded by the Court. None of them are things said or done external to the accused in consequence of which he made admissions.

[93] The respective submissions on this issue have to be considered in the light of the matters relied up by the defence, and they are conveniently listed,

together with references to the pages of the transcript of the evidence of the relevant undercover officer, and the date of such evidence, at paragraph 20 of the defence submissions. For ease of reference I have substituted roman numerals for the bullet points in the original.

(i) Gary – p 41 – 16 March 2006 – how Rosemary Nelson got her scar;

(ii) Gary – pp 44-45 – Gadget men and the exploding pen;

(iii) Robbie – pp 67-69 – 15 March 2006 – Offer made to the Accused of a quarter of a million pounds to turn Queen's evidence and also ten thousand pounds by Special Branch to do this [See letter from Solicitor 3 April 2006 and PPS reply 5 April 2006];

(iv) Robbie – pp 103-104 – the man whose hair turned from grey to brown after being sentenced;

(v) Dave – pp 14-16 – 29 March 2006 – 900 people went missing in Belfast;

(vi) Dave – pp 30-32 – the proposition that the British Government burnt three members of the Quinn family;

(vii) Dave – pp 34-36 – Deals with the return of the IRA bodies from Gibraltar and the Accused's inaccuracies and errors about this;

(viii) Dave – pp 39-42 – MOD papers being sent to him from Special Branch and MI5 and the fact that two out of twenty Catholics would be innocent to assist in black propaganda against loyalists when they were killed;

(ix) Neil – pp 53-54 – 3 April 2006 – Summary of conversation with Tania – the Accused had a fallout with Neil and the Accused put Neil in his place – Neil accepts that this is nonsense.

[94] (i) How Rosemary Nelson got her scar. On 30 August 2000, B6 page 70, Fulton said that she had been badly disfigured when a bomb she was planting in toilets in Lurgan exploded. Detective Chief Superintendent Mawer accepted that suggestion was total rubbish and outlandish, see transcript of 19 December 2005 at pages 81 and 82. Indeed Fulton repeated several times his belief that her death had been brought about by the British Government, and Mr Mawer accepted that he did not regard Fulton's evidence about that as reliable. It is not an exaggeration to say that Fulton despised Rosemary Nelson, as can plainly be seen from his obscene and disparaging remarks about her in B6 between pages 68 and 73, and in B56 at page 825. The hatred and bigotry displayed in these remarks, and Fulton's belief that the British Government were responsible for Rosemary's Nelson's death, fall squarely within Mr Kerr's category of "A culture where it is not unknown for a considerable group of people of a persuasion to believe

conspiracy theories even if far fetched". The point made by Mr Kerr is that Fulton was not recounting what he had done, rather he was saying what he believed.

[95] (ii) "Gadget Man" and the exploding pens. Gary accepted that the description Fulton gave him of an exploding pen in B6 at page 100 seemed to be "an exaggeration or impossible", although he pointed out that to blow someone up with a remote control device is perfectly feasible, although he had no experience of one being contained in a fountain pen. In the absence of any expert evidence from someone such as Dr Murray, Mr Berry's description of such a device as "a bit James Bondish" was entirely apt.

[96] (iii) Offer of money to turn Queen's Evidence. Whether the amounts of £250,000 and £10,000 are improbable or not, that criminals have been encouraged to give evidence against their comrades is certainly not, as many trials in this jurisdiction and elsewhere demonstrate. However, the PPS wrote to Fulton's solicitor on 5 April 2006 saying that the prosecution possessed no records of such offers. Although the absence of a record may not be conclusive, I must proceed on the basis that Fulton's assertion was untrue, and hence was fantasy.

[97] (iv) The man whose hair turned from grey to brown. As it seems that this was a supposed to be a natural process it can be described as fantasy.

[98] (v) 900 people going missing in Belfast. This was said by Fulton in B42, which has been excluded. It cannot therefore be relied upon.

[99] (vi) That the British Government burnt three members of the Quinn family. This falls into the same category as that at paragraph 94 and (i) above, and I will treat it in the same way.

[100] (vii) Fulton's remarks about the return of IRA bodies from Gibraltar were contained in B21, which has been excluded.

[101] (viii) MOD papers sent to Fulton from Special Branch. As Dave pointed out at page 40, it has been known for corrupt police officers in England and Wales to supply information to criminals. There have been instances in Northern Ireland where prosecutions have followed the disclosure of information to terrorists by members of the security forces. Whilst the nature of, and reason for, what is said by Fulton to have happened may appear far fetched, the concept cannot be regarded as fantasy.

[102] (ix) Fulton asserted in a telephone conversation with his wife that he had had a fall out with Neil, in the course of which "He suggests he put Neil in his place about Neil slagging him off. He described the vehement conversation on the phone with Neil". See defence exhibit F22, at tab 32. This is an extract from Detective Sergeant Frost's notes of the contents of TTS RCV 702. Neil did not describe this as "nonsense", but he said that he had no

recollection of this happening, or of Fulton putting him in his place. If Neil's recollection is correct this shows that Fulton was making up a story and putting himself in a good light in the account he was giving his wife. However I do not attach much significance to this. If Fulton did have some difference of opinion with Neil, and Neil was being asked to remember something that may have occurred five years before, Fulton would not be the first person to say to others that he had bested his superior in a dispute when that was not the case.

[103] An episode of somewhat great significance is Fulton's statement to his mother that he was earning very large amounts of money with the firm, and Neil was helping him with his investments. On 29 March 2006 Neil was asked about remarks Fulton made during a recorded telephone conversation with his mother Sylvia on 9 June 2000. The transcript is defence exhibit F27. In the conversation he told his mother:

(i) he was earning 2.5 gross (presumably £2,500) every fortnight;

(ii) he was giving Neil £500 to invest for him;

(iii) that he had been provided with a flash company car;

(iv) that Neil was a millionaire;

(v) Neil owned a lot of properties, and

(vi) had lots of shares.

Neil thought that he had told Fulton that he had a flat in London, and Fulton knew he had a flat in Plymouth, but he had not told Fulton that he had lots of properties, or that he had lots of shares, although they may have spoken about shares. Fulton had not given him money to invest on his behalf. He may have jokingly said that he was a millionaire in some situations. He said that Fulton had been provided with a Renault Laguna. He agreed that Fulton was not receiving £2,500 gross every fortnight. Neil commented that Fulton "Probably wanted his mum to think that he had a proper job, and he wasn't involved in anything else"; and that he thought "that Jim would like to please his mum, and he wouldn't like her to think that he was up to anything whenever he was over in Plymouth". See transcript pages 50 to 53. Neil's assessment of why Fulton was saying these things may well be correct, but the significance of this conversation is that Fulton was inventing some things and exaggerating others, something which is consistent with his explanation for at least those admissions he made to the undercover officers.

[104] A point made to the senior officers was that Fulton was receiving substantial payments for his activities with the firm, and that this, and his dependency on the firm in general would provide a reason for his bragging

and pretending he had been involved in the episodes he had admitted. An example of where this was explored is to be found during the cross-examination of Sir John Evans by Mr McDonald on 29 October 2005, albeit in the context of safeguards that could guard against the possibility of fabrication or exaggeration of stories. Nevertheless, the point being made is of general application to both defendants in this case.

> Q. Yes. Now, did you provide any safeguards to ensure against falsification by these targets or exaggeration in their stories that they were telling?
>
> A. Again not part of my responsibility, my Lord.
>
> Q. Well, you would know that these undercover officers had to encourage a sort of dependence by the targets on them?
>
> A. Yes, my Lord, I knew that there was no point in the deployment unless they could gain the confidence of the subjects.
>
> Q. But also it would help if there was a dependence on them, for example, by the provision of extra pocket money, cheap cigarettes, cheap drink, free drink, all those sort of things.
>
> A. It wouldn't surprise me. The difference in what we are talking about is how those cigarettes and drinks were procured by the officers. But (sic) that, of course, I mean, my Lord, that they were lawfully procured.
>
> Q. Well the subject or the target of the surveillance would have to have – it would be important for that person to have an incentive to keep these new best friends that they had acquired. You are nodding?
>
> A. Yes, I understand the point you are making, my Lord.
>
> Q. It would be important for them to keep, that is the targets, to keep the undercover officers interested.

A. The targets to keep the undercover officers? Yes, undercover officers were deployed to be interested, my Lord.

Q. Yes, I know. From the target's point of view it would be important from the target's point of view to ensure that these new friends that they had who were plying them with the cheap cigarettes and the drink and the various other favours, would want to remain friendly with them?

A. Yes, my Lord.

Q. So that they could continue that stream of money, favours, gifts?

A. Well I think the purpose is to continue the stream of conversation and information.

Q. Yes. This was the quid pro quo from the target's point of view, they were getting new friends, they were in a strange country, who were providing them with all these various favours and the undercover officers were getting the information?

A. Yes, my Lord.

Q. So you can see how structurally there was a risk that the targets would tell stories of daring (sic) do and exciting adventures that would keep these people interested.

A. That may well be so, my Lord.

[105] Fulton was paid by the firm for his work as a driver, and the payments have been itemized and analysed in defence exhibits F6 and F7 respectively. As defence exhibit F7 records, over a period of 64 weeks Fulton received an average weekly wage of £455.27, or £1,821.06 a month. As may be seen from defence exhibit F6, whilst the payments were regular, they varied in date and amount. Thus in five weeks (weeks 3, 4, 25, 40 and 59) no payments at all were made to Fulton for wages, but on some occasions large amounts were paid. On 17 July 2000 and 25 April 2001 he received £1,000; on 15 March 2001 £900 (making a total of £1,070 that week); £570 on 18 April 2001, and £500 on 21 December 2000. In addition Fulton benefited from time to time from the generosity of the undercover officers, who paid for meals and refreshments. That Fulton may have been anxious to impress the firm so that he would

continue to be paid, and therefore had a motive to misrepresent and exaggerate his conduct in Northern Ireland is something that has to be at the forefront of the question why he made the admissions, and whether they are true.

[106] He was also dependent upon them, to some degree at least, for social companionship, and that may have been part of his motive for boasting. On 15 March 2006 at pages 60 and 61 Robbie accepted that the firm were his friends, that they were the people he socialized with occasionally, as well as the people he worked with. However, Robbie was not contradicted when he said that Fulton was anxious to avoid drawing attention to himself.

> Q. Yes, that's really what I'm after, you can't assist with that. But in terms of male friends to go out to the pub with, things like that, it really revolved around the members of the gang; did it not?
>
> A. On yea, and you know he was … he said: You know, I'm keeping my head down, you know, I'm staying nice and quiet over here. It's, you know, nobody knows I'm here and I want to keep it that way, so you know his friends were us, and he didn't mix with other people in the community, to any great extent.
>
> Q. So you were his friends and you also were his employers; isn't that right? I mean you paid his wages?
>
> A. Yes, his wages were paid by, by Neil in essence …
>
> Q. Yes?
>
> A. …as the head of the organisation. Ah we …we would work together and we could occasionally socialize together, em but the rest of the time, you know, the time – you know he's either with somebody else, not with me, I can't, I can't (interrupted).
>
> Q. No, you can only speak for yourself.
>
> A. Yes.

[107] Robbie was also asked whether Fulton was friendly with people other than the firm whilst he was living in Plymouth. He said that Fulton and his wife visited a lady who lived behind his flat at Plymouth, who Robbie thought was called Jill, and Fulton also spoke of neighbours who lived next to Gibson, and next to himself in Plymouth. See page 59. In addition, as appears from the evidential transcripts, his wife Tanya came from Northern Ireland, and Robbie said that she came on several visits and then took up residence with Fulton in Plymouth. B4 shows she was there on 13 July 2000 and on 30 August 2000 Fulton discussed with Gary that his wife and children were coming over. See B6, page 67. We also know that he was in contact with Gibson and her family from time to time. Therefore, whilst the undercover officers made up a significant, probably the major, part of his everyday existence, Fulton was not wholly dependent upon them for contact and companionship. Nevertheless, it is not difficult to see that he might have wished to ensure that he stood well in their company and esteem by describing what he had done in Northern Ireland. On the prosecution case he was seeking to do this by being forthcoming about what he had actually done. That he may have sought to achieve this by lying to impress his listeners, as the defence argued, has to be viewed as a plausible alternative explanation.

[108] Before I turn to consider the evidence against Fulton on each charge, I wish to refer to four further matters of general application. The first is that it is apparent from some of Fulton's admissions that he had been arrested and questioned about many of these, or other, offences in the past, and had been in custody. That he may have been suspected of involvement in any of these offences in the past must not be held against him and does not advance the case against him in any way. However, that he may have been interviewed in the past in relation to some of the offences now alleged against him, as a result of which allegations were put to him at that time about the factual background for these offences is relied upon in the defence statement as one of the ways in which Fulton acquired details which he then allegedly made use of. To that extent it is consistent with the case he makes. The second is that on many occasions during interview Fulton either said nothing, or indicated that he did not wish to say anything, in respect to the allegations that were being put to him. He was not obliged to say anything, and his silence, or his refusal to answer questions, cannot be held against him and cannot be taken into account when considering whether the prosecution has proved the case against him. The third is that Fulton has not called evidence. In this case virtually none of what has been called "the background evidence", that is the evidence relating to the circumstances of the offences themselves, has been challenged. Indeed the evidence of almost all of the witnesses except those who dealt with the surveillance operation, was agreed or read, or when witnesses were called they were not cross-examined. Fulton has not called any evidence in relation to the evidential transcripts, for example to suggest that the tapes may be unreliable because they had been

interfered with in some way. Nor has he called any evidence in relation to the circumstances in which he made the admissions, or to the circumstances of the offences. That is his right. However, it means that there is no evidence from him to undermine, contradict or explain the prosecution case, and that is something I take into account when considering the prosecution evidence.

[109] The fourth relates to the fact that Fulton has not given evidence. He is entitled not to give evidence, to remain silent, and to make the prosecution prove his guilt beyond reasonable doubt. It is open to me to draw such inferences as appear proper from Fulton's failure to give evidence. It is for me to decide whether it is proper to hold Fulton's failure to give evidence against him when deciding whether he is guilty. There can be no doubt that had Fulton given evidence he would have faced a great many questions. Some of these would have been common to each charge. For example, where did he learn the details of each crime? When did he learn these details? If he learnt some or all of these details from what others told him or said in his presence, who were these individuals? What exactly did they say, and why does he think they said them in his presence? One can easily envisage these questions, or variations of them, or further questions arising out of the defendant's answers, being asked in relation to the details of each admission. Then there would be questions relating to his reasons for claiming involvement in these offences, and in particular why he made similar admissions to others even though the undercover officers were not present? Apart from these matters, there are many issues that arise in relation to his consumption of drugs or alcohol. One example being the allegation that he had given Fulton cocaine on three occasions that was put to Gary when he was cross-examined by Mr Berry on 16 March 2000. Firstly, in a pouch after Gary had visited the toilet in a wine bar; secondly, in Neil's flat after Neil had gone to bed; and on the third occasion a few weeks later when he allegedly gave Fulton a small toiletry bag to keep for a few days, accompanied by an invitation to sample the cocaine it impliedly contained. See pages 57 – 61. Another would no doubt have been the evidence of Neil that Fulton identified himself as one of the masked men with guns beside the LVF flag being held over Billy Wright's grave in Ex. A 107, evidence to which I refer later.

[110] I am satisfied that it is fair that I should draw an adverse inference against Fulton from his decision not to give evidence. I do so because I am satisfied that the only sensible explanation for his failure to do so is because he has no explanation for making these admissions that could have stood up to cross-examination. I remind myself that I should not find him guilty only or mainly because he did not give evidence, but I take his failure into account as some additional support for the prosecution case, and in deciding whether the explanation he has advanced is, or might be, true.

[111] I now turn to the individual incidents, that is each charge, or group of charges, relating to particular offences. I propose to deal with each of the 19

incidents in turn broadly in the order in which they appear on the indictment, although the connections between some of the incidents mean that it is appropriate to deal with some in a different sequence, notably the first three incidents that are the subject of counts 1 – 13, that is the murder of Mary O'Neill, the attempted murder of Janelle Woods, and the attempted murder of Joseph Murnin and Mark Murphy at Hilltown. As will become apparent, all three occurred on the night of the 4th and in the early hours of the 5th June 1999, and the prosecution allege that each was committed at Fulton's direction, and that he was a participant in the attack on Mr Murnin's house. It is alleged that all three were linked by Fulton's involvement, and he ensured that the attack on Mrs O'Neil's home and the home of Janelle Woods should be carried out after he returned to his home in Portadown after the attack on Mr Murnin's house, thereby ensuring that when suspicion inevitably fell on him he would be at home with his wife. When dealing with each incident I will first refer to the charges, then to the background evidence, followed by the admissions relied on. I will then consider the defence case, followed by my conclusions and verdict.

The Events of 4 and 5 June 1999

[112] Counts 1 – 13 cover three incidents that occurred on the night of 4 and early hours of 5 June 1999. The first in chronological terms is the third of the three, that is the attack on the home of Mr Murnin. His bungalow was attacked at about 11.30pm on the night of 4 June 2000 when an anti-personnel device consisting of a Russian-made hand grenade was thrown towards the house, causing an explosion which blew in the window of the room where Mr Murnin was sitting watching TV. Also in the house at the time were his four children and his 13 year old nephew, Mark Murphy, who was staying the night. The prosecution case is that Fulton drove from Portadown with the others to the scene of this attack in a Renault 5 belonging to his wife Tanya. After the attack he drove them back to Portadown because it was part of his plan that he intended to get back to his house before the other two attacks were carried out, in order that he would appear to have an alibi when the police came to see if he was at home because suspicion would inevitably fall on him.

[113] The second and third incidents occurred virtually simultaneously in Portadown, Sergeant Bingham describing how he heard two simultaneous explosions when he was carrying out a VCP. The evidence of Jayne Humphreys, a neighbour of Janelle Woods, was that she had heard a large bang at about a quarter to one in the morning of 5 June. Sergeant Brown, who went to the scene of what transpired to be the graver of the two incidents at the home of Mrs O'Neill at 49 Corcrain Drive, received the call to go to that scene at 0048, so these attacks were both carried out at about a quarter to one that morning. As we shall see, a blast bomb had been thrown into Mrs O'Neill's living room through a hole broken in the window with a brick.

Tragically, when the bomb exploded it inflicted very grave injuries which caused Mrs O'Neill's death. The third incident occurred at the home of Janelle Woods at 137 Westland Road. Again a blast bomb was thrown at the window, which it appears to have broken before it fell to the ground and exploded. The blast bombs used in both incidents in Portadown have been described as Dr Murray as being devices of a type intended primarily as anti-personnel weapons.

[114] The prosecution case is that Fulton planned all three attacks, and himself took part in the attack on Mr Murnin's house, as can be seen from the accounts he gave to two of the undercover officers. Speaking to Neil on 18 May 2000, B3 at page 30, he said:

I'd ordered the fucking two houses hit, with Catholics in them in our area,

and

But they were only about, fucking about a two minute walk from my front door, you know. So, fucking, I couldn't be in the area but I, so I took two guys with me and we drove away up to fucking near Newcastle. Up to a Provie contractors house and I was using the wife's wee Renault 5 and it wouldn't go over 60 mph see.

He made the same assertion on 16 August 2000 when he was speaking to Dave, saying in B5 at page 46:

> …the one we all got arrested for fucking O'Neill Rose O'Neill…that silly old bat fucking it was the night I fucking planned three of them.

Then on the same page he repeats that he had planned all three, saying:

> So the night I planned the three of them three different units going out three different places I went out with a grenade but I went into Provie country right into where the Provies live.

In his submissions at the direction stage Mr Kerr pointed to further remarks by Fulton on 12 January 2001 where he again described to Dave how the attacks were part of a coordinated plan, part of which was that the attack on Mr Murnin's house was to be the first, and the others were to be carried out after sufficient time had elapsed to allow Fulton and his companions to return to Portadown. In B12 at page 193 occurs the following, which arose in the context of a discussion about Fulton's use of hand grenades which precedes it, and the description of the incident which follows unmistakeably refers to the attack on Mr Murnin's house.

> I'd give all the order that all the rest of the boys were going out and everybody had their check times. We were, we were away outside country like so we were, we're going to go first, that would have give us time to get back into town before they went, they went, so, I think it was 4 attacks altogether but they had all blast bombs.

[115] The prosecution rely on the inferences to be drawn from the use of anti-personnel devices in all three attacks and on Fulton's planning all three. If these accounts are true, then not only did Fulton decide that all of these attacks were to be carried out, and plan how they were to be carried out, but he was aware that anti-personnel devices were going to be used in each attack. These matters are relevant to the charges he faces in respect of Mrs O'Neill and Janelle Woods because they have a bearing on the intent that has to be established in respect of the first eight counts on the indictment.

Incident 3 – The Attack on Mr Murnin's House

[116] Counts 8 – 13 relate to this episode. Counts 8 and 9 are charges of attempted murder in relation to Joseph Murnin and Mark Thomas Murphy, two of the occupants of the house at the time, and counts 10 and 11 are charges of attempting to cause grievous bodily harm with intent to do each of them grievous bodily harm. Count 12 alleges that an RGD 5 grenade was used to cause an explosion of a nature likely to endanger life or to cause serious injury to property, contrary to Section 2 of the Explosive Substances Act, 1883. Count 13 is a charge of possession of the grenade with the same intent, contrary to Section 3(1)(b) of the Act. So far as the charges of attempted murder are concerned, the prosecution have to prove that Fulton intended to kill Mr Murnin and his nephew respectively, because the law requires that specific intent to be proved where the charge is one of attempted murder, whereas in the case of murder an intent to kill or to cause serious bodily harm may be sufficient. So far as counts 10 and 11 are concerned, the prosecution must prove that Fulton intended that grievous bodily harm, that is really serious bodily harm, should be inflicted on Mr Murnin and his nephew.

[117] In relation to counts 8, 9, 10 and 11 the prosecution case is that he planned and directed the attack, telling the others what to do, but the grenade was thrown by someone else, although Fulton was present. However, on his account, he also armed the hand grenade in his house before the attack, see B12 at page 193, and took it from one of the other attackers and straightened the pin before handing the grenade back to his companion and telling him to throw it. At B12 pages 193 and 194 he said:

> …I had to grab a fuck sake give me the fucking thing. Pulled it off him and I straightened the pin out but eh then pulled it out there was only a fucking millimetre left, hear [sic] me there now pull it out and throw the cunting thing.

[118] Therefore, although he is indicted on counts 8, 9, 10 and 11 as a principal offender, he did not throw the grenade. However, his presence, his actions in planning and preparing for the attack, taking part in it, and adjusting the pin to enable the grenade to explode when thrown, show that on his account he was taking part in a joint enterprise as an aider and abettor of the person who threw the hand grenade. It is from his avowed actions, as well as his declarations as to the purpose of the attack, that his intent is to be inferred. So far as count 12 is concerned, he was also taking part in a joint enterprise which, on the basis of his account, resulted in an explosion being caused, and he aided and abetted that by his actions, both before and during the attack. In respect of count 13, on his account he had actual possession of the grenade with knowledge of its properties when he armed it in Portadown and adjusted the pin at the scene of the attack, and therefore had possession as a principal offender, and not just as an aider and abettor.

[119] Mr Murnin lived in a bungalow at 93 Ballywelly Road. In his statement he described Ballywelly Road as being at Cabra, though he corrected this in his evidence to Hilltown. Some of the witnesses who attended the scene gave the location as Cabra, others as Hilltown, County Down. In any event the bungalow appears from the map Exhibit A20 to be in a rural area close to the Hilltown to Castlewellan Road. It was not included on Exhibit A94A, the map showing the location of some of the offences with which Fulton is charged, but it is clear that it is a considerable distance from Portadown. There was no evidence how far that was, something that would in any event depend upon the route taken, nor as to how far the bungalow is from Hilltown. As will appear, this is a matter of some significance in relation to Fulton's admissions. It was put to Fulton during his first interview (see Exhibit C1(b) at page 2) that:

> Roughly speaking it's in the region of 30 to 35 miles from Portadown where Mr Fulton lives.

No issue was taken with that estimate. As the crow flies it is 20 miles from Hilltown to the centre of Portadown, and, depending on which of the various routes that could be taken is used, the rough estimate of 30 to 35 miles from Portadown to Mr Murnin's home may not be too far out. Indeed the written submissions of 23 May 2006 of the defence said Hilltown is 30 miles from Portadown, see paragraph 41. In any event, one might expect the attackers to try and avoid being stopped, particularly on their return journey as they would expect the security forces to have been alerted. In such circumstances

to take a less obvious route using minor roads would be sensible. Fulton said at B12 that on their return journey:

> …that wee car wouldn't do more than fucking 60 round the country roads. I was ripping, but I got away like back to Portadown.

The reference to "round the country roads" suggests that minor roads were used.

[120] As stated earlier, on 4 June 1999 Mr Murnin was in the house with his four children aged between 7 and 6 months. At this time his wife was out at a church function and the children had just gone to bed. Also in the house was his nephew Mark Murphy who was staying the night. Mr Murnin was sitting watching TV in the room shown in Exhibit A19 photograph 6, sitting in the chair in the corner furthest from the photographer, close to the large window that faces out to front of the bungalow shown in Exhibit A19 photograph 2. His evidence was that when watching TV he usually had what he described as the two wall lights on, by which he presumably meant the wall lights on either side of the fireplace as in Exhibit A19 photographs 6 and 10. At about 11.30pm he heard something rattle on the roof but passed no remark. He then heard a bang against the window, followed by a loud explosion and the glass from the window came in around him, although fortunately he was not injured. After the blast he heard the sound of the squeal of a car tyre outside. He checked that his children were unharmed and put them all in a backroom where Mark Murphy watched them whilst Mr Murnin checked outside. Mark Murphy's evidence was that he was in bed at the time, he also heard glass smashing and a car screeching away.

[121] When Mr Murnin went outside, he did not go round the front of the house, and when he checked from the side he saw that there was damage to the front window. He described the damage to the kerb shown in photographs 2 and 4, and said that the white fragments of materials on the roof shown in photograph 5 had not been there before. He also saw that some of the glass was damaged in his works' van that can be seen in photograph 2 parked at the front of the house.

[122] When police attended the scene they observed the damage to the window, the kerb and the rear doors of the van. Detective Constable Crompton suspected that there had not been a shooting incident, as had been thought at first, so he arranged for an ATO to attend. Detective Constable Crompton found a ringpull and the flyoff lever for a hand grenade, both on a grass bank quite close to the road surface in the area at photograph 11. That area is outside the boundary fence at the front of Mr Murnin's house and beside the road, as can be seen from the location map Exhibit A20.

[123] The ATO, Staff Sergeant Graham Middleton, described the items first seen by Detective Constable Crompton as a possible grenade fly off lever and pin. The fragments found at the scene were examined by Dr Gerard Murray who concluded that they were from a Soviet RGD 5 type grenade thrown at the house. He described this as a factory produced, anti-personnel device, and said that had it gone through the living room window and there was a person inside there was the potential for serious injury, if not death. He also observed that it had very little use as an anti-property device, and that it was primarily used by loyalist terrorists.

[124] Part of the prosecution case is that at that time Mrs Tanya Fulton was the owner of a Renault 5, the car the defendant said that he had used to travel to and from this attack. The unchallenged evidence from Elizabeth Donaghy and Steven Stewart of the DVLNI was that their records showed that Mrs Tanya Fulton declared that she had purchased a blue Renault 5 which she taxed for one year on 1 June 1998, and in respect of which she renewed the tax at Portadown Post Office on 29 June 1999 for a further six months. Mr Andrew Chapman's evidence was that he had sold this car to Mrs Fulton of 132 Ulsterville Park, Portadown and bought it back from her in the summer of 1999. He did some work on the car during the period she owned it, and when he bought it back there was no damage to the bodywork, although just before he bought it back a rear wheel arch was scuffed. I am satisfied that the defendant's wife did possess a Renault 5 at the time of the attack on Mr Murnin's house on 4 June 1999.

[125] Fulton described this episode in four conversations with undercover officers, first to Neil on 18 May 2000, then to Dave on 16 August 2000, then to Robbie on 18 September 2000, and again to Dave on 12 January 2001. The first conversation with Neil on 18 May 2000 is contained in B3. The recording started at 0750, although there is no evidence when it finished. They are described as leaving the flat together and they drove to a café for breakfast, after which they continued their day's work with Fulton driving, and Neil's evidence was the Fulton drove him from Plymouth to Exeter and back. During that recording Fulton talked about hand grenades. At pages 30 to 31 he referred to his having thrown a Russian hand grenade and borrowing his wife's car because his was not working, and her car would not go over 60 mph. He described how he took two men with him "…and we drove away up to fucking near Newcastle. Up to a Provie contractors house…" He described how he had to reverse down the driveway, and then instructed Rory to use a breeze block to break the window, saying that "Dale put the grenade through the fucking window after the breeze block went through".

[126] He then described how the person who had the grenade panicked and was unable to pull the pin out to activate the grenade.

> Jim: A straight pull. He said Jim I can't get the pin out. Rory had already fucking broke the window, says Jim I can't get the pin out of the grenade, here's me fuck sake, give me the fucking thing, ripped it out like that there, hear me, now just fucking hold it, when you let go, throw it just spring it off and throw it, don't try and throw at the same time or it will spring it off some other direction, then, bang, fuck me, (inaudible) threw it it bounced off the fucking sill of the window landed on the driveway.
>
> Neil: Oh no.
>
> Jim: And I fucking don't, two doors were open, fuck want to feel the fucking stones. They near broke my fucking head, smoke just come flying into the car, them two jumped in the car. (Inaudible) and then they scooped everybody, and a week later they fucking scooped me.

[127] Fulton's next reference to these events was on 16 August 2000 and is to be found at B5. As on 18 May the conversation takes place in the morning, the recording starting at 0947, and took place when Fulton and Dave were in a car together. Dave's evidence was that they met at 1047 in Plymouth, and he told Fulton to drive him to London, and on the way they stopped for breakfast at a Little Chef at Ilminister. Fulton referred to the murder of Mrs O'Neill and the use of blast bombs, saying at page 46:

> So the night I planned the three of them three different units going out three different places I went out with a grenade but I went into Provie country right into where the Provies live.

At page 48 he said that he drove to the attack, saying that because of the area it was in "It was a real dodgy move like but I wanted this bastard he was er a construction worker.

[128] Fulton then described the attack on the bungalow in this passage at page 49:

> Jim: And he had fucking a van and all outside you could hear him sitting in the living room he had one of the wee windows open but just open about that and what do you call it er laughing and getting on with a couple of his workmates so I sent the boys down I says to em make sure you break the fucking

> window first cos it was a big double glazing window I says now fucking hit, you have to hit…to break a double glazing window that size you throw it at the middle it'll bounce off anything at all even a brick you have to hit it at the bottom quarter panels that's when it'll shatter the whole window I says now lift a good size fucking brick, break the corner of the fucking window and toss the fucking grenade in he says no problem so the 2 guys go out wee man he runs up game as a badger big fucking house brick whack…fucking the corner of the window goes through that was alright so they started jumping about in the house so we had to put it through there and then the fucking other wee guy runs over to me and goes like that Jim I can't get the fucking pin out. Here's me you what , give me the fucking thing, now I'm sitting on your man's driveway in a clean car and the window not even broke and lights were going on just all over the place and I fucking just grips pulls the pin out I says now hold that once you get out of the car let it fucking go and toss it through the window the boy who was letting it go he panicked and fucking threw it at the window all it did it exploded outside the fucking outside the window shattered the rest of the window and fucking threw up shit everywhere.

[129] Fulton's next reference to this episode was to Robbie on 19 September 2000, and is to be found in B8 at page 127. He was discussing how he had been arrested and questioned about the O'Neill murder, and in the course of the discussion said that he had used his wife's Renault 5 for the grenade attack, which is plainly a reference to the attack on Mr Murnin's house:

> Because the night O'Neill was killed my car stayed at the house but nobody had knew I'd took the wife's car a wee Renault 5, it was a shit car. It wouldn't go over sixty miles an hour, but it was a clean as a whistle and nobody on this earth I don't care who you are would have contemplated that I'd have used that on a move. But (mumbled word) Robbie I had went near eighty-miles away in to a Provie area with two, two boys with me for the grenade attack in that car, there's nobody Robbie, even if you drove up to the checkpoint and all, being out of the area you got the chance of nobody recognising you, you know at night time and that wee car there you were getting

> waved on, nobody in their right mind is going out in that car to do something…

[130] Two points arise from this. The first is that Fulton describes how he took a calculated risk in using a small car in poor condition for this attack because it would not go over 60 miles an hour, but he did so because nobody would think he would use it, it was an improbable car to be used by terrorists and so it was unlikely he would be recognised, and for these reasons it was unlikely they would be stopped at checkpoints. The second is that he went into what he described as "Provie area" obviously an area where he would not be welcomed. This description certainly suggests that he was prepared to take risks but the risks were calculated ones. His statement that "I had went near 80 miles away into a Provie area" was emphasised by the defence as not just being inconsistent with the facts, but so exaggerated that it indicates that Fulton's account could not be true. If that is read as meaning that the journey was 80 miles each way, and that is the obvious meaning, then it is grossly inaccurate. It could, however, imply that the journey was 80 miles in all, including both legs of the journey. If that were the case, then the inconsistency with the known facts is much less. That that was the intended meaning is, however, less likely from the words used.

[131] The final references to this incident occurred on 12 January 2001 and are to be found in B12. Like each of the three previous descriptions, this also occurred during a journey when Fulton drove Dave to Reading Services. Robbie was with them earlier in the morning but left them after they had breakfast together, the recording commencing at 0950 when Dave and Robbie met. They meet Fulton and had breakfast, and the recording stopped at 1148. Therefore the conversation between Dave and Fulton took place on a journey before noon. In that conversation there are references by Fulton to the manufacture and use of bombs involving what Fulton refers to as "carbine" (presumably a mistake for "carbide"). Fulton then turns to the subject of hand grenades, again telling Dave about the attack on Mr Murnin's house, going into considerable detail about his role in the preparation of the attack, as well as in the attack itself.

[132] Although Fulton's earlier account of this episode had been quite a detailed one, on this occasion he gave an even fuller account, as can be seen from the following passages at pages 193, 194 and 195.

> I have seen them there I've never used one of them but the last one I used. Proper shrapnel grenade was just like a wee round apple just with a wee neck on. Just pull the pin, just let her go. But you want to actually hear the percussion cap going off first before it ignites the explosives.

Dave: Right.

Jim: It's a fuck quare bang off it alone. Know what I mean aye. [redacted]. I'd give all the order that all the rest of the boys were going out and everybody had their check times. We were, we were away outside country like so we were, we're going to go first, that would have give us time to get back into town before they went, they went, so, I think it was 4 attacks altogether but they had all blast bombs. I had the little grenade, so I took the boys way out country, me and Mahatma were in the house first arming it, I had a, I had a bullet-proof jacket on backwards. You know right down here what do you call it I'm sitting like that as if it's really going to fuck'n know save me like sitting with a grenade in my hand just screw it right in once you screw it past a certain point that's it armed. Know what I mean so you can't fuck about with them, so we drive down to this house, Republican build, he was a building contractor, but he's a Republican, way in the middle of a republican area, like 30 miles in any direction like, if you'd have been fucking caught anywhere, know they'd have butchered you, butchered you. But as usual what do you call it eh, short notice I had to grab a fucking a clean car. Fuck'n the wife was driving this stupid wee Renault 5 GTL or something and it was a heap of fucking shit, the cunting thing wouldn't go. It took a big hill to get it up to fuck'n 80 mile an hour. Know what I mean but it was totally clean know what I mean so there was no fucking books on it whatsoever. So there was fuckin 3 of us jumped into it me and the (inaudible). Took us about an hour to get there, we were running against the clock, like. I says right boys, I says you get out I says Robo you grab a brick. Up, break the fuckin now. It's a big double glazed front fuckin window, in this big bungalow, make sure you hit it down about down one of the corners don't throw it in the middle cos it'll bounce back, big brick hit the corner of it, fuckin er that'll break it and then lob the fuckin grenade in or the fucking grenade will just bounce off the window. Ah there's no problem. The two of them gets out, fucking the first one fair enough they'd never used a grenade before know what I mean, and in the heat of the moment, know what I mean I didn't think know what I mean

common sense would have know to fuckin its just like you know one of them pins, just flatten the edges out till there (sic) straight and then just pull it like any jubilee clip, so fuckin eh.

(Dave coughs).

Jim: All I hears this crack the window going in then all the fuckin lights in the house going on, er yer wee man comes back to the car and he say I can't get the pin out. Fuckin hell I'm sitting in yer man's driveway in this wee fucking stupid, wee fucking Renault 5. I says for fuck sake give me the fuckin thing. Pulled it off him and I straightened the pin out but eh then pulled it out there was only a wee fuckin millimetre left, hear me there now just pull it out and fuckin throw the cunting thing. But, there was that much activity round the house the wee fella just run to the top of the driveway, just fuckin lobbed it, fuckin thing just bounced off the sill of the window and exploded, fuck me I'm not joking yer wanta see the shit hitting my fuckin car or the wife's car, I had all the windows open just in know what I mean cos the percussion from an explosion it would have put your windows in.

Dave: Oh right.

Jim: You know so I had all the windows down on the side of the car, the fuckin stones, shit hitting my fuckin face. Here's me ya wee bastard will yet get into the fuckin car. You want to see us trying to get away that wee car wouldn't do more than fuckin 60 round the country roads. I was ripping, but I got away like, got back to Portadown. As soon as I got into the house the wife was up staying in my house with the kids, I says right I had a sofa bed downstairs as well. Pull that sofa bed out, were watching T.V. downstairs. Eleven o'clock on the, or five past twelve on the button boom!

[133] From these accounts it can be seen that Fulton described the events in considerable detail on four occasions over a period of twelve and a half months and the following features appear in those descriptions.

(i) A Russian-made hand grenade is used, not a home-made device.

(ii) Fulton gave instructions at the scene that the window be broken in the bottom corner so the hand grenade could be thrown through the hole into the room inside.

(iii) The grenade thrower is inexperienced, panics and is unable to extract the firing pin.

(iv) Fulton then takes over, almost extracting the pin but leaving only one millimetre or so before returning it to one of the other attackers.

(v) Instead of the grenade being thrown through the hole it is thrown at the house.

(vi) The grenade bounces off the windows.

(vii) Their car is spattered with small stones from the blast.

(viii) Fulton took his wife's Renault 5 car because it was not associated with criminal activity, and so was less likely to be stopped at a checkpoint.

(ix) This car was not capable of high speeds.

(x) He prepares the grenade for use at his home in Portadown earlier that day.

(xi) Whilst preparing it he puts a bullet-proof vest on backwards.

[134] In some respects his accounts are either internally inconsistent, or inconsistent with the facts of the episode.

(i) He once referred to the owner as "McGlinchey" (page 222).

(ii) He said on one occasion that he thought there were four attacks that night.

(iii) He described the explosion as being beneath the window.

(iv) Dale put the grenade through the window (page 31).

(v) He said the window was open (page 49).

(vi) He said that the man was "laughing and getting on with a couple of his workmates" (page 49).

Most of these are very minor inconsistencies of the sort that may well emerge when an account is given several times on different occasions widely separated in time.

(i) The reference to Mr Murnin as "McGlinchey" is easily understood, either it was simply a slip of the tongue, or it is by no means impossible that Fulton had obtained the wrong name.

(ii) The reference to four attacks (page 193) was expressed in terms of uncertainty at the time, and on each of the other occasions Fulton said that there were three attacks.

(iii) The explosion was on the edge of the driveway, but that was only a few feet from the window as can be seen in Exhibit A19 photograph 2.

(iv) The reference to Dave of putting the grenade through the window at page 31 was corrected almost immediately when the grenade is described as bouncing off the window sill at page 32.

(v) The quarter lights, or side windows, in the damaged windows were shut. See the same photograph.

(vi) Although the windows were shut, Fulton said he heard the sound of voices, which he had attributed to there being workmates in the room. However, Mr Murnin said that he had the TV on, so no doubt sounds were emanating from the TV which could have been heard outside.

[135] Matters of greater significance are that Fulton said to Neil.

(i) That three shots were fired.

(ii) That it happened in Omagh.

(iii) That he said he went nearly 80 miles into a Provie area.

(i) and (ii) are plainly wrong, (iii) I have already referred to at 130].

[136] I have already referred to Fulton's defence that he was repeating what he had heard from others, that he inserted himself and friends and family into his account to make it seem more authentic, and that he was bragging to make himself appear a big man in the eyes of the firm, and I do not propose to repeat it. He was questioned about the Murnin incident at considerable length during his first interview. He made no reply, even though one of the matters put to him was the possibility that he might want to say that he had read about it in the papers. In the second interview he was played the tape relating to the 18 May 2000 and then questioned about it. It was in the fourth

and succeeding interviews that he made the defence that he was repeating a story he had picked up, although he could not be precise where he heard it. At page 44 when saying that he was not involved in the murder of Mrs O'Neill he said that earlier that night he had given Dale and Rory a lift to the Coach, when asked who they were he said he did not know their second names even when asked was he referring to Dale Weatherhead and Rory Robinson. Robinson has an obvious connection with the name "Robo" he used in the passage from page 194 set out earlier. The police returned to this in interview C12(b) at page 148 and Fulton then admitted that he had known Dale for four or five years. It is clear that he was caught out in an attempt to distance himself from Weatherhead by claiming him as an alibi, but then saying that he did not know him that well, when, as he was driven to say at page 151, "Yous are well aware I know Dale". There is nothing to support this alibi and I am satisfied that it was false for the reasons I give later at [151].

[137] I am satisfied that on each of the four occasions he recounted the part he actually played in the attack on Mr Murnin's house. Fulton was not affected by alcohol or drugs because he was driving for long periods each time, and it is wholly implausible to suggest that he may have been affected in this way. I accept the evidence of the undercover officers on this. As earlier stated there can be no doubt that Fulton was bragging when he discussed these matters, the question is was he bragging about matters he had been involved in, or was he, or might he have been, describing events he had heard about and in which he was falsely claiming a role for himself to improve his standing in the eyes of the undercover officers whom he wrongly believed to be members of the criminal gang? Was what he said about his role in this attack true? There are a number of things he has said that are completely wrong, namely that shots were fired and that it happened in Omagh, and the reference he made to driving nearly 80 miles into a Provie area is, on the face of it, a significant inconsistency, although it is possible, to put it no higher, that on one construction it may not be. Then there are the details I have considered at [134], none of which I consider to be of great significance either individually or collectively.

[138] These have to be sat against the strikingly detailed accounts he has given on several occasions, accounts which conform to a very significant extent with the known facts, and contain a wealth of circumstantial detail which, on the face of it, suggest that he is describing something he had been involved in and not something he has heard from others. Arming the grenade whilst wearing a bullet-proof jacket backwards. The instructions to break the bottom quarter panels because the window is double glazed and otherwise the brick would bounce off the window. The panic when one of them could not pull out the pin. The calculated risk in using his wife's car even though it was so small and underpowered because it was "clean". All of these carry conviction as indicating he is describing events he took part in.

[139] There is also the difficulty Fulton would have recalling details with the degree of consistency and verisimilitude displayed in these accounts had he not been involved in these events. It has to be remembered that when he described the attack on Mr Murnin's house Fulton was describing only one of a substantial number of crimes that he said he had been involved in. Plainly he has a retentive and capacious memory, but it beggars belief that he could remember such a wealth of detail about so many different events if he had not been involved in them.

[140] In addition, Fulton did not confine his discussion of his role in the attack on Mr Murnin to conversations with the undercover officers, because he discussed it with Gibson and Ayesha Landry on 24 March 2000 in B2, a recording from a probe when there were no undercover officers present. At page 16 there was a discussion about why "Bug" (Blaney) had admitted involvement in Mrs O'Neill's murder, and there then occurred the following exchange between Gibson and himself which plainly refers to the aftermath of the attack on Mr Murnin's house when he was safely in bed at home before the police came to his house to check his whereabouts. Gibson refers to his being "away doing the other one", and Fulton says "But I was already back home".

> Muriel: Because you had went on home as I remember.
>
> Jim: No I was, I wasn't even in County Armagh.
>
> Muriel: Aye, you were away doing t'other one whenever eh Philly went down to do that there.
>
> Jim: But I was already back home, in the house with Tanya.
>
> Muriel: Aye, in bed.
>
> Jim: In, no we were actually put the, we put the, you know the couch bed, we had actually rolled it out to watch TV. We heard it going off and when it went off, me and her were looking through the fuckin blinds and a Landrover come up, parked in front of the house and shone the lights, flood, flash the lights at me and Tanya in the window, you know what I mean, so that was 2 seconds after it happened me and her were sitting, I had nothing on, she was sitting in her pyjamas wave, waving at the police so they knew it had nothing to do with me. You know, all they had me in for was directing it, directing you know all the attacks, that's all.

> Muriel: That's what I said to Gabriel I said they are going to try and get Jim on a Directing Charge here.

The significance of this passage is that the account tallies with the account he gave to the undercover officers, eg to Neil on 18 May 2000, B3 at pages 32 and 33, and to Dave on 16 August 2000, B5 at page 51. Not only has he been consistent in his account, but he has given some of the details to Gibson and her daughter, and Gibson's intervention shows that she was aware of his having taken part. This conversation cannot be explained as having been an attempt to impress the undercover officers.

[141] Having weighed all of the evidence relating to these charges I am satisfied that Fulton was not describing events he had heard others talk about, or had picked up from other sources, but was recounting events in which he participated. Notwithstanding the inconsistencies to which I have referred I am satisfied that his admissions are reliable and that he took part in the attack on Mr Murnin's house as he admitted. I am satisfied that his admissions are true.

[142] I now turn to the specific charges, the first of which is count 8, the attempted murder of Mr Murnin. Fulton has described how they took a Russian grenade, which was armed by him, and how he pulled out the pin at the scene to enable it to be thrown by one of his companions, who he then told to throw it through the hole in the window to be broken for that purpose. The use of an anti-personnel weapon, and the determination Fulton displayed to ensure that the hand grenade was thrown into the room, leads me to the inescapable conclusion that the occupant of that room, whom he believed was Mr Murnin, would be killed, and that is what he meant when he said at page 89 "I wanted this bastard". Fulton would not have set up such an elaborate attack, involving as it did his taking a calculated and considerable risk that he would be caught, and driving so far, merely to intimidate Mr Murnin out of his house, or to frighten him. I am satisfied that his intent was to kill Mr Murnin, but fortunately the plan miscarried because one of his fellow attackers blundered in his role, and Mr Murnin escaped injury. I am satisfied that count 8 has been proved and I find him guilty on that count.

[143] Count 9 is a count of attempted murder of Mark Murphy, Mr Murnin's nephew. There is no evidence where he was in the house at the time, anymore than there is evidence where Mr Murnin's children were either. When I asked Mr Kerr at the direction stage why there were no counts in respect of Mr Murnin's children, he very reasonably replied that one would not tend to bring a charge in respect of every person who happened to be in the house. Whilst Fulton intended that whoever was in the room into which the grenade was thrown would be killed, that does not necessarily mean that he intended to kill all the occupants of the house, although there is a strong

inference that he was indifferent as to who was killed, provided that Mr Murnin was. However, there is no evidence that he knew that there were any other occupants of the house as he makes no reference to them, although he possibly was aware that there were others living in the house. Another factor is that Dr Murray described this type of grenade at page 91 as one where it became less lethal the further people are away from the explosion.

> This type of grenade is an anti-personnel weapon designed for use in an offensive role. The fragmentation produced upon initiation of the explosive filling, approximately 110 grammes of TNT, is most effective at close range but the potential for lethality falls off very rapidly with increasing distance from the explosion. Grenades have been accounted [presumably this should be "encountered"] on numerous occasions in Northern Ireland particularly attributable to Loyalist extremists.

[144] There is no evidence where the others where in the bungalow, or to say what the risk was to them had the grenade exploded in the room where Mr Murnin was. These facts might suggest that the prosecution have failed to prove that Fulton had the necessary intention to kill Mark Murphy. That would be to take an unrealistic view of the entirety of the circumstances involved in this attack. Mr Murnin's children had been in the room until not long before the attack. If they, or Mark Murphy, had been in the room with him, would they not have been encompassed by his intention to kill? Terrorists who carry out sectarian murder attempts of this type are completely indifferent to who may be killed provided that their intended victim is killed. I am satisfied that Fulton shared this indifference to the full and I find him guilty on this count.

[145] Count 10 is an alternative to the count of attempted murder of Mr Murnin and I find the accused guilty on this count. Count 11 is a similar charge of attempted grievous bodily harm in relation to Mark Murphy and for the reasons already given in relation to the attempted murder charge relating to him I find him guilty on this count. Given my findings as to Fulton's intention, and as he armed the grenade at his home before setting out, prepared it for use at the scene by partially extracting the pin, and instructed his companion to throw it into the room once the window was broken, Fulton clearly had the necessary intent to endanger life, or to enable others to do so, and had possession of the grenade. I find him guilty on counts 12 and 13.

Incident 1 – The Murder of Mrs O'Neill

[146] Counts 1 and 2 relate to the death of Mrs O'Neill, count 1 alleges that others having murdered Mrs O'Neill, Fulton "did aid, abet, counsel and procure those persons to commit the said offence". Count 2 alleges that he did "aid, abet, counsel and procure" others to commit an explosion of a nature likely to endanger life or to cause serious injury to property. As already indicated the prosecution case, based on Fulton's submissions, is that whilst Fulton did not take part in the attack on her home which led to Mrs O'Neill's death, he ordered it to take place and planned it, as he did in respect of the attack on the house of Janelle Woods. Because of the issues of law that arise I propose to deal with the background facts, then with his admissions and whether they are true, and finally with the inferences to be drawn from his admissions, before returning to the issues of law.

[147] By 4 June 1999 Mrs Elizabeth Mary O'Neill and her husband John Joseph O'Neill had lived at 49 Corcrain Drive, Portadown for some 36 years. At about 12.30 am on 5 June 1999 Mr O'Neill went upstairs to bed but his wife stayed up to watch television. A short time later he heard a bang from the front of the house, followed by a shout from his wife. Mr O'Neill had no idea what she was shouting, so he got up and started to make his way downstairs. When he was three or four steps from the bottom of the stairs he saw his wife in the doorway leading from the front hall into the living room. There was then an explosion causing injuries to her chest and heart, resulting in what Professor Crane, the State Pathologist, described as a "massive haemorrhage both externally and into the left chest cavity" which was responsible for her death. He also concluded that she had "sustained extensive mangling of her left hand consistent with her having been holding the device, close to her body when it exploded".

[148] When the police investigated the scene a concrete brick was found near Mrs O'Neill's body, see Exhibit A5 photograph 20, and there was considerable broken glass around, and in the vicinity of, her body, as can be seen in that photograph. As can also be seen from the photographs, her body was found lying in the door way between the hall and the front living room, and there were two holes in the window of that room, as can be seen from photographs 1 and 2. As is apparent from the latter photograph in particular that window is double glazed and both layers of glass had been broken. I am satisfied that what happened was that the window was broken with the concrete brick and the explosive device was then thrown through one of the holes into the living rooms. Mrs O'Neill picked it up, no doubt in a vain attempt to throw it back into the street, but tragically the device exploded in her hand before she was able to do this, inflicting massive injuries which caused her death.

[149] The explosion occurred at about a quarter to one, see [113] above. Fragments of the device can be seen in photograph 8, and it is significant that on part of one of the fragments can be seen a deep incised groove. When the

fragments were examined by Dr Murray of the Forensic Science Agency of Northern Ireland he referred to several of these grooves on one of the fragments, and explained that, as he put it in cross examination on 15 September 2005 at pages 6 and 7 of the transcript:

> The purpose of putting the grooves into the metal, my Lord, is to create lines of weakness – so that you have reduced the thickness of the metal to make it easier for the pipe to break up.

[150] Dr Murray described weapons of this type as being "…small, hand thrown devices intended primarily as anti-personnel weapons". He was asked what he meant by the use of the word "primarily", and because of the importance of this in the context of the charges relating to Mrs O'Neill (and to the charges relating to the attack on the home of Janelle Woods) I set out his response in full.

> A. They are explosive devices, my Lord, and have been used in the past… have been thrown into property and have caused damage to the property, but the purpose of the device is primarily as an anti-personnel weapon. It does have also the potential of causing damage.
>
> Q. Am I correct then in extracting from that, Doctor Murray, that the sole purpose is not as an anti-personnel weapon, that there are secondary purposes for such devices?
>
> A. It… I have known examples, my Lord, where such devices have been placed on the windowsills of houses and have caused damage to the windowsill and to the windows; without having caused extensive damage inside the property. So that's why I say they also have this potential of causing damage.
>
> Q. Can I ask you, Doctor Murray, have you examined many such devices (or the remains of such devices) in almost 32 years?
>
> A. I have, my Lord.
>
> Q. And are we talking a figure in scores, or hundreds or even more?
>
> A. Ah hundreds, my Lord, at least.

> Q. And of those cases that you've dealt with, can you say how many of those cases – involving pipe bombs – involve fatalities?
>
> A. I can recall two, my Lord. There may be others, but two stick in my mind.

[151] Fulton referred to the murder of Mrs O'Neill, and to the part he played in it, on several occasions over a period of eight months between 22 March 2000 and 16 November 2000. The first occasion was on 22 March 2000, in B1 when Fulton, Gibson and Ayesha Landry were present in Gibson's house in Cambourne. No undercover officers were present and the recording, which covers the period from 1709 to 2124, came from a probe. This conversation took place shortly after Fulton had returned from the United States and moved to Plymouth. Fulton and Gibson were discussing the time they have spent in Gough Barracks and Fulton refers at page 2 to Mrs O'Neill's murder. This was one of the occasions he got her Christian names wrong, saying she was Rosemary O'Neill, whereupon Gibson emphatically corrected him, saying she was Elizabeth Mary O'Neill. There then occurs a lengthy discussion in which he and Gibson refer to themselves and others being arrested and questioned following the murder, in the course of which differing recollections are expressed as to who was actually arrested. I have earlier referred to Fulton's alibi that he had given Dale and Rory a lift to the Coach, and at page 3 he explains how he told the police that he wouldn't say who the people were that he had given a lift to, a position he maintained throughout the period he was questioned. He also referred to Dale in a fashion that shows he knew him well, even though, as we have seen, he told the police at one stage during his interviews that he did not know Dale's surname. This account of their common experiences leaves me in no doubt that Fulton deliberately lied to the police about his knowledge of Weatherhead when he was questioned after this arrest in 2001.

[152] The second reference to the murder of Mrs O'Neill came two days later, in B2 on 24 March 2000. Again this recording, which was between 1300 and 1656, came from a probe, and those present where the same as in B1 on 22 March 2000. At page 14 he makes a passing reference to the murder of Mrs O'Neill, and then there is a discussion about why "Bug" (Philip Blaney) had admitted to involvement in Mrs O'Neill's murder, and to his apparently having implicated Fulton in one of the attacks that had taken place that night. Fulton then says "It couldn't possibly have happened", and the exchange to which I've earlier referred at [140] takes place between himself and Gibson in connection with the Murnin incident.

[153] The third reference to Mrs O'Neill's murder comes on 18 May 2000 in B3. Fulton drove Neill from Plymouth to Exeter and back in the morning. In

the course of his description of the attack on Mr Murnin's house Fulton says at page 30.

> "We went out and fucking, (inaudible) I gave the boys pipe bombs like", and later "I'd ordered the fucking two houses hit, with Catholics in them in our area"… "But they were only about fucking about a two minute walk from my front door, you know. So, fucking, I couldn't be in the area…"

[154] The fourth reference to Mrs O'Neill's murder occurred on 13 July 2000 in B4. This is the result of a probe tape when Fulton, his wife Tanya and their children visit Gibson. No undercover officers are present. There is another discussion about Bug being charged, and at page 38 Fulton is unsure about Mrs O'Neill's name, asking was she McNeill or O'Neill, and again Gibson puts him right, saying she was Elizabeth O'Neill. It seems that this remark was probably made shortly after a phonecall at 1930.

[155] A more significant reference is the fifth, which occurs in B5 when Fulton and Dave are on a journey from Plymouth to London on the morning of 16 August 2000. In the course of this conversation in the following passage at page 46 Fulton says that he planned all three attacks. He also explained the sectarian motive behind the attack on Mrs O'Neill's house, the way the attack was carried out and why he had taken a grenade and not a blast bomb.

> …and the one we all got arrested for fucking O'Neill Rosie O'Neill…that silly old bat fucking it was the night I fucking planned 3 of them what do you call it er I wouldn't throw them no more after the last one I threw fucking wick bent on it cracked when I lit it went to throw it, it bounced jumped on the top of the wick right into the fucking neck of the fucking blast bomb it got about 4 fucking foot from my hand and went off.
>
> Dave: Fucking hell.
>
> Jim: So the night I planned the three of them three different units going out three different places I went out with a grenade but I went into provie country right into where the provies live.
>
> Dave: Yeah.

> Jim: But er 3 of the other guys they went …cracker like I must admit it was a fucking real real strong fucking type, different from the design we were using but it was out the same batches, anyway so they put the window through first with a brick and then tossed that in and she's so fucking house proud what's she do she's sitting in the living room instead of fucking running out that's sitting going psst on the floor instead of fucking running out frightened she picks it up and goes to throw it back out of window she picks it up lifts it up to here and it goes off here just completely blew her torso off from there…
>
> Dave: Shit.
>
> Jim: Just dismantled her.
>
> Dave: What was she then.
>
> Jim: She was a prod (laughs) well she er it was a mixed family.

[156] The sixth reference to Mrs O'Neill's murder occurs on 30 August 2000 in B6 during a meeting with Gary where Fulton refers to being arrested and questioned about the murder, but he makes no admissions in relation to it. The seventh reference occurs on 19 September 2000 in B8 when he again referred to her murder at page 127 in a passage in the course of a conversation with Robbie already quoted at [129]. His admissions relate not to his participation in the murder of Mrs O'Neill, but to the attack on Mr Murnin.

[157] The eighth reference occurred on 25 September 2000 during a journey with Neil when he drove Neil to Great Portland Street in London. This is B9 and the recording is from 0902 until 1110. At page 149 the conversation turns to Bug who Fulton says had phoned him. He then goes on to describe how Bug has told them that he had implicated Fulton and Mahatma in Mrs O'Neill's murder. Fulton continued at page 151.

> Well that's an impossibility for the simple reason is Bug was nowhere near me that night. He didn't even see me that night. I know he was on one of the moves but he what do you call er he didn't see me.

Whilst what Blaney might have said about Fulton is not evidence against Fulton, what is significant is Fulton's knowledge that he knew Blaney "was on one of the moves", in other words that he knew Blaney was involved in

one of the episodes on the same night. He continued to discuss Blaney's activities, and at page 155 refers to his actions that night, and to his being questioned by the police after the murder, saying "they [the police] already know I never done it". That is a clear denial of taking part in the attack on Mrs O'Neill. But he goes on to refer to his getting back to his house before the murder.

> Jim: They already know they already know I never done it, but all they're trying to do was eh get me for ordering it cause actually when hers went off low and behold. Me and the wife were, I got back to the house before there's I had time it, what do you call it we had done ours I had time to get back to Portadown in County Armagh get into the house.
>
> Neil: Ah.
>
> Jim: Before that one went off and what do you call it I was in the house and the wife er, I wanted to stay downstairs the whole night just in case any fucking body come near the door what not. So we pulled a two seater sofa bed out, me and the wife. Got the big er sleeping bag down, lying there, we heard it going off.

[158] The ninth reference by Fulton to Mrs O'Neill's murder occurs on 16 November 2000 in B10 during a conversation between himself, Gibson and Talutha Landry. This conversation was recorded by a probe during the mid-afternoon between 1547 and 1656. Fulton refers at some length to allegations that appear to have been made in the United States about his involvement in the murder of Rosemary Nelson and other crimes, and in the course of his denials he referred to Mrs O'Neill's death at pages 163 and 164.

> No no no I actually thought that would have been you know what I mean but (inaudible) and this one cunt that's leading the congressional enquiry. The senate. I can't remember his fucking name. Fuck he has it fucking in for me. He's me a convicted LVF terrorist and everything like, (inaudible) leading fucking protestant fucking murder squads fucking responsible for over fourteen fucking murders and all.
>
> Muriel: Mary Elizabeth O'Neill for instance.

> Jim: Aye that's another reason why what the disagreement was ordering, me ordering me the death of Mary O'NEIL and throwing blast bombs.
>
> Muriel: Mary Elizabeth O'Neil, 59 year old grandmother.
>
> Jim: Went strictly against Billy WRIGHT's wishes that she was not to be touched. An order was given that she was not to be touched.
>
> Muriel: Billy was already dead. (laughing). Jim: That she had not to be touched, only I made sure she was, and then there was a policeman with a blast bomb (inaudible). We, I ordered everybody all our men to stay away from all that. None of our men were ever near there when that cop got blew up. They just thought those old (inaudible) with Mary.

I am satisfied that in the sentence beginning "He's me a convicted LVF terrorist" Fulton was recounting the way he was being portrayed in the congressional enquiry, and not admitting to his supposed activities. However, when he responds to Gibson's interjection about Mrs O'Neill what he says is quite different. He is plainly saying that he ordered her death and the throwing of the blast bombs, and that despite an order from Billy Wright that Mrs O'Neill was not to be touched, in his words "Only I made sure she was".

[159] The tenth and final reference to his part in Mrs O'Neill's death occurred on 12 January 2001. This conversation is B12 and occurred in a recording between 0950 and 1148 that morning. Dave's evidence was that after breakfasting together at the Port O Call Café in Plymouth Fulton drove him to Reading Services. At page 193 in the passage quoted earlier at [132] Fulton referred to the preparation for the various attacks, saying "I'd to give the order that all the rest of the boys were going out and everybody had their check times", and that he and his companions were going to go first to give them time to get back into town "before they went, they went, so think it was four attacks all together but they all had blast bombs".

[160] Are Fulton's admissions that he ordered the attack on Mrs O'Neill's home true, or are they, or might they be, untrue? Was he falsely ascribing to himself the role of the leader, the person who ordered all three attacks, who decided who was to be attacked, when and with what weapons? When considering this I have to bear in mind that it is central to Fulton's account that he was not present when the attack on Mrs O'Neill's house was carried out, and his understanding of what happened at the scene necessarily came from others. Given that Mrs O'Neill lived not far from him, and the dreadful

fashion in which she met her death, it is perfectly possible that some at least of the features of the attack were common knowledge in the area in the months after her death, and that Fulton could therefore have acquired this knowledge, other than by having been involved in it, in the period between 5 June and his going to the United States, which he said in interview was in September 1999. See Exhibit C4 (b) at page 48. As Fulton was questioned by the police he could also have acquired details about the attack on Mrs O'Neill from the questions put to him. Equally, the description he gives is a relatively brief one, and so it would not have been as difficult to remember the details of such an event, irrespective of the number of other events he described. Nor does the extent to which his admissions conform with the known facts necessarily prove that he was involved, as his admissions do not contain the wealth of detail found in some of his other admissions, particularly that relating to the attack on Mr Murnin the same night.

[161] Have the effect of drink or drugs any part to play in his saying these things? For the reasons I have given in relation to the admissions to the undercover officers about the Murnin incident I am satisfied that he was not affected by drink or drugs when he made the admissions whilst driving. Those reasons apply with equal force to the admissions in B3, B5, B6, B9 and B12, all of which were made when driving during the day. So far as the admissions made when there were no undercover officers present are concerned, there is nothing to suggest that Fulton was materially affected by alcohol or drugs on any of those occasions.

[162] Are there any inconsistencies or exaggerations in his account? Fulton described her torso as completely blown off by the explosion, and to her being "dismantled". Mrs O'Neill was not physically dismembered, as these remarks imply, but the injuries to her hand and chest were very severe, and whilst the reference to her torso being blown off contained a significant element of exaggeration, this, and the reference to her being "dismantled", are to some degree figures of speech and understandable as such, as is the reference to her being "cut in half" at page 33.

[163] The central pillar of Fulton's explanation for saying these things is that he was trying to impress the members of the firm. However, this is not only inconsistent with, but is contradicted by, his references to his part in Mrs O'Neill's murder to others when the undercover officers were not present. These individuals were his wife, Gibson and her family, all people who plainly knew a great deal about his activities. Two of the descriptions in the four probe conversations, B1, B2, B4 and B10, implicate him in this crime. The first is that in B2 were Gibson refers to him in the passage already quoted at [140] as having been at home. On its own this might be thought not to contain a direct, as opposed to an implied, admission of involvement, although the tenor of the entire passage in the context of the discussion about Blaney's implicating Fulton, is not that the police were wrong to believe

Fulton had been involved, but that they could not prove it because he had got home in time to give himself an alibi. However, his statement on 16 November 2000 to Gibson and to Talutha Landry that he had ordered Mrs O'Neill "to be touched" is incontrovertibly a statement that he had ordered that she be attacked. I do not believe that in saying this to Gibson and Talutha Landry Fulton was merely repeating an untruthful account he had given to the undercover officers. He had no need to impress Gibson, on the contrary he was reminiscing with her and she plainly knew a great deal about him and the others in the circle they talked about.

[164] His assertion that he invented his role in Mrs O'Neill's death does not bear scrutiny and I am satisfied that Fulton was telling the truth when he described his role in the events which resulted in her death.

[165] What was Fulton's intention when he planned the attacks on the homes of Mrs O'Neill and Janelle Woods? Plainly his motive was sectarian in both incidents. Mrs O'Neill was a Protestant married to a Roman Catholic, as can be seen from his reference to the O'Neill family as "a mixed family". These homes were chosen because the occupants, or some of them, were believed to be Catholics, hence Fulton's order that the houses were to be "hit". What was meant by "hit" is central to the charge of murder (and as we shall see to that of attempted murder in relation to Janelle Woods) because the defence submit that "the plan was, as found by Mr Justice Coghlin in the Blaney judgment, to intimidate or frighten Catholic families out of their houses in Loyalist areas. It was not to cause grievous bodily harm or kill the occupants of the houses" as it was put in paragraph 13 of the final submissions dated 14 June 2006.

[166] Blaney is Philip Joseph Blaney, who has been referred to as "Bug" and who features in some of the passages already referred to, including references to his being arrested in respect of Mrs O'Neill's murder. As will become apparent, Mr Treacy relies on Blaney being convicted of the manslaughter of Mrs O'Neill, and when applying for a direction at the end of the prosecution case he put before the court:

(1) the indictment (Bill 231/01) upon which Blaney was tried;
(2) the judgment dated 9 January 2003 in which Coghlin J convicted Blaney of the offences relating to the death of Mrs O'Neill and the attack on Janelle Wood's home;
(3) the sentencing remarks of Coghlin J on 7 March 2003 when passing sentence on these charges.

[167] The only other information I have been given as to Blaney's role in these events came from Mr Kerr, who stated without contradiction that

Blaney was meant to be the lookout in the O'Neill attack, and to put the brick through Ms Wood's window. See page 6 of the transcript of Mr Kerr's submissions at 1 June 2006. He then developed the prosecution's submission that the person who threw the device into the house had the necessary intent to commit murder in the case of Mrs O'Neill.

> The Judge: So he was meant to put it through the Woods' window?
>
> Mr Kerr: Yes, and in the O'Neill case he was meant to be the lookout.
>
> The Judge: Is it the Crown case so far as Blaney was concerned he may or may not have had the necessary intent to kill Mrs O'Neill, because he was only charged with manslaughter?
>
> Mr Kerr: Our submission on that has to be that he evidence in his case was insufficient to show the intent.
>
> The Judge: Yes.
>
> Mr Kerr: But if I might say I think I referred before to it but Mr Treacy in his submissions had suggested that Blaney was, in fact, a principal but of course as his role was to be the lookout we say that that is not in fact the position and therefore within the terms of the principles I opened to your Lordship he was not a principal and, therefore, the result in this case was not on the face of it necessarily inconsistent with Mr Fulton having the appropriate intent.
>
> Your Lordship would be quite entitled on the evidence to infer that the principal who threw the device into the house had the requisite intent.
>
> The Judge: I presume that the Prosecution are alleging against Fulton, insofar as one can find people who play many different roles in a criminal enterprise, his role is that of counsellor and procurer because the inference from his remarks that I already quoted is that he directed that this lady was to be killed.
>
> Mr Kerr: That's correct, my Lord.

> The Judge: And therefore, unusually perhaps where it is the actual perpetrators who are charged, here there is someone who says he planned three episodes that night, one of which he took part in, the Murnin attack, but the other two were at his direction and with his knowledge and not only at his direction and with his knowledge but he directed the devices that were to be used.
>
> Mr Kerr: That's correct, my Lord.

[168] As the judgment of Coghlin J states, Mr Treacy was instructed on behalf of Blaney by Mr Ingram, but no evidence has been given in the present case as to the nature and extent of Blaney's knowledge of what was intended, no doubt as the result of careful thought by the defence, and it does not appear from the judgment of Coghlin J, which was concerned with other issues.

[169] I have referred to Blaney's intention because Mr Treacy's submission is that it would be inconsistent to convict Fulton of murder when Blaney was convicted of the manslaughter of Mrs O'Neill. The nature of the defence submission on this can be seen from the following extract from paragraph 15 of the final defence submissions dated 14 June 2006. (The italicised passages are quotations from the closing submissions for the prosecution).

> (i) *"Joint Enterprise – it is the Crown case that **all** the participants in the attacks **agreed** as to what was to be done and the manner in which it was to be carried out … **Each is**, therefore, liable for the acts done in pursuance of that **joint enterprise** …* (Emphasis added). It is instructive to note that Mr Blaney and Mr Fulton on the Crown case were secondary parties to the agreed attack and the joint enterprise. It is not suggested that there was more than one joint enterprise or plan relating to Mrs O'Neill's house. Thus, if both this Accused and Blaney are secondary parties to an agreed plan and the principals carried out that agreed plan then it would be entirely inconsistent to convict this Accused of murder when Mr Blaney was convicted of manslaughter.
>
> (ii) *"We **[the Crown]** cannot say whether that person **[the principal]**, at the time of throwing the bomb, knew that Mrs O'Neill was in the living room or that he intended to kill her or cause her serious bodily harm."*

> [Insertions added] Given this position it would be contrary to authority for the Court to hold the Accused as a secondary party guilty of murder where the principal did not have the mens rea for murder. (And, of course, Fulton had even **less** means of knowing since he was removed from the others who were carrying out the attack).

[170] The authority to which Mr Treacy refers is R v Gilmour [2000] NI 367, but before turning to its application to the facts of this case, it is appropriate to consider what the prosecution have to prove to sustain the charge of murder against Fulton. The first is that his actions were such as to "aid, abet, counsel or procure" her death. Although all four words are used in the particulars of offence, the prosecution case is that Fulton counselled and procured Mrs O'Neill's death by directing that she was to be killed. A person who commands that a crime be committed "counsels" the commission of that crime, and a person who sets out to see that a crime is committed and takes the appropriate steps to produce the commission of that crime "procures" the crime. See Archbold 2006 at paragraphs 18 – 21 and 18 – 22 and the cases cited therein. By virtue of Section 8 of the Accessories and Abettors Act, 1861, a counsellor and procurer shall be liable to be tried, indicted and punished as a principal offender. A principal is one who is the actor or actual perpetrator of the fact, but, as pointed out in Archbold at 18-9:

> It is possible for two or more persons to be principals in the same crime, but the distinction between a joint principal and an abettor is sometimes difficult, and unnecessary, to draw.

Where two or more persons embark on a joint enterprise each is liable for the acts done in pursuant of that joint enterprise (leaving aside issues that arise were one of the persons may have acted in a manner that departs from what was agreed to be the joint enterprise). Thus if A tells B to go and kill C, tells him where and when C is to be found, and B then kills C in compliance with A's command, A and B are joint principals although A only counsels and procures the killing of C by B.

[171] It is also well established that "Where a person has been killed and that result is the result intended by another participant, the mere fact that the actual killer may be convicted only of the reduced charge of manslaughter for some reason special to himself does not result in a compulsory reduction for the other participant", Lord Mackay of Clashfern in R v Howe [1987] AC at page 458C. That being the case, there is no obstacle in law to Fulton being convicted of the murder of Mrs O'Neill despite Blaney only being convicted of manslaughter, and to that extent Mr Treacy's submission at (i) is contrary to authority. I have no evidence as to what Blaney's intention was, or what

he thought was the intention of the person for whom he was acting as a lookout, and who threw the blast bomb into Mrs O'Neill's house, or what knowledge Blaney had as to the nature of the device that was used. Therefore, that Blaney was charged with and convicted of manslaughter has no bearing on the charges against Fulton.

[172] The defence place particular reliance on the decision of the Northern Ireland Court of Appeal in R v Gilmour. Gilmour was convicted of the murder of the Quinn children in the early hours of 12 July 1998, the terrible event to which Fulton referred, but on appeal his conviction for murder was set aside and a conviction of manslaughter was substituted. The deaths of the children were brought about by a fire started when an unusually large petrol bomb was thrown through the window of the house where they were asleep. The defendant had driven two of his associates, who he knew were in the UVF, to the scene, but remained in his car with a fourth man when the other two left the car. The two men disappeared, and when they re-appeared Gilmour saw what looked like a bottle in the hand of one of them, and he then heard the sound of breaking glass. The trial judge found that an unusually large bottle in the form of a one and three quarter litre whiskey bottle filled with petrol had been thrown into the house. That the bottle was of an unusually large size was of crucial importance, as appears from the following passage at page 373 of the judgment in which the Court of Appeal also dealt with the characteristics of petrol bombs.

> There is, however, more substance in the next submission, that the proof is insufficient that the appellant realised that those who threw the petrol bomb intended at least grievous bodily harm to the occupants of the house. Throwing petrol bombs at dwelling houses is regrettably common and always contains an element of potential danger to the occupants. It is right to say, however, that it has fortunately been only a rare consequence that occupants have been injured in such attacks, and the majority of them appear, so far as judicial notice can take us, to cause only minor fires. There is not in our view sufficient evidence to conclude that the appellant was aware that the petrol was contained in an unusually large bottle, which might be expected to cause a larger conflagration and result in greater danger to the occupants.

Thus the Court of Appeal made two findings which were central to the determination of the appeal. The first relates to the danger created by petrol bombs, and was that whilst throwing petrol bombs at dwelling houses always contained an element of potential danger to the occupants, it has only

been a rare consequence that occupants have been injured in such attacks, and the majority appear only to cause minor fires. The second finding was that there was a lack of proof that Gilmour realised that the petrol was contained in an unusually large bottle, a characteristic of such a bottle being that it might be expected to cause a larger conflagration and result in greater danger to the occupants.

[173] Gilmour illustrates the importance of examining the facts of each case with particular care when considering dicta which it is suggested are relevant to different facts. In the present case the blast bomb thrown into Mrs O'Neill's home was a device whose primary purpose was to cause death or really serious injury, the uncontradicted evidence of Dr Murray being that it was primarily an anti-personnel device, as demonstrated by the groves cut into the metal to make it easier for the pipe to break up. Implicit in Dr Murray's evidence is that the purpose of such devices is not just to create an explosion, but one which has a shrapnel effect, thereby increasing the risk to life and limb by improving the fragmentation effect on the metal container of the explosive force of the device. The danger of such devices is not, in my opinion, diminished by Dr Murray's evidence that he could only recall two fatalities out of the use of hundreds of such devices. I am satisfied that the type of anti-personnel in the form of pipe bombs used on these two occasions was fundamentally different in kind to the type of ordinary, as opposed to unusually large, petrol bombs the Court of Appeal had to consider in Gilmour.

[174] I am satisfied that Fulton was fully aware of the nature of these devices, having narrowly escaped injury on a previous occasion when he threw one which exploded prematurely just after it left his hand. He also knew of their particular potency, saying "… I must admit it was a fucking real real strong fucking type, different from the design we were using but it was out of the same batches". Such was his respect for the capabilities of these devices that he would not use one himself that night, instead selecting for the Murnin attack the factory-made, Soviet hand-grenade which did not have the same danger to the thrower if it was used properly.

[175] In deciding whether the necessary intent has been established it is necessary to consider whether Fulton intended that the death of, or grievous bodily harm to, Mrs O'Neill, was part of the joint enterprise which he directed; or whether, as the defence argued, it was, or might have been, an attack against a family of mixed religion with a view to driving them out of this estate, as Coghlin J said when sentencing Blaney in 2003. In paragraph 15(iv) of the closing submissions it is asserted that:

> the contemplation of Mr Fulton is expressed by the Crown on p. 2 of their written submissions where they state:

"**he clearly wanted these people out of the estate …**".

This is indicative of intimidation rather than grievous bodily harm.

Whilst the statement that "he clearly wanted these people out of the estate" refers to the attack on Ms Woods house and not that on Mrs O'Neill's house, it encapsulates the issue, namely did Fulton intend to get these families out by intimidating them or by causing death or grievous bodily harm?

[176] The prosecution rely on the method used as can be seen from the inclusion of the words omitted by the defence in the quotation at [169] "ie breaking a window of the respective properties with a brick and then throwing the armed pipe bomb into the living room area". I am satisfied that it was part of the plan that such a device was not merely to be thrown at each house, but that a window was to be broken to enable the explosive device to be thrown inside. That this happened in all three attacks that night leaves me in no doubt that it was an integral part of the joint enterprise of which Fulton was the moving party.

[177] Do any of Fulton's own statements throw light on his intention? On 15 May 2000 he said that he wanted the two houses "hit", which may suggest that mere intimidation was all that was intended. On 16 November 2000 he said that by ordering that Mrs O'Neill was to be attacked he was going against an order that Billy Wright had given that Mrs O'Neill was "not to be touched". Does "touched" mean, or might it mean, that the attack was directed only against Mrs O'Neill's home as opposed to her person? Taken on their own these remarks are ambiguous and consistent with his intention being either that the devices were to be used to intimate, or to cause death or grievous bodily harm.

[178] However, there are two further matters which have a bearing on the question of intent. The first is the complete absence of any suggestion by Fulton in any of his references to the death of Mrs O'Neill, that her death was unintended. Indeed, he positively gloats about her death on 16 November 2000 in the passage set out earlier [158] when he said "that she had not to be touched, only I made sure she was".

[179] The second matter is whether any inference as to his intention can be drawn from the fact that it was his intention to kill Mr Murnin that night? His plan was that there were to be three attacks on dwelling houses, each using an explosive device, each involving the breaking of the window so that the device could be thrown inside, and each device being an anti-personnel device. In the attack he carried out he intended to kill Mr Murnin. I consider

that conjunction of circumstances provides very strong evidence that Fulton's intention was that death would be caused to the victims of all three attacks.

[180] Throughout his interviews Fulton denied involvement in this and all the incidents of that night, and I have referred in some detail already to the nature of his denial, and his explanation as to how he came to insert himself into the accounts he claimed to have heard from others, and I do not intend to repeat them. Having weighed all the evidence I am satisfied that Fulton intended that the attack on Mrs O'Neill's home would result in her death because she was a member of what he regarded as a Catholic home as her family was of mixed religion. It appears from his remark that going against Billy Wright's instructions that Mrs O'Neill was not to be touched, and making sure that she was, that his intention was not just that any of the occupants of her house should be killed, but that he had a particular animus against her, no doubt because she was the Protestant partner in this family of mixed religion. I find him guilty on counts 1 and 2.

Incident 2 – The attempted murder of Janelle Woods

[181] Counts 3 – 7 relate to the attack on the home of Janelle Woods in the early hours of the morning of 5 June 1999. Counts 3 and 4 allege attempted murder of Janelle Woods and Steven Black respectively; counts 5 and 7 allege attempts to cause them grievous bodily harm with intent to do them grievous bodily harm, and count 6 is one of causing an explosion of a nature likely to endanger life or cause serious injury to property. Fulton is alleged to have aided, abetted, counselled and procured the offence in each case. Many of the issues of law and fact that are relevant to these charges have already been considered in relation to the charges arising out of Mrs O'Neill's death and I do not propose to repeat them.

[182] Janelle Woods was 20 years old and lived at 137 Westland Road, Portadown. As can be seen from the location map Exhibit A6, 137 Westland Road is not far from Corcrain Drive, and both are in the area bounded by Charles Street and Loughgall Road. In 137 on the night of 4 and 5 June were Ms Woods, her eight month old child Jade, her 17 year old sister Sally-Jane, and her boyfriend Steven Black. Steven Black had fallen asleep whilst watching TV on a couch in a room in exhibit A13 photographs B6-9. He was awakened by a bang which was one of the two explosions heard by Sergeant Bingham, and which occurred about 0045. When Mr Black opened the curtains he found that the left hand panel was broken in the front bay window, which can be seen in Exhibit A13 photographs 2 and 6. An examination of the scene by WO1 Paul McCreanor resulted in the discovery of part of what appeared to be a pipe bomb in the form of a piece of metal plate approximately 80 millimetres square with a centrally drilled hole in it. This was lying amongst broken glass and wood outside and below the broken window, as can be seen in photograph 3. The scene was examined by a

Scenes of Crime Officer, Colin Dempsey, who found that the side window had been broken, possibly by the impact of the improvised explosive device. What Dr Murray described as a hexagonal headed bolt fitted through a hexagonal nut was found by another Scenes of Crime Officer, Constable Gardiner, in the front garden of 158 Westland Road.

[183] Dr Murray described these items as the remains of a pipe bomb improved explosive device, devices which he described as small, hand thrown devices intended primarily as anti-personnel weapons. However a difference that has emerged between this device and used in the attack on Mrs O'Neill's home at 49 Corcrain Drive is that nothing was recovered in relation to the Westland Road device that would point to grooving or weakening of the structure because nothing was recovered from the body of the pipe bomb.

[184] Dr Murray's evidence as to the nature of these devices has already been described. Although nothing was recovered to say that there was any grooving or weakening of the structure of the pipe bomb used in the attack on 137 Westland Road, Dr Murray's evidence that this device, like that used at 49 Corcrain Drive, was primarily intended to be used as an anti-personnel weapon is unshaken.

[185] Apart from Fulton's references to the two houses being attacked being Catholic homes, there was also evidence from Mark Douglas to suggest that there was a sectarian motive for this attack. He was a previous boyfriend of Ms Woods and had lived for a while at 137. He described how on one occasion when she was pregnant that some young men who were drunk came to the house and said that her father was a Catholic, and that when the child was born they would have to leave the estate.

[186] When considering the charges in relation to Mrs O'Neill's death I have set out those passages in which Fulton admitted that he had ordered and planned the two attacks on Catholic houses that night and I do not propose to repeat them. I have already concluded that his admissions were true, and I am satisfied that the attack on Ms Woods was the second of the two attacks to which he referred. It is unnecessary to repeat the considerations that led me to conclude that Fulton's intention was to kill Mrs O'Neill. The same considerations satisfy me that his intention was to kill Ms Woods. The method and device used were the same, and it was the third attack of the three he directed and planned were to be carried out that night.

[187] As I have already stated, Mr Kerr accepted that Blaney was meant to put the bomb through the Woods' window. This raises in starker form the point Mr Treacy made that the charges of attempted murder in this instance could not be sustained because there was no evidence that Blaney – the principal in the attack on the Woods home - had an intent to kill, and

therefore Fulton as a secondary party could not be convicted of attempted murder, a crime which requires the specific intent to kill. The argument was framed in the following way in paragraph 16 of the closing submissions.

> 16. The Accused repeats the submissions above and further contends that there are no direct admissions in respect of these offences in the covert recordings. There is absolutely no evidence that the principal (Blaney) in the attack on the Woods home had an intent to kill He was never charged with attempted murder and if this attack was part of what was agreed between the participants there is no evidence that Mr Fulton as a secondary party contemplated that the principal might attempt to kill - this would be impossible to sustain in circumstances where the principal never had such an intention and carried out the attack in the manner agreed by the participants.

[188] The prosecution meet this argument in the following way in this passage from Mr Millar's closing submissions in respect of Fulton.

> The position, however, is more complex when it comes to consideration of the charges of attempted murder at Counts 3 & 4. For these to succeed the Crown must show that Fulton intended nothing less than the murder of both Janelle Woods and Steven Black. There is evidence of the attempt to throw the pipe bomb into the house, but there were no injuries. Furthermore there is little in the way of direct evidence of a specific intent on Fulton's part with regard to this attack. He clearly wanted these people out of the estate and had there been a fatality there would have been the basis of a murder charge as in the O'Neill case. The following principles fall for consideration:
>
> Intent *McNaughton* [1975] NI 203. In a no warning terrorist attack on a police station with rifles and grenades intent to kill is the compelling inference: *Murphy* [1993] NI 57. The Crown would accept that whereas in dealing with a secondary party the degree of intention may in most cases be less, when dealing with a charge of attempted murder the principle advanced in Woollin [1999] AC 82 ought to apply. In other words did the defendant know that his actions were extremely likely or virtually certain to have the result, if so it is a

> question for the jury to determine whether he had the requisite intent.
>
> A person who aids and abets the principal offender is guilty of aiding and abetting the attempted murder if he assisted the principals when contemplating that they might attempt to kill: *Kwong Fatt Loke* [1999] 7 BNIL 18.
>
> It is the Crown submission that on the facts of the Case, the breaking of the window and attempt to throw the pipe bomb into the front room was all part of a carefully coordinated attack masterminded by Fulton and if the court concludes that he intended to kill Mrs O'Neill there is no basis to conclude that he desired any other result in respect of Ms Woods and anyone who might have been in the house with her. In such circumstances it is the Crown submission that Counts 3 & 4 are made Out against Fulton.
>
> On the other hand if the court is not satisfied of his guilt on Counts 3 & 4, but is convinced that the admissions are true, we submit that it was clearly within Fulton's contemplation that his intended actions could have caused really serious bodily harm in the event that the pipe bomb had entered the living room when Ms Woods and Mr Black were present. [Counts 5 & 7].

[189] Had Blaney been charged with the attempted murder of Janelle Woods because he was meant to put the brick through Janelle Wood's window then he would have at least aided and abetted the person who was to throw the pipe bomb through that hole. In such a case as an accessory the prosecution would have to prove that he foresaw, or contemplated, that the person who was to throw the pipe bomb through the hole in the window made by Blaney intended to kill.

[190] It could also be argued that he himself was a principal in a joint enterprise. However, whichever category of offender Blaney fell into depends on the evidence as to the state of his knowledge about the purpose of the attack on Janelle Woods, and what sort of weapon was to be used in that attack, as well as his role in the attack. As I have stated earlier, I have no evidence about Blaney's state of mind other than the very limited information that has been put before me. Quite properly Mr Kerr confined himself to stating that the evidence in Blaney's case was insufficient to show the necessary intent, and that is apparent from the decision to prefer a count of causing an explosion rather than one of attempted murder. It is material to point out that nothing whatever has been put before the court to suggest what

the intention was of the person who threw the bomb at Janelle Woods' house, or who that person was.

[191] If Fulton intended to kill Janelle Woods when he ordered her house to be attacked, and that the device to be used, in the form of a pipe bomb, was primarily an anti-personnel device, and that the window was to be broken to allow the pipe bomb to be thrown inside, must he be acquitted of counselling and procuring attempted murder because Blaney, the person who broke the window, was not charged with attempted murder?

[192] I do not accept that Fulton is entitled to be acquitted in those circumstances. By ordering the attack to be carried out in this fashion Fulton was himself a principal, and it is not necessary that he should be present when the attack is carried out. As the authorities cited in Archbold 2006 at 18-7 establish, where a person who is not criminally responsible, for example because of the absence of mens rea, is incited to the commission of any crime, the inciter, though absent when the act constituting the crime is committed, is liable for the act of his agent, and is a principal. In my opinion Fulton's conduct falls squarely within this principle on the facts of the present case.

[193] Even if Fulton is regarded not as a principal, but as an accessory, he may still be guilty of attempted murder because, as Lord Steyn observed in R v Powell [1999] 1 AC at page 14 E/F:

> If the law required proof of the specific intention on the part of a secondary party, the utility of the accessory principle would be gravely undermined. It is just that a secondary party who foresees that the primary offender might kill with the intent sufficient for murder, and assists and encourages the primary offender in the criminal enterprise on this basis, should be guilty of murder. He ought to be criminally liable for harm which he foresaw and which in fact resulted from the crime he assisted and encouraged.

The Court of Appeal accepted that this principle applies "with equal force to the crime of attempted murder", see Carswell LCJ (as he then was) in R v Kwong Fatt Loke [1999] NI at page 172b.

[194] I have already referred to Fulron's denials of involvement in this and the other attacks that night. I am satisfied that Fulton intended to kill Janelle Woods. She was the occupant of what he regarded as a Catholic house. He ordered her house to be attacked for that reason, and that the attack be carried out by means of an improvised explosive device of a type primarily intended to be an anti-personnel weapon. An essential part of the plan was

that the window would be broken so that the device could be thrown inside. This was one of three such attacks to be carried out that night at his instigation. In those circumstances the inescapable conclusion is that he intended that she should be killed. I find him guilty on count 3.

[195] However, it was Steven Black, not Janelle Woods, who was in the front room where the window is broken, and into which it was clearly intended that the pipe bomb should be thrown. I am in no doubt whatever that Fulton was completely indifferent to the risk that someone other than Janelle Woods would be killed if they happened to be in the room into which the pipe bomb was to be thrown, whether sitting with her or if she was elsewhere in the house. Terrorists who carry out sectarian murder attempts of this type are completely indifferent as to who else may be killed, provided their intended target is killed. I find Fulton guilty on count 4.

[196] It follows from my verdicts on counts 3 and 4 that the prosecution have proved counts 5 and 7, attempted grievous bodily harm with intent in respect of Janelle Woods and Steven Black, and count 6, causing an explosion and I find him guilty on each count.

Incident 4 – Attempted Murder of RUC Officers at Drumcree on 9 July 1998

[197] Fulton faces ten charges relating to a very serious incident at Drumcree on the night of 9 July 1998 when an improvised explosive device in the form of a pipe bomb was thrown from the crowd at the police lines. The pipe bomb exploded near the police, and such was the effect of the explosion that four officers were gravely injured. Four of the counts are of attempted murder of each of the injured officers, four of wounding with intent of the same officers, and the two remaining counts are of causing an explosion of a nature likely to endanger life or cause serious injury to property, and possession of a pipe bomb with intent to endanger life or cause serious injury to property.

[198] The wounded officers were part of a much larger force of police and soldiers deployed to prevent an Orange parade from passing down the Garvaghy Road after attending a church service at the nearby Drumcree Church. The protestors were separated from the police at this point by a number of obstacles. The first was a water-filled ditch some feet wide, the ditch being created by digging a ditch, or widening an existing ditch. On the police side of the water were lines of barbed wire, the final line consisting of rows of barbed and razor wire several feet thick and some feet high as can be seen in Exhibit A21 photographs 1 and 2.

[199] On the opposite side of the ditch were large open fields in which a crowd estimated by Reserve Constable Irvine to be some thousands strong had gathered. This crowd made violent and prolonged attempts to breach

the police lines that night. Chief Inspector Barr described a constant hail of missiles consisting of bottles, stones, heavy duty fireworks, and ball bearings been thrown at the police, whose task was made even more difficult and dangerous as heavy duty lights and laser pens were also directed at them from the crowd. From time to time the police moved forward to prevent the demonstrators dismantling the wire with poles and grappling hooks, and as a result the officers came closer to the crowd. At about a quarter to midnight one group of police from L3 Mobile Support Unit were moving back, having repelled another attack, when a pipe bomb exploded, injuring the officers named in the four counts.

[200] Chief Inspector Barr received injuries to his lower left leg in particular, with damage to the muscles and tendons, as well as some damage to his right leg above his ankle. Such were the severity of his injuries that he was concerned at the time that he would lose his left leg, and it was two and a half years before he could resume any duty. Reserve Constable Irvine also received serious leg injuries, and whilst being treated for his injuries at Craigavon Hospital his lung collapsed. The severity of his injuries meant that he was unable to resume his duties as a full time reserve constable. Constable Harkness also received very serious injuries to his lower left leg. He was in hospital for several weeks, and also has been unable to resume his duties as a serving officer. The fourth officer to be injured was Constable McBrien. He was operated upon at the Ulster Hospital, and a piece of metal was subsequently removed from his left thigh. This is only a brief description of the injuries suffered by these officers in this explosion, and the consequences of those injuries.

[201] Two explosive devices were referred to in the evidence and appear to have been thrown at the police that night. The first is referred to in the statement of WOII Saunders which was read. He described a pipe bomb that does not seem to have exploded, and it consisted of, amongst other components, 15 x 75 millimetres (approximately 3 inch) nails, and 5 x 75 millimetre lengths of welding rod offcuts. The second device exploded leaving a mark on the surface of the field shown in Exhibit A21 at photographs 1 to 3. In photograph 3 can been seen a piece of metal later recovered from that spot. WOII Saunders also recovered what he described at page 127 as "a single piece of fragmentation approximately 140 millimetres". Although the evidence as to the link between this item and item 3 described by Dr Murray in his statement at pages 131 and 132 of the papers is somewhat confused, Dr Murray described the metal fragment removed from Constable McBrien's leg as being part of "a functioned pipe bomb type improvised explosive device". He went on to describe how the shallow groove cut across one side was similar to those associated with fragments in items 2 and 3 described by him at pages 131 and 132. There can be no doubt that a pipe bomb exploded at about a quarter to midnight on the

night of the 9 July 1998, and that the shrapnel effect of the blast was responsible for the grave injuries suffered by the four officers.

[202] It was not disputed that whoever threw the pipe bomb which caused these injuries intended to kill the officers in the vicinity of the blast, or in the alternative intended to cause very serious injury, nor do I believe that it can plausibly be suggested that the thrower had any other motive. Dr Murray's evidence was that the grooves were cut in these devices to increase the fragmentation effect, and hence the shrapnel effect. This device was thrown during a period of extreme tension and considerable violence, when the police were being subjected to a constant hail of missiles. I am satisfied that the proper inference to draw is that the thrower intended to kill a number of the police officers, or if that was not possible, to at least cause them grave injuries.

[203] The admissions upon which the prosecution rely to bring home these charges against Fulton are contained in B16, B18 and B112. B16 relates to a conversation between Robbie and Fulton on 11 January 2001 between 0846 and 2151. Robbie's unchallenged evidence was that during this time they travelled by car to Exeter and back. Although it was not expressly stated, I am satisfied that the journey started and finished in Plymouth as that was where Fulton lived. Robbie's evidence was that they travelled in Fulton's car, and as he was employed by the firm as a driver I infer that Fulton was driving. Pages 270 to 275 record Fulton describing at some length his presence at various meetings with leading Loyalist terrorists, as well as some of his own actions, and the use of kneecapping and murder to ensure that commands of terrorists such as Billy Wright and Swinger were obeyed. At page 275 he started to describe the confrontation at Drumcree between the demonstrators on one side and police or soldiers on the other. He described how the moat (as he accurately described it) was built, and the rows of barbed wire created a sense which he said "was like the Somme", a metaphor which accurately conveys the scene portrayed in the photographs in Exhibit A21. At page 277 he described how the crowd was used for cover and he threw a blast bomb which exploded amongst the police, several of whom fell to the ground.

> Jim: But you want to see all the people there are thousands of people just standing upon the bank, what do you call it, just facing over all the police lines and all and we got the fucking and we got down there, we've come across fucking ambush style like that there right up in between them and then we turns round and says right everybody when we say go just part for us and they just fucking parted throw in one of the grenades (Jim makes a noise like explosions).

> Robbie: Did you get them?
>
> Jim: Oh fuck aye, see my first blast bomb I threw landed right in the middle of thirty, a group of thirty fucking policemen all standing with fucking masks on hoods on like that with their rifles and all (inaudible), just parted slightly and I had lit it it's a fucking about a three second fuse, fucking such a throw like I have a (inaudible) from throwing it straight in you (inaudible), just seen it exploding and what do you call it just see peelers fucking falling to the ground and all like then, up and our fella came up machine gun then the thirty eight.

Although he does not give a year for this episode, at page 278 he says "but then the third year, that's when it came to a fucking head like", which suggests that it was during the third year of protest at Drumcree that the throwing of the blast bomb he had earlier described took place.

[204] The next reference occurred on 16 May 2001 and is to be found in B18. This covers the period between 0052 and 0600, and records a conversation between Fulton, his brother Swinger, and Swinger's wife Louise. The conversation contains many references to individuals including Fulton's cousin Gary, Mutley (Ian Stewart) and others. The conversation is critical of many of those to whom they refer, particularly Mutley. I have already described the reference by Fulton at page 300 to being ordered by "Brigade Staff" to collect money "for the organisation", and in part there is an element of regret that things in Portadown were not what they were. Given that the conversation is taking place a few weeks before the 2001 Drumcree parade it is not surprising that in the following passage at page 302 they speculate about what might happen at Drumcree that year.

> Swinger: Watch Drumcree this year, nobody will be at it.
>
> Jim: What did … tell Louise.
>
> Swinger: See last year they were firing shots.
>
> Jim: Tell Louise what I said.
>
> Swinger: The year before it up firing shots, I was missing for two years.

> Jim: The day of Drumcree last year where wa… where was I. I was in the States, I walked away.
>
> Swinger: See the year before when I was (inaudible) jail Jim.
>
> Jim: I told you before (inaudible) visit, what did I tell you when I was the visit, its finished.
>
> Swinger: Who's the only ones opened up on the police 1998.
>
> Jim: We were.
>
> Swinger: Aye and who's the orangemen give off about them.
>
> Jim: They were.
>
> Swinger: Right, that's it over, its finished, its done, its dusted, its over. They'll stand there for the next twenty years and I will laugh at them. God forbid me but I will laugh at them. No matter who comes to my door.

[205] The final reference is to be found in B112, which contains the discussion between Fulton and Gabriel Yellow between 0052 and 0443 on 7 June 2001 to which reference has already been made. As in the case of B18 this is the result of a probe. Fulton describes in considerable detail how to make various types of explosive device, including one he said he made with Mahatma using a spark plug that could be detonated when the engine of the car is turned on. During this conversation Fulton refers to blast bombs in the following passage at pages 12 and 13:

> Jim: See them blast bombs, I'm not joking you.
>
> Gabriel: They're lethal now aren't they.
>
> Jim: Fuck, that's what killed that peeler and all. That's the ones we were throwing at the peelers at Drumcree. (Overtalking). Just like grenades. (Overtalking). We had people from all over, all over Northern Ireland in the countryside fucking making, in their workshops, in their fucking garages, fucking it just, nobody asked anybody. All of a sudden there's (overtalking) thousands of them (overtalking).

> See I used one; that, you know the boys had made with fireworks. Not using the black powder but using they're like a white like a grey centre in one of you know those rockets. That there is an even more, a better combustible on its own, see that there, fuck.

[206] Fulton was questioned in interview C16(b) about what he had said about throwing the blast bomb at Drumcree. He accepted that he had been at Drumcree on several occasions, saying that he simply stood "with another hundred thousand people" and walked about. At pages 156 and 157 he maintained that he had never thrown a blast bomb, saying that he had gained his knowledge from what he had seen on TV, and when he described how to make blast bombs he was simply saying what was common knowledge.

> Fulton: I never threw no blast bomb. It was me just being bravado. Know what I mean I'd seen it on TV, it was know what I mean so it was legitimate, I could know what I mean there was no problem I could get a video and show know what I mean so I could make it beli, so believable.
>
> Well what had you seen on TV.
>
> Fulton: It showed you, I don't know whether it was Spotlight or whatever, wee circles round people coming down and getting up, some guy getting up and throwing something. Another guy getting up and letting a shot off. I mean anybody could have know that I mean it was all on TV. They actually put a wee light spot around the heads of the people running down. I mean anybody could have fucking said that.
>
> Well what did.
>
> Fulton: Only I was in a good position getting into this firm that made me look real good.

At page 157:

> What do you actually know about the manufacture of blast bombs.
>
> Fulton: Nothing. It doesn't take a, it doesn't take Einstein to figure out know what I mean I've seen them on TV of doesn't take an Einstein to figure out

what do you call its how you cut a piece of metal and weld it against it.

Well tell us how you do it.

Fulton: I don't know how you do it. I'm only surmising by looking at them. I have never seen, I have never been up close to one so I couldn't tell you.

Well you've told this undercover policeman how to make one.

Fulton: Aye that's me just letting on I know how to make them. I've never been close to one to tell you exactly how to make them.

Well what you have described to him is exactly how you make a blast bomb.

Fulton: Fuck's sake it's common knowledge round town, it's the talk of the bars, there's that many people fucking making them. I've heard fifty different people describe how to make them. They're all sitting just having a drink aye no problem, do this, do that. It's just know what I mean at that time like I say people were all over the place.

So you do know how to make them now.

Fulton: No I don't know how to make them. I'm just repeating what other people say.

But these people are sitting in bars telling you how to make them.

Fulton: Aye just discussing it. Opening. Round that time everything was just, everybody was just coming for Drumcree sitting round bars, sitting round camp fires. I can honestly say I've never been up close to a blast bomb in my life.

Fulton maintained this position, repeating it in the next interview, C13(b) at pages 177 and 178.

[207] A number of points of a specific and of a general nature made by the defence have to be considered. The first is that the charges must fail for lack

of particularity and uncertainty because it is argued that the covert recordings disclose insufficient detail about the circumstances, time, year and injuries to link this episode to the charges because they relate to a specific date, number of offences and incident. It is said that there is nothing to suggest that there was only one attack on police whereby injuries were sustained during the many years of that standoff. However, Fulton's description of the events strongly implies that it happened in what he termed the third year, when, as he put it at page 278 "that's when it came to a fucking head like". That was said on 11 January 2001, and it is the case that the next reference relied upon is what was said on 16 May 2001, four months later. His answer "We were", when his brother asks "Who is the only ones opened up on the police 1998", has to be placed in the context of a lengthy discussion in which they were discussing their connection with various named terrorists, and their contempt for the attitude of individuals such as Mutley, and the way things are going at Portadown in their absence, encapsulated in this exchange between Fulton and his brother at page 305.

> Swinger: See what's going on in Portadown now its all shit its all (inaudible).
>
> Jim: I know brother but you're reading each other that's …
>
> Swinger: (inaudible) is it all shit or what.
>
> Jim: But family is family brother know what I mean I can understand, I can understand your situation.
>
> Swinger: The first time I went to jail, sure Louise you know this, in Portadown sure there was an atmosphere, all heart, all one.
>
> Louise: Hmm.
>
> Swinger: That was, see now Jim.
>
> Jim: You telling me before I, just before I left you telling me I hadn't got it all sorted. Before I left was everything, I'd fucking UVF in their own fucking. …
>
> Swinger: Jim when I went to jail it went hay-wire, hay-wire.
>
> Jim: You telling me before I left was, there was, I hadn't got Portadown whatever way I want it.

Swinger: All I'm saying Jim, when I went to jail it went hay-wire.

Louise: It would have been settled a bit probably….

Swinger: I'll tell you one thing.

Louise: Then Jim went to (inaudible).

Swinger: See if I hadn't been in jail your man Jameson wouldn't have been dead, there you are.

The entire conversation strongly suggests that when Fulton replied "We were" he was claiming personal involvement in some fashion in attacking the police in 1998, and not just associating himself in a general way with such an attack. However, viewed in isolation the expression "opened up" may be more suggestive of shots being fired than a blast bomb being thrown, although it is not inconsistent with the latter.

[208] That Fulton was saying that he had thrown a blast bomb is incontrovertible in the passage from B112 sited above. Looking at these references as whole they establish that Fulton said that he had thrown a blast bomb at the police lines at Drumcree in 1998, and it exploded causing several officers to fall to the ground. The scene he describes evokes that described by Chief Inspector Barr and the other officers, and there has been no suggestion put to any witness that there was any other attack of a comparable nature on this or any other year. I am satisfied that the episode Fulton described was the explosion that injured Chief Inspector Barr and the other three officers.

[209] During interview Fulton said that he had made up this account of his involvement from what he had seen on TV, and that it was common knowledge round town how to make blast bombs, and that he made this up to make him "look real good with the firm". Although it is conceivable that a person could invent such a simple account of the type that Fulton gave, his reason for doing so does not bear examination. Whilst the description in B16 was given to Robbie, and therefore is consistent with Fulton's explanation, the references in B18 and B112 were not made when there were undercover officers present, and hence Fulton had no reason to invent stories in order to impress members of the firm. On the contrary, his discussion with his brother shows that they were deeply involved in terrorist activity.

[210] Have these admissions been brought about by the effect of drugs and or alcohol? The conversation in B16 occurred during a car journey when I am satisfied Fulton was driving, and for the reasons I have given I am satisfied that he was not affected by alcohol and or drugs on that occasion. The conversations in B18 and B112 both took place after midnight, and the

possibility that he may have consumed alcohol or drugs to a material extent is one that has to be considered, given Fulton's propensity to drink heavily on occasions, and to consume cannabis, during this period. However, there is no evidence to suggest that on either of these occasions he was materially affected by drugs or alcohol, and I therefore discount the possibility that the reliability of either of these admissions is undermined by these factors.

[211] Having considered all of the evidence I am satisfied that these admissions are reliable and true. I am satisfied that Fulton threw a blast bomb at the police lines, and from the nature of the weapon and the circumstances in which it was thrown I am also satisfied that his intention was to kill, or if unsuccessful, to wound the officers, and that he was fully aware of the nature of the device he threw. He therefore had the intent necessary to constitute the offences of attempted murder and attempted wounding with intent, as well as the offences under the Explosive Substances Act. Accordingly I find him guilty on counts 14 to 23.

Incident 5 – Attempted Robbery of Conor McAleavy 25 Octobweer 1996

[212] Fulton is charged on count 24 with the attempted armed robbery of Mr Conor McAleavy, and on count 25 with the false imprisonment of Mr McAleavy, just after midnight on 25 October 1996. Mr McAleavy was the manager of the Ulster Bank in Newcastle, County Down, and lived with his wife and daughter at 25 Shimna Road, Newcastle. He was tricked into opening the door of his house by a man dressed in police uniform, and then attacked as several men entered the house. He made his escape upstairs and the plan then miscarried. The intruders had to smash a window to get out, but as they had dropped the keys of their car in the house they had to flee on foot. It is alleged that the attack had been planned by Fulton over a lengthy period, and that although he was not with the intruders, he was waiting elsewhere in Newcastle, and fled by car back to Portadown when he realised the plan had failed.

[213] The facts are not in dispute. Mr McAleavy was the manager, and before that had been the assistant manager, of the Ulster Bank in Newcastle. It appears that on occasion the alarm would go off at the bank on a windy night, and the police would then call at this home and he would go to the bank and deal with the alarm. On 25 October 1996 at about ten minutes past midnight his wife was upstairs in bed, and he was sitting downstairs watching TV when he heard someone at the front door. He was unable to see who it was and opened the door to see a man dressed in a police uniform who asked if he was Mr McAleavy, to which he replied yes. The man said the alarm had gone off at the bank to which Mr McAleavy replied "not again". However, had he collected his thoughts he would have realised that had this been the case he would have received a call from the security company. The man in police uniform walked past him into the house,

whereupon he felt an object pushed into his neck as the man was followed into the house by three or four other men.

[214] Mr McAleavy was then told to lie down in the inner hall and he did so. One of the men stood over him and said either "I'm going to" or "We're going to stiff you", and he thought that he could not lie there, so he got to his feet. He is six foot three inches and, although he was struck a heavy blow to the top of his head, he exchanged blows with the intruders before he was able to escape upstairs, trying to alert his wife to what was happening as he did so. As he was half way up the stairs he heard the man following him on the stairs call to his companions to hand him the gun. With commendable presence of mind Mr McAleavy got into a bedroom, lay down on the ground and jammed his feet against the door.

[215] Disconcerted by his unexpected and successful resistance the robbers fled, throwing a dining room chair through the window to effect their escape. Mrs McAleavy, who was on the phone to the police from the bedroom, went to the window and told her husband that they were going. He saw a vehicle parked outside, from which a man got out and patted his pockets. As the keys of the car were later found on the floor of the porch it seems that they had already been dropped by the robbers in their panic, because other men got out of the car and came back into the driveway, obviously in an effort to retrieve the keys so that they could make their escape in the car. At this point Mr McAleavy went into a back bedroom, smashed a window and got out onto a flat roof, where he stayed until the police and ambulance arrived shortly afterwards.

[216] The robbers fled on foot leaving their car behind. The man who was wearing the police uniform made his way through the grounds of 24 Shimnavale to the banks of the Burren River, abandoning his police tunic and tie as he did so. It is likely that at least one, probably two, of the others accompanied him on this route, because two balaclavas were found in the same area during the subsequent search. Constable Morrison used a police dog to track the robbers, and the dog followed a track along the Burren River to a point where he believed that the person they were following had crossed the stream at which point the track was lost. Later that morning at about 0525 Detective Constable Clifford and Constable Garrett were returning from the scene in Newcastle to Downpatrick, when they came upon a youth on foot entering Dundrum Village from the Newcastle direction. This person identified himself as Marlow Moore of Portadown. He was completely soaked and was arrested on suspicion of the attempted armed robbery at 24 Shimna Road.

[217] Examination of the Mazda 332 car found outside Mr McAleavy's house, keys with the same number on the fob being found in the house (see Exhibit A27 photographs 9 and 10), led to the discovery of an RUC forage cap

with the number 7986 written inside lying in the footwell; further proof, if proof be needed, that this was the abandoned getaway car. This cap had been issued to two officers, Robert Rainey, who retired in 1983, and Graham Gilbert, though neither could recall having lost, or having had stolen, any such cap.

[218] There was evidence from Caroline Kirwan, formally Caroline Keating, that at about 0030 a male came to the taxi office of Donard Cabs at 1A Donard Street, Newcastle, where she worked as a dispatcher, and asked for a taxi to Armagh and Portadown, before settling on Portadown as his destination. He asked the fare to Armagh, and after she had told him that the fare would be £25 he said Portadown. She told him that he would have to wait for five to ten minutes until a driver became available. Gerard Smyth, who at that time drove for Donard Cabs, arrived and spoke to the male who was waiting outside. The man said he wanted to go to Portadown, whereupon two more men appeared from nearby and got into the cab. Mr Smyth was uneasy, and declined to take them to Portadown so the two men got out. Another driver, Angela Donnan, was willing to drive them to Portadown, and, after they paid Ms Keating the fare, all three drove off with Ms Donnan. One of the men appeared "nervy" to Mr Smyth, and he noted that the man who had been waiting in the office had what seems to be a fresh cut on his nose. Ms Donnan drove them to Portadown, arriving at about 0130 am in what was plainly a Loyalist area to judge by the murals and slogans on the walls. She left them off where they asked. She also noted that one had a cut on the bridge of his nose. She said that two of her three passengers definitely hid their faces from her on the journey by putting their heads closer to the window.

[219] This was plainly a carefully prepared attempt to seize Mr McAleavy and force him to open the bank. A complete police uniform had been acquired so that he could be tricked into thinking that the person at the door was a police officer. The reference to the alarm going off in the bank suggests that their intention was to persuade him to go to the bank, and that they knew that Mr McAleavy would not be surprised at this request. That suggests that they had information about the bank alarm going off from time to time. That there were at least four men involved indicates that they probably intended to hold his family until the robbery was over, an extremely common practice in this jurisdiction when banks, post offices, or businesses where large sums of money are kept, are the subject of planned robberies when the robbers go first to the home of a member of staff. The reference to a gun by the man who pursued Mr McAleavy upstairs; the hard object he felt pressed against his neck, and the references to being "stiffed", strongly suggest that the robbers had either a real or an imitation firearm with them in the house, although Mr McAleavy did not say that he saw one. That Moore was soaked when arrested is consistent with his having gone into the Burren River, and Fulton's admissions link him to the crime. That the three men

asked to be driven to Portadown is highly suspicious, but no more than that without evidence linking them to the attack, although the time at which they came to the taxi depot is consistent with them being part of the gang who had been stranded in Newcastle because they had abandoned their car.

[220] The admissions relied upon appear in B19, B22, B24 and B113. B19 relates to a conversation between Neil and Fulton between 1340 and 1535 on 30 March 2000. Their first meeting had been on 24 March 2000 and this is therefore very early in Fulton's relationship with Neil and the other members of the firm. B19 refers to Neil giving directions (pages 308 and 328) and asking to be dropped off (page 322), so it is clear that Fulton is driving. Neil is recorded as telling Fulton to keep the car clean, no tickets. During the journey the conversation between Fulton and Neil can best be described as a virtual monologue by Fulton, who talks at length about robberies at banks, ATMs, and post offices, as well as the plan to rob Martin Phillips (which is the subject of count 56 – incident 17), and the emergence of the LVF when the followers of Billy Wright left the UVF to form their own organisation, interspersed by occasional remarks by Neil.

[221] Fulton refers to robbing banks by taking over the bank manager's house, and then making the manager open the ATM from inside for example. Having talked about these robberies, and their frequency, in a general way, he then describes how he was responsible for planning the attack on Mr McAleavy. Between pages 316 and the top of page 321 he described the following.

(1) He got information through an intermediary from a police officer in Newcastle who was in serious financial difficulties.

(2) His informant said that the bank's alarm was unreliable and how easily it could be set off on a windy night. He also said that the police shifts change at midnight, with the result that because of the change over there would be no police on the ground in Newcastle town centre between ten to and ten past twelve.

(3) Either the informant or the intermediary (it is unclear which) provided Fulton with a complete RUC uniform.

(4) Fulton watched what was going on for three months, and somehow learnt that the manager had no alarms in his house. He was also told that the manager would open his door if it was a windy night.

(5) At the request of Swinger and Billy Wright Fulton agreed to take a man he named as Tony on the job so that Tony could regain

his confidence. Another man wore the uniform that night, and had an imitation 38 concealed underneath a clipboard.

(6) Fulton arrange for a "clean" car to be bought for £900 to be used by the robbers.

(7) He drove another "clean" car to Newcastle in front of the robbers' car, and parked some distance away so that he could watch what was happening in the wing mirror.

(8) He described how initially everything went according to plan, with the manager opening the door and then being put on the floor. Then the robbery went wrong when, despite two of the intruders holding him down, the manager was able to get up and barricade himself into the bedroom.

(9) At this point the incompetence of the gang becomes apparent, because they find that they are locked in the house because there was a combination door lock, and the door had somehow closed, trapping them inside.

(10) The robbers escaped by using what he calls "an antique chair" to smash a window and climb through it, only to discover that they had lost the car keys, so they had to escape on foot.

(11) They split up, three stayed together, one had to go through a river, and one, Marlow, was arrested, convicted and sentenced to ten years imprisonment.

[222] The next reference is to be found in B22, which relates to a conversation between Fulton and Dave on 23 August 2000 between 0847 and 1542 in Fulton's council house in Plymouth. Fulton talked at length about the attack on the home of a prison officer (Mr Terry, incident 10 – count 37) and his prominent role in the LVF. They discussed the need to have good intelligence when planning a crime, and how long it can take to prepare some crimes. Fulton then proceeds to describe the attack on Mr McAleavy's home in detail, in very much the same terms as in the first description to Neil, but referring expressly to some matters that were implicit in the account he gave to Neil.

(12) The plan was to stay all night in the house.

(13) They anticipated escaping with very large amounts of money, anything up to £700,000 sterling and at least 200,000 to 300,000 punts, as well as what he described as bonds, presumably bankers' drafts or something of that nature, and their

corresponding ledgers, which could then be sold anywhere in the world.

However, there were also the following inconsistencies.

(14) He said the abandoned getaway car cost £1,200 not £900.

(15) That the member of the gang who was caught received twelve years, and not ten years imprisonment.

(16) He named the manager as Mr McIlvenny.

[223] The third reference is found in B24, a recording on 30 November 2000 starting at 1218, although the finishing time is not known. The conversation on this occasion is with Robbie, and occurred on a journey to Bristol with Fulton driving. Robbie's estimate was that the journey from Plymouth to Bristol could take one and a half to two hours. It appears that the journey had something to do with a Belgian buying a picture. During their conversation there were comments by Fulton about how some individuals could shoot people but not rob banks, and vice versa. There was then the following exchange.

> Jim: Where as you know what I mean I'm a sort of all round guy.
>
> Robbie: If he is a sort of Jack of All Trades and Master of None.
>
> Jim: Yeah exactly. Oh no not really. (Both are laughing).
>
> Robbie: Walked into that.
>
> Jim: I am a master of very few now. Well put it this way I've made the mistakes in every trade there is to know, what's the right way and what's the wrong way.
>
> Robbie: What's been the biggest fuck up you've had though.
>
> Jim: Eh one of my jobs but I wasn't on, know what I mean, I wasn't allowed to go on it because I was running things but I set the whole thing up and then they used other men through request I used different people and the whole thing fucked up. Five guys

> fucking went to a house. Got the house open no problem what do you call eh paid expensive for the clean car and all because you know what I mean it was hundred per cent certain. The guys go into the house exactly the way I told them, I had your man in the policeman's uniform, everything, clipboard and all bank managers house. Got through the door no problem. He took the security off the door, let them in, once they got in your man 45 under the clipboard straight to his head put him on the ground. The man got down no problem, but then I don't know what all went wrong I've heard so many different stories about it. There was four of them on the move, five of them altogether counting the driver, the other three guys run into the house all wearing combats and hoods but once he seen them coming your man freaked and it is true when your frightened you do your strength, you know what I mean you do get bursts of strength.

[224] From the end of this passage on page 424 to page 430 Fulton went on to describe at some length what had happened and how the operation had gone wrong. He repeated that it was his responsibility, saying at page 426 "… but at the end of the day the buck stops with me, it was my move". He described how he had agreed to use two men at the request, and on the recommendation, of his brother Swinger and Billy Wright as a favour, implying that it was because of these two men that the plan miscarried.

[225] Although his account accords with his earlier description in most respects, there are the following differences.

(1) On this occasion he says the arrested man was sentenced to fourteen years imprisonment.

(2) He expected that he would personally benefit to the tune of £250,000, and at least a further 250,000 punts would be stolen which he could have sold for £150,000 without difficulty.

(3) He refers to the weapon as a 45, not a 38.

[226] The fourth reference to this episode is to be found later in the same conversation when Robbie said to Fulton that he had not finished the story of the attack on the bank manager. Fulton then explains in some detail what happened after the robbers fled from the scene, and what he did, adding the following information.

(17) The five men involved split into two groups, one of three and one of two, the two men then split up again, and one of the two met up again with the other three. Several of them had to go through a river.

(18) They decided to escape by taxi, initially booking a taxi to the next town, then jumping into the taxi and telling the driver to take them to Portadown. Fulton implied that all four who had re-established contact returned together by taxi to Portadown.

(19) Marlow is arrested, "fully soaked" (page 443), "he was totally disheartened freezing to death". He was sentenced to fourteen years imprisonment.

(20) Marlow was dressed in the RUC uniform.

(21) Fulton sought to intimidate the taxi driver into not co-operating with the police by sending the firm a coded warning using a recognised LVF code word.

(22) When the garage owner who had sold the car to Fulton panicked, anticipating that he would be questioned, Fulton instructed him to leave the car keys under the mat in each car, the inference being that the garage owner could then pretend the car had been stolen and thereby successfully distance himself from any knowledge of what had occurred.

(23) The police cap had been left on the counter of a bar in a pub near the Maze some years before and the policeman who provided the information also provided the tunic.

(24) Fulton referred to Mr McAleavy as "Mr McElhennie" (page 446).

[227] The final reference is to be found in B113. This is a probe recording of a conversation between Fulton and Yellow in a car driven by Fulton on 7 June 2001 between 2021 and 2224. In the course of the conversation Fulton describes his role in the Newcastle episode in this passage from page 21 onwards.

> There's no police on the ground at 12 o'clock in Newcastle and I knew that the alarm at the front of the house was faulty and I knew that the bank had a faulty alarm system, and I'll tell you better (inaudible) to set the alarm off, so the police were regularly, every, you know every couple of months every once a

week, you know down at this door knock, knock, knock the alarm's off at the bank. So I sent a wee guy to his door all in the RUC uniform, clipboard, 38 under the clipboard, knocked the door (over talking inaudible). No, Mr McAnally, em, it's the alarm at the bank. His exact words were "Ah for fuck sake, not again, come on in officer". Door open like that, 12 o'clock at night, walked straight in, gun to the head, put him on the ground, no problem. They'd all charged in, no, another three of them charged in after him and when your man, your man he was a tall guy like but as I already said say, he was already on the ground but all he though of straight away when he seen the masks and the combats coming in (audible words) (sic), he, know what I mean he just freaked and the four of them couldn't even hold him down, they pistol whipped him and everything and he headed upstairs to the bedroom, locked the door in the bedroom and called the police.

Gabriel: Aye.

Jim: They even locked themselves in the house and they had to break a big fuckin plate glass window with a big ornate chair to get out the house.

Gabriel: Laughs.

Jim: Cause there was a combination fucking know lock on the front door.

Gabriel: Ah, fuck me Jim.

Jim: Lost the keys to the car too, it was left in the driveway 900 quid fuckin car. Wasn't a cheap car we had paid extra for it because it was fuckin.

Gabriel: Eh.

Jim: Cause the crime was so perfect. I mean I had everything done.

Gabriel: Cost them fuckin money.

Jim: Aye it cost me.

> Gabriel: (Inaudible) all the fuckin education behind it, boy and you think (inaudible).
>
> Jim: I had (inaudible) the team to do it only Swinger come, Swinger Swinger and Billy both come to me and said look Jim, one last favour, please let Tony come on this with you. (Audio distorts), I'll bring him round with me I says I'll go over …..

[228] This is therefore a succinct, but comprehensive, summary of the accounts Fulton gave on other occasions, incorporating the essential features of his involvement. In it he again says that the car cost £900. He also says that it was left in the driveway, whereas it was found on the roadside in front of the house, as can be seen from Exhibit A27.

[229] In these accounts Fulton described how he had planned every aspect of this attack on Mr McAleavy's home, and the objective was to gain access to the bank and steal a very large amount of money. It was an essential element of the plan that an imitation gun was to be used, and so it involved at least the threat of force, and, as the actions of the robbers in trying to subdue Mr McAleavy show, they were prepared to use force if necessary. Mr McAleavy was plainly to be held captive, and was restrained briefly before he escaped, so if these accounts are true then Fulton is guilty of the charges of robbery and false imprisonment. When questioned, Fulton confined himself to saying that it had absolutely nothing to do with him (page 243); that he was not guilty (page 323), although in the next interview he said that he was bored (page 339). Apart from these responses, he made no reply when questioned.

[230] No specific submissions was made by the defence in relation to these charges. As can be seen from my review of the evidence, there were some inconsistencies between the various accounts Fulton gave.

(1) He referred to the bank manager variously as McElvenny, McElhennie and McAnnally.

(2) He said the car cost £900, on another occasion that it cost £1,200, and in the last reference the price was given again as £900.

(3) He variously described Marlow as being sentenced to ten, twelve and fourteen year's imprisonment.

(4) He once described the imitation gun as a 45, on other occasions as a 38.

These are individually and cumulatively of minor importance. For example, the names he gave for the manager are reminiscent of the correct name, and he was describing events which took place several years before. Of greater significance is Fulton's implied assertion that four men returned to Portadown by taxi from Newcastle, whereas the evidence of Ms Donnan and Gerard Smyth is that there were only three men in the taxi. Fulton's account in this respect is therefore at variance with the evidence, and I bear this in mind when considering the reliability of his admissions.

[231] Fulton's defence is that he picked up information from others, and the reference in the passage cited at [223] above to having heard "so many different stories about it" at first blush lends some support to it. However, I believe that to place such a construction on these words would be to misinterpret them. I am satisfied that when that remark is viewed in the context of the passage Fulton was saying that he had heard different stories about that part of the episode, and given that up to five intruders entered the house, and the struggle between Mr McAleavy and his attackers took place in the hall, it is not surprising that there may have been different accounts given by the intruders themselves of a confused situation because of the subsequent panic.

[232] Did drink or drunks play any part in Fulton's admissions? B19 and B24 relate to occasions when he was driving, and for the reasons already given I am satisfied that he would not have been affected by either drink or drugs when driving on long journeys. B22 relates to a period on 23 August 2000 starting at 0847 and ending at 1542, B113 a period on 7 June 2001 between 2021 and 2224. There is nothing to suggest that Fulton was materially affected by alcohol or drugs on either occasion.

[233] Fulton's defence that he was trying to impress the members of the firm is contradicted by the admissions in B113. These were recorded by a probe when no undercover officers were present. Fulton was talking to Yellow who he knew well. He had no motive to impress Yellow, as opposed to the undercover officers, no does it seem that Yellow needed to be impressed, because he is talking to Fulton about his desire to obtain a revolver, and not an automatic, for what he describes as "the right price". It is very hard to envisage why Yellow should talk about this to Fulton, or did not contradict, or at least express some scepticism about Fulton's account of the Newcastle robbery, if he thought Fulton was a barfly and a fantasist.

[234] Are Fulton's admissions that he planned this episode true? The admissions themselves are very detailed and have the ring of truth about them. For example, his references to details such as the combination lock, the routes taken by the intruders in the immediate aftermath of the robbery; the imitation 38 being held under the clipboard, all convey a sense of authenticity and personal knowledge, both in planning the attack, and then of debriefing

the actual intruders afterwards. His defence that he was trying to impress the undercover officers does not stand examination when his admissions to Yellow are borne in mind. Whilst there are some contradictions between his accounts, they are insufficient to raise a reasonable doubt as to the veracity of his otherwise consistent accounts. I am satisfied that these admissions are true and I find him guilty on counts 24 and 25.

Incident 6 – Conspiracy to Murder Derek Wray and Attempted Murder of William Fletcher – 6 January 1997

[235] These charges relate to events on the night of 6 January 1997 when a masked man carrying a hand gun entered the home of William Samuel Fletcher at 31 Glandore Terrace, Portadown and asked where Derek Wray was. Wray was a friend of Mr Fletcher but was not there, nor expected, that night. When Mr Fletcher said that Mr Wray was not there the gunman went as if to leave, then returned to the living room and fired several shots at Mr Fletcher, who suffered gunshot wounds to his left knee and right foot. The prosecution case is Fulton was the gunman, that he went there expecting to find and to kill Derek Wray, and when he discovered that he was not there fired the shots. Fulton is charged in count 26 with conspiracy to murder Wray; in count 27 with the attempted murder of Mr Fletcher; in count 28 with wounding Mr Fletcher with intent to do him grievous bodily harm, and in count 29 of possession of a loaded handgun with intent to endanger life.

[236] The witness statements of Mr and Mrs Fletcher were read. Mr Fletcher described how he heard a bang and had just got to his feet when a masked gunman entered the living room and asked where Derek Wray was, to which he replied "he's not here". The gunman walked back into the hall, then turned and came back into the living room. The kitchen door can be seen from Exhibit A36(1) photograph 9 to be to the left of the living room door and hence to the gunman's left as the gunman stood at the living room door. The gunman then fired several shots. Mr Fletcher described this part of the attack in this extract from his statement.

> This man walked back into the hallway, turned and came back into the living room and started to fire shots at me. He was standing at the living room door and I was standing about the kitchen door. He was firing shots at me and I pushed the living room door over and caught his arm in between the door and the door frame. Another couple of shots went off then and he pushed the door open and came into the living room. He fired another one or two shots at me and then ran out the front door.

Mr Fletcher telephoned the ambulance and police, presumably using a phone in the hall where his wife found him sitting on the stairs, because the plan of the ground floor of 31 Glandore Terrace (Exhibit 35(1)) shows a telephone point in the hall just inside the front door. There was a phone in the living room it seems from the photographs, but Mrs Fletcher said her husband was gone when she heard him on the phone, so he appears to have used another telephone.

[237] Mrs Fletcher described how she covered her eyes with a magazine she had been reading and turned her head away, so she only heard the sound of shots. However, before she did so she saw that there was a second man in the door way of the living room, but this man stayed out in the hall, she said at about the door saddle. He was also wearing a black balaclava, and she described him as "stockyish" and about five foot eight inches, five foot nine inches. She saw him bring the gun up to fire. "He held it in both hands and aimed it at William's legs or around that area", and she saw him fire the first shot before she averted her eyes. Her husband's description of the gunman was five foot nine inches, medium build (page 184). The examination of the scene by the scenes of crime officer, Constable Cathcart, resulted in the recovery of a total of six spent bullet cases, a number of distorted bullet heads, and the location of a number of strike marks in the living room. Mr Rossi concluded that at least six rounds had been fired from a single 9 millimetre calibre self-loading pistol. At the request of the police he later compared the spent cartridges with cartridges recovered from the shootings at Edenderry Primary School on 3 January 1997 (the shooting of Buchanan, Birney and Doran – incident 7, counts 30 to 33), that is three days before this incident, and concluded that the same pistol had been used in both incidents. Exhibit A36(1) photographs 2 and 3 show the damage to the frame of the front door where the door had been forced open.

[238] There can be no doubt that the shooting of Mr Fletcher was a joint enterprise between the two intruders, or that the object of the gunman in shooting at Mr Fletcher was at the very least to inflict serious injuries upon him. However, as will appear, there is a dispute whether the gunman intended to kill either Wray or Fletcher, and I defer further consideration of the intent necessary to establish the counts of conspiracy to murder Derek Wray (count 26), and of attempted murder of Mr Fletcher (count 27), until I have considered the relevant admissions by Fulton. In his written closing submissions, Mr Millar only referred to admissions contained in B28 and B29. However, B31 was admitted in evidence and there are material references in B31 between pages 589 and 593 to which I shall refer.

[239] B28 is the result of a probe recording and relates to a conversation between Fulton and Gibson at Gibson's home at 19 Clos Trevithick, Cambourne, between 0857 and 1310 on 16 March 2000, that is soon after Fulton has come to the West Country. During the morning Fulton described

the attack on Fletcher from page 502 onwards. He described how it seems that it had been originally intended to carry out this attack the night before, but it had been called of because there were three police cars in the vicinity. On the night of the attack he had smoked a couple of joints and was at his mothers, intending to smoke another joint, when he received a phone call from somebody he only to as "Bugs". This reminds him what he is to do, so he goes to the rear of Talutha's home, where he is given a gun by a man called Mahood. Fulton describes how he checks the gun and finds that it is "filled", i.e. loaded. He tells "Philly" (Philip McLean) to come with him and close the door after them once Fulton has put the door in. He then described what happened next at page 504.

> Jim: Soon as I got round to the door so I just fucking how am I getting in even the day the next day what do you call it you could see the fucking dust prints know, actually round the Yale Lock like my short leg fitted right up the top reached, right up to the Yale Lock. Like the door went to the wall, fair play to Philly he was straight in I didn't see Philly doing it but he was straight in and he fucking put his boot to the door and pulls the phone out and what you call it then, I had (inaudible) take that door there. The kitchen door was to the left. Him and the woman were lying on the couch and he jumped off the couch but to me, to me, I thought he was jumping at me and he was jumping, but he was jumping at the kitchen door but it was locked. As soon as he jumped at me I was straight to his forehead, boom like that there and how I missed his head it baffled me like. See the next thing he jumped the other way and he was standing right in front of me like that there. By this time Philly.
>
> Muriel: (Interrupting). He went fucking everywhere didn't he (inaudible).
>
> Jim: Aye by this time he was, see actually. I actually all I wanted to do was hit him in the limbs cause it wasn't Derek Wray, I was looking for Derek Wray.

[240] Continuing the description of the shooting Fulton describes how he fired several shots intending to hit the man in the limbs.

> Jim: So I said, Philly, Philly said, Jim he says, I swear on my life, I swear to God I says, I mean after that I said to Gary like, he says, I'll do anything you like boys but I'll not, not, I'm not a shooter. I'm not going

to know lie, I'm not a shooter like that tell Gary, that after it like. I swear to you he's like a break dancer. I wanted to just hit all the limbs and he's standing right in front of you I goes boom, boom, boom, boom, boom, boom (laughs). And you could see the fucking legs going and the arms going. He was all over the fucking place, but see when I got out Philly was already up Alexander Avenue.

Muriel: Philly was just away like a fucking rocket.

Jim: Billy had blocked one road off. Swinger had blocked the other road off, somebody blocked the other road off. Philly got everywhere. Philly was right out your back and everything.

[241] Fulton then describes how he made his way to Gibson's house where he waited to hear news of the attack on the radio.

Jim: I dandered across and I dandered across, there was Swinger. He'd left the car on up the walk a wee bit to block the road. Says he where to fuck will ye hurry up. Here's me, right, right, right. I was that shattered and that stoned I could hardly get over your fence. 'Sargy' he was shaking like that (inaudible) you know waiting to take the gun and all. Time I got over the back I was fucked, I mean, I was destroyed, I swear to fuck, that's me, smoking that fucking blow.

Muriel: And then the sitting up the stairs waiting on the fucking radio.

Jim: On the hour every hour then at 12 o'clock a report came in man shot dead. Ah, here was Philly, oh, oh. Oh I'm going to crack up.

Muriel: (Inaudible) dead (laughs).

Jim: Here's me let me tell you something. The rule, the golden rule is the next time somebody tries to attack you (inaudible). It's up to your own decision. (Mimicks Philly). I'm not going to go mad. So they did like started to go mad. Then they started arguing with each other. Swinger and Billy.

Muriel: Then it turned out alright.

Jim: Aye, arms and legs and all (laughs).

Muriel: Those legs and hands fucking shot right through (laughs).

Jim: Through his ankles and all aye. He got hit seven. Seven times he was hit or something.

Muriel: I don't know.

Jim: Seven times cause I always maintain that he run.

Muriel: Philly sitting with a big cigar you know and the bottle of fucking champagne and all the rest of it. He soon walked out with it didn't he.

[242] Although Fulton does not mention Mr Fletcher by name, he says that he was looking for Derek Wray, and it is unmistakeably the shooting of Mr Fletcher to which he is referring. The next reference occurs in B29, a recording made on 1 October 2000 between 0944 and 1406, at page 512.

And eh, cos I tried to murder one of their men, only he wasn't in the house, but the guy that was in the house I shot him 6 times, didn't try to kill him like. Just shot him in the elbows, the knees and the ankles, you know, what do you call it, left him a message. We want fucking, whoever fucking done that we want him punished. Billy was blamed for it.

Gary: So they were saying whoever did it wanted it.

Jim: They wanted us to punish whoever shot him. And I Billy had a word with me he said now I'm telling you don't you open your mouth in here you check your temper you let me do the talking like. But the wanker that was doing all the fucking talking, one of the old guys you know in his fucking coming into his 50's he was one of the old commanders, never pulled a trigger in his fuck'n life but he's trying to sit on the same plane as us, fuck'n fair enough, a commander all his life you know what I mean he was on the brigade staff, and I just lost it altogether and here's me what do you want to know and you want to fuck, you will, what do you want to punish him well I'll tell you what, I shot the fucker, alright I shot him,

now do you want to punish me, his face just dropped like that there.

I said, well come on, you fucking sort it out Will, cos I tell you what see if that other maggot had of been in the house I'd have put one in his fucking head. And I said, see when I do find him I will be putting fucking one in his head. So you see long after all the negotiations, this that and the other, the guy that I was looking to shoot, what you call it, they sent a whole fucking er Provost Marshall Team down to a housing estate in my area and I got them the lend of the Community Centre and ordered him up with his men and I made his men stand round in a circle, and the boys came out of the kitchen, had baseball bats and fucking broke every bone in his body.

Gary: Did they, what his own people did it.

Jim: His own people, seeing how serious it was, once I lost it in the meeting, I turns round and says you want the guy punished I said well that's alright you want to do it, and I said cos I'm the one who shot him, here's me you going to punish me boy, I said fuck all, I said you've done fuck all in your fucking life, how dare you try to fucking dictate to me. Here's me yous, may find that fucking assehole, cos see when I do find him I'm killing him.

[243] During this lengthy conversation Fulton described how he prepared for the attack, how he carried it out, and how he went to Gibson's house afterwards, before turning to another topic at page 525. This account of the shooting has to be read in its entirety, but the following matters deserve emphasis.

(1) He repeats that he was "stoned" having taken a "joint", obviously cannabis (page 514 and 515).

(2) That he had forgotten that he was to carry out this attack.

(3) Philly was to accompany him.

(4) He described where the phone was, and the layout of the house, saying at page 516:

> I says once you do that I says rip the phone out of the wall, and I says once you go through into the hallway the phones there. The door to the living room is on the right, then when you go through there, the door to the kitchen is on the left.

(5) At page 518 he described how he reacted to Mr Fletcher coming at him.

> Jim: So fuck straight through the door your man jumped but as he jumped he jumped as if he came towards me, you know what I mean, so you know what I mean rules are hey if you're in threat whatsoever, you take the threat out.
>
> Gary: Yeah.
>
> Jim: So what do you call it the fucking first shot fair enough, was right at his forehead like, but it fucking know it missed him, then once the fucking shot went off, er what do you call it, that was it I was just on overdrive then.

(6) He recounts how Philly heard him say "tell that bastard Wray when I do get him there's be one in his fucking head" (page 518).

(7) At page 523 he says that "I was near enough positive you know what I mean I never hit him anywhere serious".

(8) After the shooting Billy Wright and Swinger questioned him about how the attack went, Fulton saying that his target wasn't there, and that he shot Fletcher because, as he variously put it "… he took a dive for me at the start, so I, he got shot"; "… he took a dive at me, my first priority is to get me and my fucking mate away"; and "… he shouldn't have fucking jumped at me end of story".

[244] The next reference to this episode is to be found in B31, a conversation between Fulton and Dave on 7 January 2001. The recording was made between 1037 and 1221, although it would seem that Fulton did not arrive until after 1045, when he was expected within 15 minutes, so it covers up to one and a half hours or thereabout. B31 starts at page 562, and Dave's un-contradicted evidence was that Fulton drove Dave in a Peugeot to Michael Woods Services, which he said was perhaps north of Bristol. During this lengthy conversation he again referred to the Fletcher shooting at page 589,

saying, "er, I was looking for Derek Wray but he wasn't in house so I shot the other wee lad in the arms and legs and all…".

[245] From page 591 there occurs the following.

> Jim: (Laughing). I only tried to kill him the once. Cause he wasn't the one I was going for you know so I'd no intention of killing him but when I come through the door you come through the house front door like that then the door to the living room was right there so when I kicked it open the door to the kitchen was to the left.
>
> Dave: Yeah.
>
> Jim: And he was sitting lying on a couch with his girlfriend that way along that wall.
>
> Dave: What the right hand side.
>
> Jim: On the left hand side as I come through the door.
>
> Dave: Right.
>
> Jim: He was lying on the left hand side of the couch long ways. The TV was the bottom of it but the door to the kitchen was behind that to my left.
>
> Dave: Yeah.
>
> Jim: Well through just you know what I mean, through own self preservation when I burst through the door he was a big tall cunt he jumped up and jumped over the fucking front of the couch towards me which I thought he was making a go for me. He wasn't he was going for the kitchen door.
>
> Dave: Right.
>
> Jim: But I didn't know that there. So my first shot just went straight for his fucking head like. I mean cause I though he was coming for me. So I just put straight up boom and must have just fucking whistled passed his ear cause he just lit in mid-air he just changed direction went in front of me there then

that's when he start Break Dancing. (Jim making the sound of a gun five times laughing).

Dave: Break Dancing (short pause).

Jim: And the rush of the adrenaline and all, I didn't even know, I knew I had to, I knew I had to send to leave a message about Derek WRAY but I didn't through all the adrenaline rush and buzz and all I still to this day can't remember saying it know what I mean cause I had to ask wee Philly after it. I said to Philly did I give the warning. Philly said, aye you fucking right you give the warning alright.

Dave: Who was this Derek WRAY geezer then.

Jim: He was in the UDA I mean all he was is a big bully.

Dave: Right.

Jim: Just fucking beat up. All he done was beat up wee Prods all the time. Fucking he was a big gruff big bastard and a nasty big cunt. And he just kept beating people up and everytime he was warned it was just going through, making us look bad you know what I mean as if we were afraid of going to fucking to sort it out. So we asked the UDA to sort it out and they just kept on saying he's a wanker, he's a wanker. So Billy turned round and says that's alright we'll sort it out.

[246] Are these admissions true? Mrs Fletcher described the gunman as being "about five foot seven inches [or] five foot eight inches, very skinny", whereas her husband put the man's height as about five foot eight inches or five foot nine inches, and described him as being of medium build. Fulton described himself as 5 feet 9 inches, see B29, page 537. He cannot be described from his appearance during the trial in 2005 and 2006 as being "very skinny", he appears to be of normal build, and so the description of medium build by Mr Fletcher is consistent with his appearance. Given the traumatic events, and that Mrs Fletcher hid her face behind a magazine, thereby having a very brief opportunity to observe the gunman, it is quite possible that her husband's description of the gunman is more reliable than hers. A further inconsistency is Fulton's statement that he kicked in the door, and on another occasion he said that Philly did so. If he was "stoned", it may well be that his recollection of events is confused in some respects, as he himself

acknowledged because he asked Philly afterwards did he give the warning, apparently the warning that he would kill Wray. I do not regard either of these as being of particular significance when set against the very considerable detail given by Fulton, and the air of immediacy and of veracity conveyed by the descriptions as a whole. In addition there is the substantial conformity of the descriptions with the known facts of the episode. In particular his accurate description of the layout of the house, the position of the living room and kitchen doors, and the position of the phone inside the door very strongly suggests that Fulton was describing events in which he had actually participated, rather than recounting something he had heard about.

[247] The defence that these accounts were given to impress the undercover officers is again inconsistent with, and contradicted by, his first description being given not to them, but to Gibson on 16 March 2000 in her home. That account was given in the morning between 0857 and 1310, and whilst Fulton and Gibson resorted to drink and/or drugs on occasion, it is less likely that they would have done so at that time of day, and there is nothing to suggest that Fulton was in anyway affected by drink or drugs on that occasion. For the reasons I have given earlier I accept that he was not so affected when driving on either of the other two occasions.

[248] Fulton denied involvement in interview C17(b), and in six further interviews declined to answer any questions when questioned about this episode. This appears to be one of the episodes he had been questioned about before to judge by the references at page 237, so that could be an occasion when he acquired some knowledge of what had happened. This is also one of the episodes where there is a link with another episode, because the gun was the same gun that had been used in the kneecapping of Buchanan and others three days earlier. Whilst it is merely one element in this case, if Fulton invented his involvement in both episodes it may not be without some significance that he chose two episodes three days apart where the same gun was used. A somewhat strange coincidence, if that is what it is.

[249] Having considered all of the evidence I am satisfied that Fulton's admissions are true. What is the effect of those admissions? Firstly, it is clear that there was a conspiracy of which at least he, Philly and Mahood were part of to murder Wray. Irrespective of his motive for shooting Mr Fletcher, there can be no doubt that Wray was the target and he was to be murdered. Not only did Fulton take a loaded gun, but his assertion that "if that other maggot had of been in the house I'd have put one in his fucking head" leaves no room for doubt. As Fulton himself agreed at page 594, recovery is not to be expected from a bullet in the head. I find him guilty on count 26, conspiracy to murder Derek Wray, and on count 29, possession of a firearm with intent to endanger life.

[250] Count 28 alleges that Fulton attempted to murder Mr Fletcher. As can be seen from the various remarks made by Fulton, Wray, not Fletcher, was the intended victim of the attack. The description by Mr Fletcher of the gunman starting to leave on learning that Wray is not present strongly supports that inference. Equally, I am satisfied that when Fulton fired the second and subsequent shots his intention was to wound Fletcher, not to kill him. Remarks such as "I shot him 6 times, didn't try to kill him like", and "cos he wasn't the one he was going for you know so I'd no intention of killing him", support this contention, and I see no reason not to accept that they are a true description of Fulton's intention when he fired those shots. However, the crucial question is where was the first shot aimed, and what was Fulton's intention when he fired that shot?

[251] Mr Fletcher's account set out at [236] above does not contain any indication where the first shot was aimed. However, Mrs Fletcher said at page 186 that the gunman "…brought the gun up to fire it. He held it in both hands and aimed it at William's legs or around that area. William was standing up at that stage". Mr Fletcher was shot in the left leg and right foot, although he throws no light on the order in which the wounds were inflicted. His wife's description is evidence that the first shot, which she says she saw fired (page 186), was fired at his lower limbs, which is consistent with an absence of intention to kill.

[252] But Fulton's own accounts, if correct, plainly state that the first shot was fired at Fletcher's forehead because Fulton perceived that he was threatened by Mr Fletcher whom he described as a large man, who had stood up and was moving towards him. No doubt he thought that he might be overpowered, and therefore was in danger himself. I should say that no reference is made by Fulton, or by Mr and Mrs Fletcher in their statements, to the BB gun found under a cushion, and which resembles a real firearm. On several different occasions Fulton says he first fired at Fletcher's forehead. On 16 March 2000 he said to Gibson "As soon as he jumped at me I was straight to his forehand, boom like that there and how I missed his head it baffled me like". (Page 504). To Gary he again referred to Mr Fletcher getting up and coming at him, saying "… If you're in threat whatsoever, you take the threat out". The reference to taking a threat out very strongly suggests that Fulton intended to kill Fletcher with the first shot, an inference strengthened by his continuing:

> So what do you call it the fucking first shot fair enough, was right at his forehead, but it fucking know missed him. (Page 518).

At page 591 Fulton said to Dave "I only tried to kill him the once", and later in the passage already quoted at [245] he says his first shot "Went straight for his fucking head like" and must have just missed him.

[253] As against these repeated statements that he fired his first shot at Fletcher's forehead, he said he "Didn't try to kill him like", see [243]. This is consistent with Mrs Fletcher's description of the gunman pointing at her husband's lower limbs when the first shot was fired.

[254] If he fired the first shot at Mr Fletcher's forehead there could be no doubt that his intention at that moment was to kill him, even though that was not his intention when Fulton entered the house, or even when he turned round after hearing Wray was not in the house. Whilst Fulton's assertions are predominately that he did fire at Mr Fletcher's forehead, they are not all to that effect, and Mrs Fletcher's evidence that the first shot was fired at her husband's lower limbs raises a reasonable doubt as to whether the first shot was fired at his forehead. I find him not guilty on count 27, the attempted murder of Mr Fletcher. However, the subsequent shots were clearly intended to wound him, and I find Fulton guilty on count 28.

Incident 7 – Punishment shootings of Buchanan, Birney and Doran at Edenderry Primary School on 3 January 1997

[255] On the night of 3 January 1997 police found three men in the grounds of Edenderry Primary School on the outskirts of Portadown. Each had suffered gunshot wounds to both upper thighs. They identified themselves to Reserve Constable Suzanne Waterworth as James Buchanan, Jonathan Birney and Andrew Doran. The injured men were taken by ambulance to Craigavon Area Hospital where each was found to have been shot once in both thighs, there being entrance and exit wounds in each instance. A search of the scene resulted in the discovery of six spent 9mm cases and one ejected round. An examination by Mr Leo Rossi established that each spent case had been fired by the same browning 9mm pistol. As already pointed out at [237], this was the gun used in the shooting of William Fletcher three days later (Incident 6). Fulton is charged with three counts of wounding each man with intent to do him grievous bodily harm, contrary to Section 18 of the Offences Against the Person Act, 1861 (counts 30, 31 and 32); and with possession of a loaded browning 9mm pistol with intent to endanger life, contrary to Article 17 of the Firearms (NI) Order 1981 (count 33). The prosecution case is that Fulton ordered each of the three men to come to this spot in order to be subjected to a punishment shooting, and then shot each man in each thigh.

[256] When Detective Sergeant Bradley called at Birney's house on 9 January 1997 and tried to discuss the circumstances of this shooting, Birney did not respond. However, both Buchanan and Doran later made witness statements which were read at the trial. Buchanan described how he received a message via the intercom at his flat earlier that day, instructing him to be at the school that night at half past seven as it was in his "best interests". On arrival he waited in the dark for a few minutes before Doran, who he knew to see but

not by name at that time, arrived. About five minutes later Birney arrived. Again Buchanan knew him to see but not by name. Buchanan had seen Doran and Birney at the Coach in Banbridge. After they had been waiting for about 15 minutes two masked men appeared, one with a handgun. All three were told to sit down and Buchanan did so, with Birney and Doran beside him. The gunman then shot Buchanan once in the inside of his upper right thigh before trying to shoot him in the left leg. However, it seems the gun misfired because he heard about five clicks before he was then shot in the left thigh. The gunman then proceeded to shoot Birney and Doran, four shots being fired in rapid succession. The gunman and his companion then ran off, leaving the three wounded men who managed to attract the attention of two teenagers walking through the grounds. The police arrived first, followed by the first of the ambulance personnel, the latter giving their time of arrival at 2026. Buchanan was then taken to Craigavon Hospital. He maintained that he did not know why he had been shot, or by whom.

[257] Doran described how he was at home in the Lisburn area when a caller came to the door about 7.30 or 7.45pm. He did not know this person by name but recognised him from either the Coach or Circus Circus in Banbridge. This man told him that somebody wished to speak to him so Doran walked to a nearby car and got in. He did not speak to the driver, but the passenger, the man who had come to his door, said that they were going "up the road to see a boy". Doran was driven to Portadown where the journey ended in a driveway which he later learnt was at a school. He was told to go and stand with two other people and not to leave or he would be shot dead in his own home before the weekend. He got out and recognised Birney, who he knew, and Birney said that he and Ron had been told by phone to be there. At the mention of the name Ron Doran remembered the other man, although he had never spoken to him. The car drove off, and almost immediately two masked men appeared and he was told to sit down, which he did, as did Ron and Birney. Ron was shot in the leg with the first shot, but then there was something of a hiatus. Doran described hearing the gunman mumbling something, working with the gun and the trigger clicking and then about a minute later Ron was shot in the other leg. The gunman then shot Birney in both legs before pulling Doran's legs apart and shooting him, first in the right leg, and then in the left, before running off. He also said that he had no idea why he had been shot, or by whom.

[258] Fulton referred to this incident on nine occasions between 16 March 2000 and 7 June 2001, sometimes when more than one undercover officer was present. He spoke about this once to Liz, three times to Neil, three times to Robbie, twice to Dave and once to David and Max. The most significant of these conversations were the first two, that is the conversation recorded in B27 on 16 March 2000 when Liz was present, and then in B35 on 30 March 2000 with Neil, and I shall examine the relevant conversations in chronological sequence.

[259] B27 relates to a conversation which took in Gibson's house at 19 Clos Trevithick between 1310 and 1633 on 16 March 2000. Fulton, Gibson and Ayesha were in the house when Liz called. The importance of what then occurred is two-fold. First of all, Fulton had not met Liz before and she had no known connection to the firm and was simply there because she was friendly with Gibson. There was therefore no reason why Fulton should wish to impress her so far as improving his standing with the firm was concerned. Secondly, it is clear that he was quite willing to talk at length about himself and his criminal activities to show that he was well-known, even notorious, not just in Northern Ireland but in the USA, because at an early stage of the conversation he claimed that he had been the most wanted man in the US for a while. Later at page 487 he said that he had been put on the front page of An Phoblact. It is not without significance that Gibson supported him by saying that he was shown in the Irish press in prisoner shackles and was on the RTE news (page 487). He referred in some detail to his criminal activities, including having a bath at Gibson's house and how Gibson would burn his clothes, something which Gibson appeared to confirm at page 485 when she said "Naked men and all running around the living room trying to get into the bath". He also described how he narrowly escaped detection when carrying £25,000 in cash on one occasion (page 490), and an AK47 on another (page 498).

[260] At page 492 he described how men would be shot through the fat of the leg so that it would be reported that they had been kneecapped. The reason for this was that the victims were at risk of being shot dead by various organisations because of their suspected drug dealing, and this would be regarded by such organisations as a satisfactory method of dealing with the matter, thereby enabling them to escape death and so saving their lives. At page 492 he said how the last three kneecappings were at his child's school, and because this caused such a fuss amongst the parents his wife told him not to shoot anyone in that school again, to which he replied "It'll be alright love no more of it so we'll go back to Brownstown Park then".

[261] Whilst the reference to three people being shot in this way suggests that Fulton was referring to the episode when Buchanan, Birney and Doran were shot, taking this conversation in isolation there is insufficient detail to be certain that was the episode to which he was referring. In addition, his response to his wife's allegation might be argued to be consistent with him not being involved in that episode, but saying that, for example, he would see it did not happen again. Be that as it may, Fulton's willingness to refer to his criminal activities in such detail to someone who, so far as he knew, was just a friend of Gibson, is inconsistent with his defence that he claimed involvement in crimes because he wished to impress the firm. He was clearly willing to impress others also.

[262] Just two weeks later on 30 March 2000 occurred the next reference which is to be found in B35. This records a conversation on a car journey (see Fulton's query "is this Plymouth?" at page 636). Fulton and Neil first met on 24 March 2000 and Fulton believed that he was now working for Neil (see transcript of Neil's evidence on 3 April 2006 at page 11). B35 followed B19 which covered the period between 1340 and 1535 that day, and B35 starts at 1615. Neil had told Fulton that he was to behave himself and that he could not be drink driving, and in B19 told him to keep the car clean, no tickets (page 309). Given Fulton's need to keep in with Neil at the beginning of Fulton's involvement with the firm, and that he was driving during this conversation, it is in the highest degree implausible to suggest that Fulton may have been affected by drink or drugs and I am satisfied he was not.

[263] In B35 Fulton gives the fullest of the nine descriptions of his involvement in this episode when he described it in the following terms between pages 631 and 633.

> Jim: I've deliberately ostracised people even though they were friends of mine in the drug trade. I mean their friends of mine who fucking..
>
> Neil: Or ain't gonna go near somebody, I mean if he's, if he's been looked at then soon as you meet or they see you, your being looked at aren't you.
>
> Jim: Exactly know what I mean, its only a matter of going up and explaining to them. Listen I'll not be calling at the house no more. I've done it on 4 occasions. I've shot 3 of my friends over drugs. Billy told me to do it. Billy's right hand man. I shot both of them, him in both his legs, guys. Big Ron I shot him and Billy, Billy says because fucking they were going fucking after Billy for drugs. So Billy had to show some of them and then we shot one of the UFF boys and er they said they sent word out, over drugs that you know were going to stiff the first drug dealer in Portadown we get our hands on. So that meant Ron. Fat Ron was dealing for Billy.
>
> Neil: Oh right.
>
> Jim: So to fucking save Ron's fucking neck and see give Billy good pub.. publicity. Says right Jim he says er Ron wee guy TYLER he says and wee Danny from Lisburn. He says but wee Danny

doesn't want to do it and he said wee Danny doesn't want to turn up. I said do you fucking blame him Billy. This is another wee guy I was friendly with. So I had to go and me down it took me an hour and half to fucking talk this wee lad into coming up to Portadown and let me shoot him. I had to talk him into letting, me shoot him like (laughs). Some of them things are so comical like. I felt sorry though for Ron that night but fucking er.

Neil: Did he come.

Jim: Oh fuck aye. (Inaudible) aye. He'd nothing to lose (inaudible) (laughs). (Inaudible) fucking it was to save Billy's face but also to save Ron's life cos the UFF would have shot him dead like to prove a point. Cos we shot one of their men. So, I brings I sends for them I says aye be in my kids school their primary school. I says to be in the back of the primary school because if there's a shooting in a school ground or anywhere like that at all the Police will not come into it instantly in case its a set up. Cos they don't know what's waiting for them. So you always use a school. So I had the 3 of them. So I comes dandering across from the park with a nine mil and what do you call it er I says right boys lay down. Big Ron says Jim do me first, big Ron's a fucking good bit of fat on him like and because they're mates all I done was squeeze the fat of the leg out.

Neil: Yeah.

Jim: And I fucking I was putting the its like ramming a nail through your fucking leg through the skin of your leg. No big deal. But it comes out in the papers kneecapping, you know and it does the public know what I mean gives the public what they want and all that. So I goes to Ron first, bang. I shot Ron in the fucking this leg right but when I shot him fucking the gun recoiled and hit either my hand or else my hand moved down and the foot clip came out about a fucking couple of mil.

Neil: (Overtalking) Right.

Jim: Just caught the clip slip. See when I went on to the next leg. Click. Pulled the fuck cocked it again. Click. Cocked it about 3 times. Here's Ron for fucks sake. Jim hurry up (laughs) pitch black like, so I had to feel over the gun and I felt the clip and banged it again and cocked it, boom. The next fucking two, they're sitting beside him. Ron says ye bastard ye. I went up to see him in hospital aft.. about an hour later after I got washed up and cleaned.

Jim: I walks to the hospital first of all there's a peeler standing at the door, me and Philly (inaudible) Fulton your nothing but a sick bastard, he said shooting em an hour ago and up visiting them an hour later (laughter) . You're nothing but a sick cunt here's me now come on boys you know they're my mates (inaudible) all their families know and knew as well.

Neil: Yeah.

Jim: But they had told their families that, listen if that didn't happen the UFF were going to shoot us dead.

[264] I have set out this account at some length because it contains many of the features which occur individually in the briefer references which Fulton made to these events in later remarks.

(i) That the victims were shot to enable them to escape a worse fate at the hands of the UFF.

(ii) That this was because of the desire of the UFF to punish drug dealers.

(iii) That the victims were told where to present themselves.

(iv) That Fulton went to visit Buchanan in hospital afterwards.

[265] One element of the account which is of particular importance is Fulton's description of the interruption of the shooting and the trigger clicking but the gun not firing. This very closely corresponds with descriptions of Buchanan and Doran, and it very strongly conveys the impression that Fulton was describing events in which he had participated.

[266] I do not propose to set out the relevant extracts from the remaining evidential tapes as they do not add any further material details to those already referred to. However, they are in themselves significant because Fulton confirmed that had shot these three men on this occasion. It is also significant that, with one exception, each reference was made by Fulton when he was driving a car on a long journey. I have already stated why I do not consider he was affected by drink or drugs on such occasions.

[267] The exception is B114 on 28 June 2000 when Fulton was with Neil and Dave in a pub watching a football match on TV. This was the second occasion on which Fulton spoke to Neil about this episode. The recording commenced at 1615. B114 was not the subject of attention by counsel when Neil and Dave gave evidence and I admitted it on the voir dire. However, at that stage I did not appreciate that the entry for that day on the transaction master sheet suggests that Fulton had at least five, and possibly six, drinks whilst they were in this pub. In those circumstances I cannot be satisfied that Fulton was not adversely affected by drink and I propose to disregard tape B114 completely because it cannot be considered reliable.

[268] The remaining references are the following.

(i) B36 on 27 May 2000 with Robbie when they met at Leigh Delamere Services on the M4 to travel to Exeter Services, pages 646 and 647.

(ii) B37 on 31 July 2000 with Dave when Fulton drove to London, pages 656 and 657.

(iii) B38 on 12 October 2000 with Neil again when Fulton drove to Fleet Services on the M3 in Hampshire, a journey of about two and a half to three hours, pages 668-669.

(iv) B39 on 3 January 2001 with Robbie for the second time. Fulton drove to Bath, pages 681-683 and 685.

(v) B16 on 11 January 2001, again with Robbie when they went to Exeter and back, page 272.

(vi) B115 on 7 June 2001 with David and Max in a car from Reading to Leigh Delamere Services, page 49.

[269] When questioned during interview C18(b) Fulton said that this incident had absolutely nothing to do with him (page 242), and thereafter during this interview, and during interview C25(b), he refused to answer any questions about the matter. In his closing written submissions at page 22 Mr Treacy advanced the following arguments.

> The evidence of the `victims' is clearly at odds with that attributed to Mr Fulton in the covert recordings. In the covert recordings it is apparent that the three victims were `voluntarily' shot by Mr Fulton and that they requested him to do it. By shooting the three `victims' in the legs the Accused (according to the covert recordings) saved their lives as they faced death from paramilitary groups after they had been caught dealing in drugs. In essence therefore the `victims' consented to being shot and were seemingly grateful to Mr Fulton for this. If the Court accepts the covert recordings as reliable and chooses to ignore the inconsistencies in the accounts of the victims and that given by the Accused, it is submitted that their consent provides the Accused with a defence to the charges.

[270] It is correct that neither Buchanan nor Doran made any reference to their submitting "voluntarily". However, their conduct before and after shooting strongly suggests that they were untruthful when they said that they did not know why they had been shot. Buchanan received an anonymous call telling him it was in his best interests to go to a particular spot in the school grounds at night. When the other two arrived there appears to have been little or no conversation between them. He refused to discuss the incident with Detective Sergeant Edwards at the hospital on the night of the shooting, and again the next day when he said he did not want the police involved. Doran's conduct also suggests he was not completely frank in his account. His willingness to get into the car with these people without demur, and his initial refusal to cooperate with the police at the hospital, suggests that he too has been less than frank in his statement when he said he did not know why he had been shot. I do not consider that their evidence in that respect undermines the reliability of Fulton's description of how and why their shooting took place.

[271] If they attended voluntarily, knowing or believing that they were to be shot in the legs, does this provide the accused with a defence? I have no hesitation in answering in the negative for two reasons. The first is that I do not believe that either could be said to have "consented" in any proper sense of the word. On Fulton's account they agreed to be shot because they believed that they would be murdered if they did not. To say that they consented is a misuse of language because they submitted under threat. Submission under threat is not true consent. The second is that if, contrary to what I have held, they did consent, such consent should be deemed invalid on the grounds of public policy. See R v Brown [1994] 1AC 212. Many

thousands of people have been "kneecapped" or subjected to so-called "punishment beatings" in Northern Ireland over the last three decades by terrorists or other criminals who wish to rule their communities by fear and intimidation, and thereby subvert the rule of law. Many of those who have suffered in this way have done so in fear that if they tried to resist or escape their fate would be even worse. To suggest that submission, or even consent, negates the criminal intent of the perpetrators of such violence has never, to my knowledge been suggested before, nor accepted by any court. Certainly no reported decision to that effect has been cited, and to accept such a proposition is unthinkable. I reject Mr Treacy's submission on these points.

[272] He further suggested that the method adopted demonstrated that Fulton did not intend to cause grievous bodily harm, or, in the alternative, that as there was no bony injury there was no proof of grievous bodily harm. Grievous bodily harm means simply really serious bodily harm. Each of these men sustained a bullet wound which passed completely through each thigh. Bony injury is not required to establish this offence. There is no medical evidence to suggest that any of the three men suffered any significant consequences, other than the pain and healing process associated with such a wound. I am satisfied that bullet wounds through both thighs amounts to grievous bodily harm and that that was what the gunman intended to cause.

[273] I am satisfied that the admissions contained in B35 in particular are reliable. They gain support from those contained in B27 which cannot be said to have been made because Fulton wanted to impress any member of the firm. They are confirmed by the other admissions to which I have referred at [268], I am satisfied that they are true and I find Fulton guilty on counts 30, 31 and 32. By using the 9mm gun to carry out these attacks Fulton clearly intended to endanger life because such attacks always endanger life, even if, fortunately, death does not usually result. I find him guilty on count 33 also.

Incident 8 – Hijacking of a Post Office Van on 10 July 1996 to be used for a hoax bomb

[274] At 5.15pm on Wednesday 10 July 1996 Calvin Rowe was making his rounds collecting mail in Portadown. There was widespread disorder in the area at the time, and when he approached the collection box beside the bridge over Northway in Edgarstown he was unable to get his vehicle right up to the box because there were burnt out vehicles across the road. He was in the process of removing letters from the box when he was approached by a man wearing a balaclava who produced a pistol, and forced him to surrender the keys to the vehicle. He was forced to drive the van to the vicinity of a nearby pub called the Golden Hind where a gas cylinder was put in the back of the van. He was then told to drive the van to the police lines, which he did. The device, which was of the yellow, Calor gas cylinder, type, was found to be a hoax. Fulton is charged with two offences in relation to this incident. Count

34 – hijacking the van contrary to Article 3(1) of the Criminal Law (Amendment) (Northern Ireland) Order 1977 and Section 2(1)(b) of the Criminal Jurisdiction Act 1975; and count 35 – having a firearm with intent to commit an indictable offence, namely hijacking, contrary to Article 19(1) of the Firearms (Northern Ireland) Order 1981. There can be no doubt that the masked gunman hijacked the Post Office van by threatening the driver, and that, provided it can be proved that the gun was a real gun, he had the gun with him to hijack the van. The prosecution case is that Fulton was the masked man and was carrying a 9mm pistol. If that is proved, then he is clearly guilty of both charges.

[275] The prosecution case rests on admissions made by Fulton on 28 March 2001 during a journey with Dave which is recorded in B41. This covers the period from 0848 to 1753 and commenced when they met at Exeter Services on the M5. Fulton was driving. During the journey Fulton referred to an episode which he said involved a postman who he described as the stupidest person he had ever seen, apparently because the postman was undeterred by the disorder around him and continued to do his duty by connecting mail. He did this from a letterbox which appears from the evidence to have been located in a no man's land between the demonstrators and burnt vehicles on one side, and the police lines some distance away on the other. Fulton's description of events is to be found between pages 698 and 702. I do not propose to set it out, but it corresponds with Mr Rowe's account, which was as follows.

(i) Vehicles had been burnt out in the area, but nevertheless he went to the collection box.

(ii) He was approached by the hijacker as he was in the process of removing letters from the post box.

(iii) The hijacker wore a balaclava, and

(iv) carried a pistol.

(v) The hijacker threatened him and demanded the keys of the van.

(vi) He was made to drive the van to the vicinity of a nearby pub where the device was put in the back of the van.

(vii) The device consisted of a Calor gas type cylinder.

(viii) He drove to the police lines as he was ordered to do.

(ix) He was told that they would be watching them.

[276] Some support for the reliability of Fulton's account is to be found in the evidence of Major Seddon and WOII Lamb, who were involved in dealing with the device. Major Seddon's statement says that he saw Billy Wright and one of the Fulton brothers, he could not say if it was Mark or Jim, watching from some distance away. Fulton says Billy Wright was at the scene, and had given the order to carry out this opportunistic hijacking when he saw the Post Office van approaching.

[277] When interviewed Fulton denied involvement, and said that he was not guilty. See interviews C18(b) at page 242 and C29(b) at page 349. No defence submissions were made specifically in respect of this incident. Are Fulton's submissions reliable? He was driving the vehicle for a long period and I am satisfied he was not affected by drink or drugs. His account of events corresponds very closely with Mr Rowe's account. In particular Fulton's reference to Mr Rowe being in the process of removing the letters from the collection box when Fulton approached him with a 9mm pistol has the ring of truth. I am satisfied that Fulton was recounting events he had been personally involved in and that these admissions are reliable. I find him guilty on both counts.

Incident 9 – Possession of a .22 pistol with intent to endanger life at the time of the murder of Michael McGoldrick

[278] Michael McGoldrick was a Roman Catholic taxi driver who was murdered some time on the night of 7 July or in the early hours of 8 July 1996. His body was found in his taxi at a remote spot on the Montiaghs Road, Aghagallon, at 6.30am on 8 July. Dr Carson performed the post-mortem examination and concluded that the cause of death was five bullet wounds to the head. See Exhibit A50. Mr Rossi's examination of the bullets established that they had been fired from a single .22 weapon. On 20 July 1996 a .22 pistol and 30 rounds of .22 ammunition were found during a planned search of a potato field off the Soldierstown Road, Aghalee. This weapon was also examined by Mr Rossi, and he established that it had been used to murder Mr McGoldrick, as well as being used in another fatal shooting, the only information about that death contained in his report being that the victim was Bertie Martin who was killed on 15 July 1997.

[279] Fulton is charged in count 36 with possession of a Star .22 pistol with intent to endanger life, or to enable some other person by means thereof to endanger life, on a date unknown between 1 July 1995 and 8 day of July 1996. This is based upon his admission that he had brought the weapon from Belfast and test fired it in the country, and that he had the gun brought to him during the Drumcree protests of 1996. It is a significant part of the case against him that in his admissions he implicated his wife in the possession of the gun: saying (a) that she was with him when he took it out to the country

and test fired it; and (b) that at his direction she brought the gun up to him at Drumcree.

[280] It is also a significant element of the case against him that he is alleged to have instructed his wife to put forward a false explanation of how she brought the gun to Drumcree if she were to be questioned about it by the police. This allegation relates to the contents of the letter exhibit DE1A which is shown in exhibit A67, and to which I have already referred, see [81] to [83]. As Fulton is charged in count 43 with doing an act tending and intended to pervert the course of public justice by composing this false account, it is convenient to deal with the evidence relating to the discovery and authorship of the letter at this stage.

[281] The unchallenged evidence was that his wife Tania Fulton was searched by Anne Kelly during a visit to Maghaberry Prison on 26 July 2001, by which time Fulton was in custody on remand, having been arrested the previous month. During the search the message which is now exhibit DE1A was found by Anne Kelly in the left breast pocket of Tania Fulton's jacket. Another searcher, Elaine Allen, described how Tania Fulton then tried to lift the paper and rip it up but was prevented from doing so. Tania Fulton was known to Anne Kelly from previous prison visits, and did not deny that the paper was hers when informed by Principal Officer Alexander that the document would be confiscated. The document was later examined by Mr Craythorne, a questioned document examiner and a senior scientific officer at Forensic Science NI, and compared with other documents ostensibly written by Fulton. He concluded that the document seized from Fulton's wife had been written by Fulton.

[282] The document starts with the following passage.

> Tania. Neil once asked me was I never afraid of you ever squeeling (sic) of me to the police, so I said that you couldn't because you had brought the gun that killed the taxis (sic) driver at the first Drumcree up to me. So if you are ever asked about it this is what you say.

The letter then sets out a detailed story that his wife was to tell. In essence this was that whilst he was at Drumcree he asked her to go out to their home to get him a change of clothes, which she did. Some months later he said that she could not get back at him because she had brought a gun up to him at the barricades. She got angry, he said he was only joking, but from time to time over the years he would repeat this allegation, which she thought he only did to wind her up, she knew he was lying.

[283] I am satisfied that Fulton wrote this letter to his wife and I shall return to this part of its contents and its possible significance later.

[284] The appearance of the gun found in the field is relevant. As can be seen in Exhibit A55 photograph 4 the greater part of the gun is of a shiny, silvery colour, with a blue inlay on the pistol grip. On that inlay is a circle with the letters STAR embossed on it. The gun is an automatic pistol.

[285] There are four evidential transcripts that contain relevant admissions. B43, B44, B29 and B46, as B45 duplicates B29 and B116 duplicates part of B43. The first in chronological sequence is B43 which relates to 16 May 2000 when Fulton and Dave were on a journey from Bristol Airport to Plymouth, covering the period from 1400 to 1922. At page 722 they were talking about Tania when the following exchange occurred.

> Jim: Ah well a wife's good you see and I have my wife in a perfect position. She could never say anything about me. She could never do anything about me because, one of the most famous murders was the first the first Drumcree, first Drumcree, when Michael McGoldrick a catholic taxi driver was shot dead with a star 22 with a star 22 pistol…
>
> Dave: Right.
>
> Jim: Er an automatic. Ah well I had, I had to go down to Belfast on a motorbike to lift that. That was actually brought up for for a knee capping, so the fella he left the country so I went and put it away. So I got the wife to come on the back of the bike with me. First of all to test fire it. I had an old chopper, a hard tail chopper with a straight cut off pipe.
>
> Dave: Yeah.
>
> Jim: Real loud so out in the country. Just got her to sit on the bike. Rev her flat out and I just let three or four rounds off her. Working perfectly. Went out the road with the wife, says right into the, stick that into the hedge there, I says, beside the back of that give way sign and (Inaudible) , all wrapped in a grease er in a cloth in a plastic bag and stuck down. So that was alright. It was left

there for months. Then Drumcree happened. Nobody was expecting Drumcree to be banned.

Dave: Yeah.

Jim: Bang all of a sudden bang we were still in the UVF at the time. So we decided what to do Billy come to me he says right, it was the second day, the third, second, no the third day, Billy says to me right he says get that wee star in, there was only one way of getting it in cos everyone of us everytime, no matter, if we passed 40 times a day going up and down in our cars we were stripped I mean even coming out of it.

Dave: Right.

Jim: They had to do it by, know what I mean so there was only one way of doing it I says right, I says to the wife, away an get that package, that wee package an she fucking she was really fascinated with it cos it was a beautiful wee weapon, Dave it was only about you could hold it in your whole hand.

Dave: Yeah.

Jim: And it was pure fucking nickel plated.

Dave: Oh right.

Jim: With a bone handle with a fucking silver star on the handle, it was a star 22 a beautiful wee weapon boy it was lovely an I says away an get that wee fucking package, I says I'll get you a taxi to bring you in, I says get dropped off before the barricades and before the police lines and walk up with it. So she arrives in the taxi and the taxi pulled up. Billy says don't bring it in he says just get it left on round the fucking such an such, so I went over to the wife I says right just walk, on round to such an such house I says and hand that over.

Dave: Yeah.

Jim: Hah that's what shot Michael McGoldrick.

[286] Whilst Fulton correctly links the gun to McGoldrick's murder, and describes it as a .22, he was wrong to describe it as having a bone handle with a silver star on the handle, errors which he was also to make in later references to this incident.

[287] Fulton again referred to this in B44 on 9 July 2000 which relates to the period between 1947 and 2114 when he was in a car with Neil while they were returning from Penzance.

> A general conversation takes place re domestic matters. Jim then speaks about his wife Tanya and what she has done for him and the LVF.
>
> Jim: She must have been thinking about, she must have been thinking about Drumcree (inaudible) you know something love it wasn't last year I brought you the guns up to Drumcree. What, she says no it wasn't she says last year you wouldn't let anybody cause any trouble shes right it wasn't last year I (unfinished word) I wouldn't let any LVF members (inaudible) or up to it. It was the year before she brought the weapons up. I know what it was she was listening, she was on about McGoldrick the taxi driver (inaudible). She never ever ever mention it.
>
> Neil: She never mentions it why not.
>
> Jim: She mention about bringing the guns an all up, she will never ever mention about bringing that fucking one gun cause she knows it implicates her into a murder. She'll mention about all the other guns she hides and moves about never ever ever mention that Star 25 shes got a complex about it.
>
> Neil: Not only got a complex, probably a bag of nerves about it.
>
> Jim: The only person can do her any harm is me.
>
> Neil: Is it.

> Jim: Aye, I'm the only one knows she brought it in.
>
> Neil leaves the vehicle and Jim travels home and makes two phone calls which appear to be of a social nature.

As can be seen from this passage Fulton reiterates how he holds over his wife her involvement in moving the gun, but wrongly describes the calibre, though not the make, of the gun.

[288] The next reference to this matter is to be found in B29, which relates to 1 October 2000 between 0944 and 1406 when Fulton and Gary were travelling from Cornwall to London in Fulton's car. I do not propose to set out the entire passage between pages 540 and 542, but the following points are relevant.

(i) At page 540 Fulton says that he would like to have kept the gun, which he refers to as a "wee 25 star" i.e. a .25.

(ii) At page 541 he incorrectly says the gun had a pearl handle with a chrome star in the middle.

(iii) On the same page he says McGoldrick was killed by four shots to the back of the head when there were five.

(iv) On page 542 he correctly says the gun was used in another murder.

[289] The fourth and final reference occurs in B46 which relates to 9 November 2000 when he is again driving Neil, and at page 749 Fulton says the gun had a Mother of Pearl handle with a silver inlayed star.

[290] When questioned in interviews C30(b), C31(b) and C32(b) (pages 357-373 , 374-379 and 380-386), he denied involvement, saying at page 381 that it was totally fictitious. He made no reply when asked about the letter, Exhibit DEIA, or whether he wrote it.

[291] At the direction stage, and again in the final submissions, Mr Treacy relied upon the incorrect descriptions of the weapon, such as it having a pearl handle with a silver star on it, and being a .25 and not a .22. He also relied upon a reference in B50 to a statement by Neil for the benefit of the tape that he (Fulton) "killed a taxi driver by the name of McGoldrick". B50 has been excluded because I ruled on 8 May 2006 that the amount of alcohol consumed by Fulton on that occasion made the admissions unreliable. See page 14 of the ruling. I consider that it is wrong in principle to have regard to the content of an excluded evidential tape because were the matter before a jury, the jury

would hear nothing about the excluded material. Neil, perhaps understandably, was not asked about it. Of greater significance are the incorrect references to the calibre and appearance of the gun. Were these the only relevant matters I could not be satisfied to the necessary standard of Fulton's guilt on the charge of possession of the Star pistol.

[292] However, these are not the only matters to be considered. There is also the letter written by Fulton and seized from his wife. In it he confirms what he had said to Neil. Nowhere does he say that was untrue. Instead, he goes to considerable lengths to construct a story which his wife is to tell if questioned about this gun (and another episode), a story which from its very nature and content is plainly false. The natural inference is that in doing so he was seeking to ensure that his wife would not tell the truth if questioned, the truth being that she did bring the gun to him at Drumcree as he had admitted. I remind myself of the warning in R v Lucas about a defendant's possible motives for lying, but I am satisfied that Fulton's reason for constructing this elaborate story was to cover up the truth. Notwithstanding the repeated errors he made in the calibre and appearance of the gun, having considered the letter to his wife in particular I am satisfied that the admissions that he had the gun in his possession are reliable and are true. I find him guilty on count 36.

Incident 13 - Intending to pervert the course of justice and possession of a handgun with intent

[293] As count 43 (doing an act tending and intending to pervert the course of justice) and count 44 (possession of a handgun with intent contrary to Article 17 of the Firearms (Northern Ireland) Order 1981) are linked by the letter Exhibit DE1A to the matters just considered it is appropriate to deal with them together at this stage. At [281]–[283] I have already referred to the evidence that has satisfied me that Fulton wrote this letter, and I do not propose to repeat it. As I said, I am satisfied that Fulton's reason for constructing the elaborate story relating to the gun that killed McGoldrick was to cover up the truth.

[294] The second part of the letter relates to a different episode, again involving his wife, when she brought a loaded .45 Webley through the police lines to him at Drumcree, successfully calculating that she would not be searched because the police had been led to believe, wrongly, that he and his wife despised each other. The relevant admissions are to be found in B67, which relates to 26 October 2000 between 1027 and 1430 when he was travelling with Robbie on a journey from Plymouth to Avonmouth, Weston-Super-Mare and back to Plymouth. There had been a discussion about wives and Fulton then referred to this incident at page 932.

> Jim: No my wife's done, my wife's done a lot Robbie (inaudible) she's walked through fuck'n checkpoints and all with she came actually through one checkpoint up at Drumcree with a loaded .45. A big 45 Webley with a child's buggy and all the cops knew, knew, but then me and her had the perfect situation for all the cops.
>
> Robbie: What do you mean all the cops knew?
>
> Jim: All the cop, everybody knows who, know what I mean, my wife and all is.
>
> Robbie: Oh right.
>
> Jim: But what do you call it, the perfect situation was that (mumbled speech) cops thought that me and her despised each other we were always fucking fighting and all.
>
> Robbie: (Inaudible) (overtalking).
>
> Jim: And that's the way we always kept it. The cops would never go near her house, wouldn't search her house or nothing, cos I could actually plank stuff in her house (inaudible).

Very soon afterwards Fulton repeated this statement, adding that the gun was brought to him at his request.

> So at Drumcree the fuck'n year that we all opened up on the fuck'n Army and the Police. She, what do you call it, we were short of one weapon. The only one we couldn't get in. I fuck'n sent a girl to tell her I says, you tell the wife I says, that er, I sent such and such out to the house for her to bring up it to me, and she walked right up through all the fuck'n ranks, through the checkpoints, through everything with a Webley 45, loaded and all.

[295] The obvious inference is that Fulton received the gun at Drumcree, but in any event as she was bringing the loaded gun to him at his direction they were involved in a joint enterprise. Although he did not have physical control of the gun when his wife was bringing it to him, she was acting at his direction, and as such he had possession of the gun. See Hall v Cotton [1986]

3 AER per Stocker LJ at page 335f, and Sullivan v Earl of Caithness [1976] 1 AER per May J at page 847. In either event I am satisfied that if his account is true he was in possession of the Webley revolver. The purpose of bringing a loaded revolver to Drumcree was to enable shots to be fired, thereby endangering life, whether they were to be fired by Fulton or one of his companions.

[296] When questioned in interview at C32(b) at page 381 about this and other allegations Fulton replied that it was fictitious. No specific defence submissions were made in respect of these charges. Fulton's account was given during a lengthy journey when I am satisfied that he was driving. I am satisfied he was not adversely affected by drink or drugs. That the account was true gains significant support from the content of the story he instructed his wife to tell in exhibit DE1A. This was carefully constructed to provide her with a story which would exculpate her if questioned. Why would Fulton go to such lengths unless he believed that his wife might say something else if questioned, questioned in this context unmistakeably meaning questioned by the police, unless there was a risk that she might tell the truth, and thus be at risk of prosecution? It is the case that he says it was Neil he had told, but the circumstances of the account to Robbie correspond with what he wrote to his wife. I have already referred to R v Lucas in the context of the remainder of the letter and I bear the Lucas admonition in mind. I am satisfied that Fulton's account of this incident is true, and I find him guilty on count 44, possession of the firearm with intent.

[297] The references in the letter to "this is what you say", together with the words "so if you are ever asked about it", "it" being Fulton's statement to Neil that she brought him the gun that killed Mr McGoldrick, incontrovertibly refer to being questioned by the police. I can conceive of no other meaning, nor has one been suggested. To instruct someone to tell a false story if questioned by the police about a suspected offence is an act tending and intended to pervert the course of public justice of the clearest kind. I am satisfied that Fulton composed this letter with that intention, and I find him guilty on count 43.

Incident 10 – Attempted wounding with intent to do grievous bodily harm to William Terry

[298] William Terry lived at 8 Elmtree Mews, Portadown and retired as a senior officer at the Maze Prison early in 1997. He and his wife and other members of the family returned to the house at about 10.30pm on 13 August 1997. Mrs Terry had gone upstairs to draw the curtains, and Mr Terry and his son were downstairs when some 20 shots struck the rear of the house, one of which penetrated the glass at the top of a window in the room occupied by his daughter Jill. Jill was outside talking to her boyfriend at the time, and there is no evidence that there was anyone in her room at the time the shots

were fired at the house. Police investigations established that the shots had been fired from a 7.62mm calibre weapon of an unspecified type which Mr Thompson of the Forensic Science Agency described as being of a type usually associated with Loyalist terrorists. The distribution and location of the spent cases shows that the shots were fired from the side of 5 Oaktree Mews, a house which backs onto 8 Elmtree Mews. The firing point chosen by the gunman can been in Exhibit A58 photograph 33, and in that photograph can be seen the top of a tall fence at the rear of No 5, and part of the roof of a garden shed in the rear of No 8 which can be seen more clearly in photograph 15. They obscure the downstairs windows at the rear of No 8. The strike marks which can be seen clearly in that photograph, and in photograph 16, are grouped on the upper part of the wall, indicating that the gunman fired upwards at the side of the house, apparently aiming at the area between the upstairs windows, with most of the strike marks being in the region of the floor level of the first floor. Fortunately, the only bullet which penetrated the house was that which went through the upstairs window, and no one was physically injured.

[299] In count 37 Fulton is charged with aiding, abetting, counselling and procuring others with attempting to wound Mr Terry with intent to do him grievous bodily harm. This charge is based upon Fulton's admissions in B22, a conversation with Dave on 23 August 2000. After discussion of contract killings, the conversation turns to the effect of 7.62mm rounds when fired from a AK, clearly referring to a gun of the AK47 type. Fulton then referred to a warning given to the security forces, including prison officers, that they should lay off Loyalist prisoners; the implication being the officers should not enforce prison discipline strictly; or else there would be reprisals. He then described how his cousin Gary came to him at his holiday caravan and told Fulton that Swinger (ie his brother Mark) had left them "a job", the "job" being described by Gary to Fulton as "we'll be hitting fucking screws". Fulton then gave Gary directions to the only prison officer's house he could think of at the time, a house which was two doors from Fulton's mother's house. He then described in considerable detail what was plainly the gun attack on Mr Terry's house.

[300] If Fulton's admissions are correct, he set up the attack on Mr Terry's house by nominating him as a target. During interview C33(b) Fulton denied being involved, saying he had heard about the attack when he went to his mother's house the next day. However, it is unnecessary to dwell on the plausibility or otherwise of this explanation because Mr Treacy's submission was that at best whilst the evidence reveals offences of criminal damage and attempted intimidation, it falls short of proving that the gunman had the necessary intent to wound Mr Terry with intent to do him grievous bodily harm because what the gunman did was to spray the back of the house with gunfire.

[301] Fulton's reference to "hitting screws" is certainly consistent with knowing that the attack was intended to injure Mr Terry, an inference strengthened by the number of shots fired at the house. However, it is somewhat ambiguous, and it is by no means impossible that it meant an attack on the house designed to frighten and intimidate prison officers in general. This possibility is supported by the gunman firing upwards at the house at a point where all the strike marks but one were on a part of the building away from windows. I am not satisfied beyond reasonable doubt that the object of this attack was to wound Mr Terry, as opposed to causing fear and intimidation of prison officers, and I therefore find him not guilty on count 37.

Incident 11 – Attack on a military patrol near Union Street, Portadown, on 9 July 1998

[302] In the early hours of the morning of 9 July 1998 a two vehicle mobile military patrol drove from Charles Street (or Corcrain Road as it is known locally) towards West Street when it stopped because of a burning Transit type vehicle. It then came under attack. Sergeant Thomas, the commander of the lead vehicle, described a blast which he believed to be a thunderflash on the right-hand side of the road about level with the van. He then became aware of a series of strike marks on the ground in front of his vehicle, and he believed that they were being fired on, probably from a low velocity weapon. It later transpired that his vehicle had been struck three times by bullets. Bombardier Howarth described a blast bomb and a thunderflash being thrown. Gunner Carnegie saw one or two petrol bombs being thrown, and other members of the patrol also refer to petrol bombs being thrown.

[303] Fulton is charged with possession of a pipe bomb (count 38); with causing an explosion by a pipe bomb (count 39), and with attempted wounding of the soldiers with intent to do them grievous bodily harm (count 40). These charges are based upon admissions he made on two occasions. The first was on 16 November 2000 in B10. This was recorded between 1547 and 1656 at Gibson's house by a probe when no undercover officers were present, Fulton being in the company of Muriel Gibson and Talutha Landry. The relevant passage is to be found at page 166.

> Jim: I nearly broke my leg that night. Me, Philly and Gary standing at the back of the (inaudible) behind Billy's house, near (inaudible) place and all the Land Rovers were parked right down that bit of slip road, you know as you go onto Northway and we could hear them all talking. They were all talking and joking and all the wee (inaudible) all standing on the Landrovers. Two lines of Land Rovers blocked the whole road (inaudible). We're

> only holding (inaudible) and a blast bomb. What do you call it. Decided it was definitely me who could throw it the furthest like and I says right, cos nobody noticed we had to walk around two wheelie bins you know to get up the back garden. Nobody thought about moving them out of the way. You know for us, so that's alright. That cunt Gary, what does he fucking do? I said right light it and what do you call it, once it's lit you know what I mean there's only a wee tiny fuse like. (Overtalking) here's me wallop. Straight up in the air and we sat and our Gary (inaudible) fucking mine must have landed on the fuse went right up and came straight down on top of the Land Rover. Right down on top of it. And you could just hear it hitting it and clinking off it you know ran like fuck. That bastard Gary run past laughing and pulled the fucking front bin down. Philly hit it first and went head over heels. I fucking hit it and nearly broke my leg. I swear to God, you know what I mean.

[304] The second passage relied upon by the prosecution is to be found in B12, which relates to a period between 0950 and 1148 on 12 January 2001 when Fulton drove Dave and Robbie from Plymouth to Finchley in London. Fulton, who had been talking at length about blast bombs, pipe bombs and grenades and their characteristics, then said at page 199 that pipe bombs were unpredictable, and that he nearly got his arm and his head blown off by one. He continues at page 200.

> Jim: Know what I mean. Just soon as it lit, I fucking, I just straight up over the wall straight at the fucking Brits and it got about 10 foot from my hand and went off know what I mean, fuck'n just as well as I threw it. I went straight down behind the wall again. Because it just you want to hear them chip lumps of bricks coming off the wall fucking on top of me.

[305] Comparison of these two passages suggest that Fulton is describing two completely different episodes. In the second he describes the bomb exploding very soon after it had left his hand, the force of the explosion dislodging pieces of the wall he was sheltering behind. This is completely at variance with the first, in which he describes his missile as landing on top of the Land Rover and then falling off it. They then run off. Not only are the accounts at variance with each other, but in neither does Fulton refer to the

use of petrol bombs or, most significant of all, to the shots that were fired at the vehicles.

[306] When questioned in interview C33(b) he said that he heard others who had been involved talking about the incident in the Buffs' Club.

[307] Whatever Fulton is describing, and whether or not his description of his involvement is true, the incident(s) he is describing bear no relationship to the incident described by the soldiers, and so the evidence falls very far short of linking him with this episode. I find him not guilty on counts 38, 39 and 40.

Incident 14 – Attempted armed robbery and false imprisonment of the McCrea family in December 1991

[308] Fulton is charged with five counts relating to the holding hostage of Mr McCrea and his wife by two armed men. Mr McCrea, who held a senior position in the headquarters of the Northern Bank in Belfast, had formerly been the manager of the Crossgar branch of the bank, and he and his wife lived in Crossgar with their children at the time of these events in mid December 1991. What was undoubtedly a prolonged and extremely frightening, indeed in all probability a terrifying experience for the McCrea family, was perpetrated by two armed men who were undoubtedly part of a carefully prepared plan which involved Mr McCrea being led to believe that the safety of his family was at stake, thereby forcing him to cooperate with their kidnappers in an attempt to rob the Northern Bank in Crossgar of a large amount of money. However, it seems that the robbers' information was out of date, and they were unaware that he had been transferred from the Crossgar branch.

[309] It is unnecessary to describe in detail the events as recounted by Mr and Mrs McCrea in their evidence. At 10.00pm on Sunday 15 December 1991 she opened the front door of her home to be confronted by two masked men, one with a gun. She was forced to lie on the floor, her hands were taped behind her back, and the tape was put round her eyes and legs. At one point she felt a knife or something cold put against her throat. When the intruders learnt that her husband was no longer the manager in Crossgar they were taken aback, but it seems that a decision was made to continue with the plan notwithstanding. At one point one of the intruders tried to feed her three week old son before giving him to her. Mr McCrea returned about 10.25pm, was punched in the face, pushed to the floor and kicked in the face. He was questioned about the money and negotiable securities that they expected to find in the Crossgar branch, and he was threatened that he wouldn't see his family again if he did not cooperate. He saw one of the intruders had a loaded gun, the other a large bladed knife. Phone calls were received by the men during the night, and the next morning he was made to leave for work as usual. He was given instructions to take calls at previous predetermined

phone boxes, and eventually was directed to the Crossgar branch where he broke down and told the manager what had happened. Unknown to him, his wife and children had been left tied up in a large, walk-in wardrobe. However, Mrs McCrea, clearly a lady of great determination, managed to get herself and the children out of the wardrobe, and when the bank rang asking where her husband was she broke down and told them what had happened, and the police were informed. Her car and his credit cards were stolen by the intruders.

[310] The only evidence against Fulton on this matter is to be found in the following passage from B19 at pages 312-314. As is apparent from this passage there is no reference whatever in it to the incident involving the McCreas. It is correct that Mr McCrea said that he found a bank security leaflet when he came home later, but this does not advance the prosecution case to any material extent because he said that he had such leaflets in his briefcase, and they went through the briefcase. This does not correspond to the reference by Fulton to leaving glossy magazines open at the home security section.

> Jim: Oh aye that there and robbing post offices they don't mind banks as much either. But see post offices. See anything to do with the Royal with the fucking Queens head or anything boy, do they take that thick. Used to leave calling cards in all for them.
>
> Neil: Calling cards.
>
> Jim: Aye they weren't actually calling cards. We used to do a bank managers house. Take over the bank managers house. At one stage like there was us, a unit of us who was doing that fucking 7 days a week. So we were taking about 3 different bank mangers a week. You know what I mean out of fucking 10 banks we got one you know what I mean you're fucking you're set like for a few quid so they started publishing these anti terrorist magazines for all the businessmen and fucking banks, bank holders and all, they're all a big glossy magazines come in a group of 12 and you're meant to buy one every week. So every bank fucking manager we hit fucking he'd always the whole fucking 12 in fucking a nice mahogany case so we started opening them at fucking home security (laughs) (inaudible) of the cabinets and all and setting them all up round the fucking living room

leaving them for the peelers to come in. (Inaudible) these bad tempered sarcastic fuckers everytime they questioned me like.

Neil: You wouldn't want to be a bank manager over there then would ye.

Jim: Wait till I tell you something they're as crooked as fuck. I have seen, I have seen dozens of them asking for money out of the …

Neil: Have you.

Jim: Oh fuck aye. You get them to drive ye and all know what I mean in their car fucking pick money up and all thems going like what about me now I'm going to be all, throw us a couple of grand. I says no. See that wee cunt Tony I see him pistol whip one cos yer man actually started arguing with him in the car trying to get money of him. Him being fucking held by a gun. Tony fucking whacking him on the back of the fucking head when he's driving.

[311] The defendant denied involvement in this episode in interview C35(b) at page 434. Mr Treacy submitted that the passage relied upon by the prosecution "is too general, vague and non-specific to ground a conviction". In essence the prosecution have to rely on a general admission that Fulton committed many bank robberies which involved breaking into the homes of managers as proof of a specific episode to which he has made no specific admissions. I consider that the defence submissions are well-founded and I find the defendant not guilty on counts 45, 46, 47, 48 and 49.

Incident 15 – Hijacking and false imprisonment of Mr McCallum in March 1992

[312] Fulton is charged with three counts relating to the hijacking of a car and the false imprisonment of the driver on 6 March 1992. Count 50 alleges that he hijacked a Vauxhall Vectra registration number DDZ 3483 driven by Mr McCallum; count 51 that he falsely imprisoned Mr McCallum, and count 52 that he had a firearm with him with intent to commit an indictable offence, namely hijacking. These events are alleged to be part of a longer episode described by Fulton which he said occurred early one morning when he and a companion went to a house that they had been keeping under observation. This was owned by a banker somewhere in the country (although exactly where is not stated). The plan was that they were to go to the house and take

the banker and/or his wife hostage when the door was answered. The plan went awry when, contrary to expectations, no one answered the door, so they decided to wait nearby. However, a police vehicle appeared on the scene, and a high speed car chase then took place through the countryside until they came to a built-up area, where Fulton lost control of the 2 litre Cortina he was driving and crashed the wall of Mr Adams' house in Carryduff at about 8.30am.

[313] Mr Adams thought this was a stolen car and pursued the two men who got out of it as they ran up the Saintfield Road towards the roundabout where the Ballynahinch Road branches off from the Saintfield Road. As he chased them, a passing Vauxhall car stopped and took him on board and they overtook the two men. In his evidence Mr Adams described how he then stood facing the taller of the two men who pulled out a revolver-type gun and told him to back up. The two men then continued along the road. At this point Mr McCallum entered the picture. He was a fireman driving his Fire Service white Astra into Carryduff, intending to drop his children at his brother-in-law's house nearby, and a neighbour's child at the roundabout to catch his school bus. Mr McCallum stopped to let the boy catch his bus, and at that point a man got into the back of his car carrying a bag as another man spoke to Mr McCallum through the driver's window. This man pointed a gun at his face, said the gun was real, and got into the rear of the car, sandwiching Mr McCallum's two children between the two men in the back seat.

[314] Mr McCallum was made to drive to the nearby Carryduff Shopping Centre, then onto the Hillsborough Road. During the ensuing journey he was made to drive to Drumbo, then along the Hillhall Road, past Belvoir Hospital and along the dual carriageway to the junction with the Castlereagh road where the men told him to turn into an adjoining street. They got out and walked away, having told him not to report to the police.

[315] At an early stage of the journey they questioned Mr McCallum about his religion and made him hand over his driving licence. Initially he was told to drive to Friendly Street in Belfast, but as he drove through Drumbo the men became more relaxed and told him they were not Provisionals but Loyalists, and that he was to take them to East Belfast.

[316] Although there was no evidence as to the date of this episode from either Mr Adams or Mr McCallum, Detective Constable Lovell gave evidence that he had collected various reports of incidents on 6 March 1992 from Carryduff Police Station, and he was not cross-examined, the inference plainly being that these events occurred that day, and there was no suggestion to the contrary at any time, nor were any specific defence submissions made about this incident. I am satisfied that the incident occurred on that date. Count 50 refers to Mr McCallum's car as a Vauxhall

Vectra registration number DDZ 3483, although there was no evidence from him about the registration, and he referred to it as a white Astra. However, as I shall explain, Fulton also referred to the car as a white Astra and I am satisfied that it was McCallum's car to which the charge and Fulton's admissions relate.

[317] The admissions are to be found in B31, which relates to a conversation between Fulton and Dave on 7 January 2001 between 1045 and 1221 when he drove Dave from Plymouth to Michael Woods Services which he thought was north of Bristol, again a lengthy car journey. Fulton spoke at length, and the conversation turned to bank robberies, and he referred to the events which the prosecution allege include the events which give rise to counts 50-52 commencing at page 578. He first of all described how he and another man went early one morning to a banker's house somewhere out in the countryside which they had kept under surveillance for some weeks. They went to the door expecting his wife to be in and to answer. The unmistakable inference is that she, or her husband, was to be held hostage as part of a bank robbery. However, there was no answer when they knocked at the door so they decided to wait in a nearby driveway in their 2 litre Cortina. As they did so a car which they recognised as a police car appeared, whereupon Fulton, believing that the police were suspicious, drove off at high speed. He then described a car chase with both vehicles travelling at very high speed. So far the events occurred in an unidentified country area, but at this point in the pursuit the cars were approaching an urban area. A petrol tanker jack-knifed and Fulton was able to escape, but he then lost control of the car as he took evasive action to avoid a pedestrian crossing the road, and crashed through a stone wall into a garden.

[318] The narrative continues at page 581. He describes how he and his companion abandoned their car and fled on foot, pursued by the occupier of the house into which they had crashed in a car he described as a Cavalier RSI. He described how one of them produced a snub nosed 38. They intended to hijack that car but it drove off at speed, so they took a white Astra which Fulton saw sitting at a nearby bus stop with several children in it. Both men got in, and the driver, a fireman bringing his children to school, was made to hand over his driving licence and then told to drive them to East Belfast. Fulton then told the driver:

> Now I tell you, we're not the fucking IRA, we're the Mid Ulster UVF, now I says if you identify us, or anything like this, well come back on you, now I'm telling you drive us into East Belfast.

[319] Fulton was questioned about this, and in interview C38(b) at page 438 he said that he had heard about this episode, and had superimposed himself

on the account he had heard. At page 440 he said that he was never involved. No specific defence submissions were made in relation to this incident.

[320] This conversation occurred whilst Fulton was driving and I am satisfied that he was not affected by drink or drugs. The description of events he gives corresponds closely with the accounts of Mr Adams and Mr McCallum in the following respects.

(i) The car is a Cortina.

(ii) It crashes through a wall into a garden.

(iii) A Vauxhall Cavalier and a white Astra were also involved.

(iv) There were children in the Astra.

(v) The driver was a fireman.

(vi) They were able to get into the car when it stopped to let a child out.

(vii) Afterwards they headed towards a department store.

(viii) They then drove to East Belfast.

(ix) The driver's driving licence was taken.

[321] The only improbable feature of Fulton's account is his description of Carryduff as "a big Provie area". As against this, whilst the description of the events is given in dramatic terms, for example the description of the car chase, it is detailed and includes small details which strongly suggest that he was recounting events he had taken part in, such as the reference to crossing the cattle grid at page 579; removing the gear knob at page 581; losing the keys of their own car that they had left in a carpark, impliedly in Carryduff, see page 582. In addition, Fulton was describing something that had occurred almost nine years before. I do not believe that he was adding himself to something he had been told about that happened the best part of a decade before. The entire tenor of the account, and the detail, render that wholly implausible. Having considered all of the evidence I am satisfied that this account is reliable and that Fulton was describing events in which he took part. His actions establish all the necessary ingredients of each of these accounts, and I find him guilty on counts 50, 51 and 52.

Incident 16 – Conspiracy to murder by bombing the Sinn Fein offices in Newry in May 1994

[322] The evidence of Mr Fordyce, a retired ATO, was that on 24 May 1994 he carried out an unsuccessful search of Gosses Coal Yard in Newry. This search had been carried out because there had been a coded warning from a Loyalist group, but when a further coded message was sent the next day another search was carried out. This search was of an area of waste ground behind a retaining wall inside the yard, and in this area was found an improvised explosive device in a thermos flask. The device was complete with a timer made from a watch, the detonator, a quantity of explosives and a battery connector, but no battery. The explosive was identified by Mr McCorkell as being about 1-1½ lbs of Powergel, a commercial explosive. Mr Fordyce expressed the view that although no battery was found, whilst it would have been difficult to cause the device to explode, this would not have been impossible. His opinion was that the device had been abandoned where it was found. The evidence was that the device would have killed anyone within five metres of the explosion, and injured anyone within 100 metres. It was established that the Sinn Fein offices at the time were about 150 metres away from the coal yard according to Mr Fordyce.

[323] Fulton is charged with three counts based upon his admissions. Conspiracy to murder people in, or in the vicinity of, the Sinn Fein centre, count 53; doing an act with intent to cause an explosion in that he tried to repair a broken timing mechanism on this device, count 54; and possession of the device with intent to endanger life or cause serious injury to property, count 54.

[324] The admissions are to be found in B68, which relates to a discussion with Dave on 12 July 2000 between 1818 and 1949, during a journey when Fulton drove Dave to Bristol city centre. During the conversation Fulton describes how he was unwittingly recruited by his brother to take part in what turned out to be an unsuccessful attack on the Sinn Fein offices in Newry. He was unwittingly recruited because Swinger did not tell him that there was a bomb involved, and Fulton had always sworn that he would have nothing to do with, or go near, explosives. On page 941 he described how he agreed to drive Swinger, and another man only referred to as "Turkey", towards Newry in Fulton's wife's newly-acquired 1300 Fiesta. During the journey Swinger asked could he drive, and was allowed to do so. While Swinger was driving he pulled into the side of the road, another Fiesta pulled up beside them and a tea flask was passed over from the other vehicle. It emerges when they park in a street away from the Sinn Fein offices that Turkey is to plant the bomb. They watch Turkey scale a wall with an iron door in it and then disappear. A few minutes later Turkey is seen running back towards the car, and en route he throws the flask into a bin. It transpired that Turkey could not get to the back of the Sinn Fein centre, so Fulton agreed to Swinger's request that he go with Turkey and help him to set the bomb by showing him how to get to the centre, Swinger knowing that his brother had gone over the wall when he and Billy Wright intended to carry

out a machine gun attack on the Sinn Fein offices on an earlier occasion. Fulton agreed to do so, and went through the iron door, having allowed Turkey to struggle over the wall for a second time.

[325] Fulton's narrative continues at page 944.

> I got up another wall and put a plank across onto the side roof of the fucking, walked across the plank, got down into the back of the Sinn Fein Centre. He came over and handed me the bomb down I says, right set the fucking thing, so I get's up and goes to the other side of that wall. I'm sitting, I said have you set it yet, I cant get the watch to work, I says what, I cant get the watch to work. By this time my blood was boiling it was just an active service move. So I climb back over the wall and I swear to god this is me now, with the way the fucking it was a stop watch on a bar wee a real fine screw or drill bit wee tiny drill bit, a watch drill bit drill through it put a pin through it, so when the hand comes round once the hand touches it, its wired to the battery and basically for the connection. So I said, he said, it won't wind up, the fucker I didn't know, at the time he had broke it see when he came over and threw it in the bin. He had fucking broke it, so I'm sitting like that I said give me the fucking thing, well I took the lid off, opened it, fucking stop watch sitting there, here's me I'm sitting like that, turned my head away like as it was going to know what I mean, if the bomb goes off you're obliterated. I was sitting like that, screwing the fucking stop watch and then listening to it, the fucking bastard thing watch broke, so we had to take it away with us again.

[326] Fulton denied having anything to do with munitions, and by inference denied these charges, when interviewed. See interview C36(b) at page 448. No specific defence submissions were made in respect of these counts. Before turning to consider whether the admissions are true, I have to consider whether they relate to the offences charged, that is the discovery of a bomb in Gosses Coal Yard, because Fulton did not refer to the bomb being abandoned afterwards. However, that a defective bomb would be abandoned is obvious. Once it had malfunctioned, it would be the height of folly to bring it back to base, or indeed transport it any distance, for two reasons. First of all, it might explode, and secondly by doing so the bombers were increasing the risk that they might be caught in possession of it. In addition, Fulton's description of

the device as contained in a thermos flask, the components of the device, and that it failed to operate, all correspond closely with the evidence relating to the device which was disarmed by Mr Fordyce. Taking the evidence as a whole, I am satisfied that the incident described by Fulton was the one to which these counts relate.

[327] If Fulton's admissions are true, then he is plainly guilty on each count. By agreeing to show Turkey how to get to the Sinn Fein offices when he knew that Turkey was carrying a bomb he joined the pre-existing conspiracy. Without a doubt the purpose of the plan was to cause death or injury to those in the offices, or at the very least serious damage to the offices, and he plainly had no qualms whatever, on his account, of joining in the attack. By attempting to repair, and so start, the timer device he had the necessary intent to render him guilty on counts 54 and 55. Are these accounts true? Dave's un-contradicted evidence was Fulton was driving, and I am satisfied that he was not affected by drugs or alcohol. As in incident 15, Fulton purported to describe events that occurred many years before, in this case seven years before. I do not believe that he could recount in such detail events he had only heard about, but not taken part in, so long before. On the contrary, his description of details such as opening the metal door, but letting Turkey climb the wall the second time, and the other Fiesta being red give an air of authenticity to his account. I am satisfied that these admissions are true and I find him guilty on counts 53, 54 and 55.

Incident 17 – Conspiracy to rob Martin Phillips in December 1996

[328] On Saturday 7 December 1996 Mrs Denise Phillips left her house in Saintfield with her sister, Vivienne Brewer, to go to a nearby shop to buy some bread and milk, leaving her three daughters and her son in the house for a few minutes. On their return in the region of 6.40pm they were confronted by three masked men, one with a gun. They were made to walk to a patio door at the rear of the house where one of her daughters let them in. She and her sister, and the children, were first held in the kitchen, and then made to go into a downstairs bathroom where they were kept until they realised the men had gone. During the time they were held prisoner in the bathroom, a period she estimated at some 40 minutes, Mrs Phillips was brought a nappy, bottle and dummy when she asked for a bottle for the child. Whilst these men were in the house she said that her husband would be home soon, to which they said that they knew that. After some time she heard banging outside, and after a short period she left the bathroom, discovered that the men had gone, and that it was her husband banging on the door so she let him in. Her sister's statement was to the same effect.

[329] In his statement her husband, Martin Phillips, described how he followed his usual routine after work by going to a pub in Saintfield, where he remained for 1½ hours, returning home about 7.30pm. As he walked

towards the house having parked his car he was accosted by two masked youths, one with a gun. Despite having a gun pointed at him by one of the youths, who demanded money from him, saying that his family were in the house, Mr Phillips pulled the mask from one of the youths. He estimated that the unmasked youth was very young, perhaps 15 or 16. Both youths fled. Mr Phillips then went round the house trying to get in and saw a third man walking down the hallway, so he went to a neighbour's house next door and phoned the police. By the time he returned the third man had escaped.

[330] There can be no doubt that this was an attempt to rob Mr Phillips when he returned home because he was expected to be carrying money, hence the initial demand for money. The prosecution case is that Fulton organised and planned the operation, but did not take part in it. The admissions upon which reliance is placed to prove count 56, conspiracy to commit an armed robbery of Mr Phillips, commenced with B19. This relates to a conversation between Fulton and Neil on 30 March 2000 between 1340 and 1535, during which Neil tells him to keep the car clean and not to get any tickets. This is after they meet at Plymouth station, and Fulton is driving. See page 322 when Neil tells him to slow down. This is a few days after their first meeting, and I am satisfied Fulton was unaffected by drink or drugs because he was driving and anxious to make a good impression on Neil.

[331] During the references to this incident Fulton tells Neil that Phillips was believed to have large amounts in cash in the house, and that he met his managers every Thursday in a pub where they gave him the takings. Although he set it up, he was unable to take part himself because, as he put it, "the wife never came home in time for me to go". He sent three men to commit the crime who did exactly what he told them. He described how Mrs Phillips' daughter opened the patio door and let the men and her mother in. He also described how the two women and three children were put in the bathroom and tied up. Then one of the men departed from the plan by waiting outside with one of the others. When Mr Phillips returned he pulled the mask off this man, whom Fulton named as Tony. It was expected that Mr Phillips would have anything between £5,000 and £30,000 on him. The informant about the money was said to be Mr Phillips' brother-in-law.

[332] In B24 on 30 November 2000 in a conversation starting at 1218 with Robbie during a journey to Bristol Fulton again referred to this incident. This time he said at page 430 that he could not take part in the robbery because he and his wife had had a row and she left him sitting in the house, the implication being that he could not leave as there were children to be minded or something of that sort. He therefore had to send someone else in his place, someone who had been recommended by Billy Wright and Swinger. Fulton had trained the other men himself, and he expected that the proceeds of the robbery would be £158,000; £100,000-£120,000 of which would be in the safe, with another £38,000 being on Mr Phillips' person. Again he referred the

family being tied up, and the plan being changed by going outside to wait for Mr Phillips. He said the information came from one of Phillips' own men. The third description is that contained in B41. This relates to 28 March 2001 when Fulton met Dave at Exeter Services on the M5. It covers the period from 0848 to 1735. At page 702 Fulton turned to this episode, and a summary of the conversation refers to the house of the owner of four carpet warehouses, £120,000 is talked about, and the informant who provided the information about the money was said to be one of the man's managers. I am satisfied this referred to the attempted robbery of Mr Phillips.

[333] Fulton made no reply when questioned, see interviews C36(b) and 37(b). If these admissions are reliable there can be doubt that Fulton is guilty of conspiring to carry out an armed robbery of Mr Phillips, because he planned and organised the taking prisoner of Mrs Phillips and the others, the intruders were to lie in wait for Mr Phillips, and then steal the money he was expected to be carrying and to have in his house. However, whilst Fulton's description of events is relatively brief, there are a number of inconsistencies between the accounts themselves, and between those accounts and the prosecution evidence.

(i) He variously said that his wife did not return on time and that she walked out on him after a row.

(ii) The amount the robbery was expected to produce varied very substantially, £5,000 to £30,000, £120,000, and up to £158,000.

(iii) The inside information about the money being in the house and being brought home was attributed to Mr Phillips' brother-in-law, and to one of his managers.

(iv) Mr Phillips was said to come home from the pub every Thursday night, whereas this occurred on a Saturday night.

(v) He said there were two women and three children, whereas there were four children.

(vi) He said that the family were tied up, whereas there is no reference to this in the statements of Mrs Phillips and her sister.

[334] In his closing submissions Mr Treacy relied on (iv) and (vi). While some of these inconsistencies are less important than others, and some might have been resolved if Mr and Mrs Phillips had given evidence, the cumulative effect of them is to create a reasonable doubt as to whether Fulton really was describing an episode in which he had been involved and I find him not guilty on count 56.

Incident 18 – Importing and supplying Class A and Class B drugs in 1998 and 1999

[335] Fulton faces four counts relating to the importation and supply of Class A drugs in the form of Ecstasy, and Class B drugs in the form of Cannabis or Cannabis Resin. Count 57 alleges the supply of Ecstasy; count 58 the possession of Ecstasy with intent to supply; count 59 supply of Cannabis or Cannabis Resin, and count 60 possession of Cannabis or Cannabis Resin with intent to supply. In each case the offence is alleged to have occurred between 1 January 1998 and 30 September 1999. It is alleged that Fulton was involved in importing the drugs into Northern Ireland concealed in gym equipment delivered by post to a gym in Portadown and then sold or distributed. Evidence was given by Robert Jameson that in 1999 he owned a unit in the Brownstown Business Centre in Portadown which he rented to various people who used it as a gym during that year. A number of people ran the business at various times until it finally closed down, the last of whom was Gary Fulton who took the equipment away in November 1999. Jameson said that he saw the defendant at the gym on occasions. None of his evidence was challenged, nor was the statement by Detective Constable Butler who confirmed, if confirmation were needed, the meaning of drug slang used by Fulton, as well as giving evidence about the relevant prices for Ecstasy and Cannabis at the time described by Fulton and at the time the statement was made.

[336] These charges are based upon admissions contained in B8, B35 and B118. B35 relates to 30 March 2000 when Fulton and Neil are in a car, and the recording starts at 1615. In a passage which is described in indirect, and not direct, speech Fulton is recorded as saying that he got what he describes as a "9 bar" a week from a friend in London for £380 which he then sold on to Gibson. It is also stated that "he talks of smoking blow and making money through drugs". Whilst there is a strong probability that Fulton is referring to himself in these summarised passages, in the absence of the actual words used in a verbatim transcript I am not satisfied that his guilt can be proved to the requisite standard by B35, because a summary may result in a distortion of meaning, or place an inaccurate meaning on the actual words uttered. This defect does not affect B8 which relates to 19 September 2000 when Fulton travelled to Reading from Plymouth with Robbie, and the recording starts at 1235. During the conversation Fulton describes how he was involved in bringing what he refers to as "blow" ie Cannabis, at the rate of "40 or 50 kis [kilograms] of stuff every week" by post to a gym in a business complex owned by Bobby Jameson. See pages 132 and 133. This is a succinct description of his earlier account, as was that contained in B35.

[337] Finally, Fulton again refers to this topic in B118, which relates to 6 June 2001 when Fulton, David and Max travel to Reading together. After Max leaves, Fulton and David returned to the vehicle and continued to Bristol,

during which journey Fulton again turned to the importation of drugs into Northern Ireland.

> Jim: We used to (inaudible) fucking getting the gear to come in the storage heaters, you know that auld fucking like glue, like a, its like a paste that's inside, well that stuff fucking comes off nothing like (inaudible) in there and 30 ki. We brought them in in storage heaters. Well done like. Then I got them in the next time, and er we had our own multi gym, bogus name but it was the biggest multi gym in Northern Ireland. I'd fucking (inaudible) rowing machines and all, jogging machines all them uns coming in with all the fucking blow in them. Perfect so it was cos the units where we had the gym was owned by the JAMESON's and they have er police guards with them all the time, they do security work, so this whole place is just fucking know what I mean, there's police on the gates, there's police walking in the grounds. CID with him at all times, for they know we go in there and train seven days a week. I'm sitting there, what do you call it. I knew it was coming, nobody else knew it was coming. I just printed on this wee card TNT leave parcel and get one of the, one of the guys to sign for it and put the boy whose name it was in just put his signature at the bottom of it and pinned it on the noticeboard. I'm sitting on the bike that morning and wee Philly's sitting beside me just finishing off the training (inaudible) in comes the TNT boy, he went to walk out again. I said hey is that not for you there, pointed at the notice. That'll be me, says will one of you's boys give us a hand in with these. I say's what is it, rowing machine, jogging machine. I say's aye I'll give you a hand in (inaudible) lifted it off and all and brought it in all (inaudible) like that there, sign for that there. Here's me no problem, wee squiggle (inaudible). Squiggle. Here's him right that one's yours dead on. I'm straight on the phone, well mate, come down and get this stuff. Straight in that door, out the back door and away in the car, perfect cover. Police all around you and CID everywhere.

[338] When interviewed in exhibit C36(b) Fulton denied any involvement with drugs in any way. In his closing submissions Mr Treacy correctly pointed to the absence of any reference to Fulton himself being involved in the importation of Class A drugs in the form of Ecstasy, and I find him not guilty on the Ecstasy charges, counts 57 and 58. Mr Treacy also submitted that there was insufficient evidence to link the Cannabis charges with the period covered by the charges, but the evidence of Mr Jameson as to the use of one of these units for a gym during 1999 provides that link. I have already explained why I believe Fulton would not have been affected by drink or drugs while driving, and that reasoning applies equally to these occasions. Whilst there is no extraneous evidence, other than that of Mr Jameson, to support Fulton's account, as the account was clear, consistent and repeated on one than one occasion I am satisfied that it was true. Fulton had the necessary connection with the physical transportation of the Cannabis that was imported through delivery to the gym, as well as the necessary intent, and I therefore find him guilty on counts 59 and 60.

Incident 19 – Attack on Mark Fulton on 10 February 1998

[339] Fulton faces two charges relating to 10 February 1998, count 61 that he had possession of a .38 revolver and ammunition with intent to endanger life, and count 62 alleges that he had possession of them in suspicious circumstances. These charges relate to what is alleged to have been a staged attempt on the life of Fulton's brother Mark "Swinger" Fulton by the defendant. This was suggested and carried by the defendant with the connivance of Swinger and their cousin Gary, and was intended to remove threats to them and their associates from the UVF, threats connected with drug dealing. It was believed that because the UVF would inevitably be blamed for what would appear to be an unsuccessful attempt on Swinger's life, in an effort to avoid retaliation leading members of the UVF would ensure that the threats against the Fultons would be removed.

[340] That there was an incident involving Swinger Fulton in which shots were fired on 10 February 1998 was not challenged. On the afternoon of that day Peter Robinson, MP for East Belfast, received a message that Mark Fulton wished to speak to him, and a telephone number was given at which he could reach Mark Fulton. Mr Robinson rang Mark Fulton at about 5.45pm, and was told by him that meeting of the PUP and UVF had decided that Mark Fulton was to be killed, to which Mr Robinson replied that he would have to inform the police. Later that night Mrs Robinson received a message from a Pastor Kenny McClinton which she passed on to her husband. The message was that an attempt on Mark Fulton's life had been made about 9.15pm, but he had not been injured.

[341] At, or shortly after, 8.30pm Mrs Mary Gibson and her 12 year old daughter Louise were in their home at 38 Westland Road, Portadown. Their

house is opposite the junction with Hartfield Avenue, and overlooks Flat 2d Hartfield Avenue, the entrance to which is at the junction. Mrs Gibson heard what she described as "two thuds", and Louise saw a man running from a point close to the entrance to 2d. The man ran past the front of their house and passed their car, and seemed to put his hand on the front of the car as he passed. This man appeared to be wearing a black woolly hat or a black balaclava; either a dark coloured tracksuit top or lightweight coat, and what looked like black tracksuit bottoms. Mrs Gibson saw Swinger and a man she knew as "Philly" standing in the doorway of the flats, and she thought that Philly had been shot as he had his hand over his mouth and was holding his stomach. She approached them and asked if they were alright, they said they were and asked for the police to be called.

[342] As it happened Constable Reid had driven along Hartfield Avenue at about 8.30pm and seen a green Citroen Xantia normally used by Mark Fulton parked with its lights on near the junction of Hartfield Avenue and Westland Road. Constable Reid drove onto Westland Road and saw a black Honda Civic driven by Gary Fulton pass by. There were no passengers in this car. Gary Fulton lived at 2d Hartfield Avenue. Very soon afterwards Constable Reid heard a radio report that shots had been fired, and he returned to Hartfield Avenue and Westland Road, arriving at 2037. He was then approached by Mark Fulton and Philip McLean and spoke to them. A police search of the area led to the discovery of two bullet heads in the vicinity of the front door of 2d Hartfield Avenue. The first can be seen on the pathway 0.85 metres from the door in Exhibit A73 photograph 4, and the other appears in photograph 5 somewhat further from the door. Mr Rossi examined them and established that they were .38 Smith and Wesson, round nose, lead revolver bullets. They can not be microscopically matched, but he thought that they had been discharged from the same barrel, which was either homemade or reworked.

[343] These charges relate to admissions made by Fulton on 1 October 2000 when he travelled from Cornwall to London with Gary, and are to be found in B29 and B45 (which duplicates B29 and relates to the same journey). B29 covers the period between 0944 and 1406. During the journey Fulton spoke at length about several matters, and between pages 529 to 536 he referred to this incident. I do not propose to set out all, or even part, of his description. It contains the following.

(i) There was a staged attempted on Mark "Swinger" Fulton's life planned and carried out by Fulton. The objective was to convey the impression that the attack had been carried out by the UVF. Because it would be attributed to the UVF, the UVF would be scared that their members would be attacked in retaliation, and as a result the UVF would stop threatening Fulton and his associates, whom they had been accusing of drug dealing.

(ii) Fulton, his brother Mark and their cousin Gary discussed and agreed to the plan, but they deliberately kept their henchman "Philly" (Philip McLean) in ignorance of the plan, with the result that when the attack was staged on Mark Fulton when Mclean was with him McLean believed that his life was in danger as well.

(iii) On the night the plan was carried out Swinger drove down to the spot with Philly in the Citroen Xantia and parked. Gary was to follow a short distance behind.

(iv) Fulton, who was to be the gunman, dressed in a tracksuit and baseball cap.

(v) When Swinger got out of the car Fulton ran over and fired a number of shots, pretending to fire them at Swinger. Four shots in all were fired, and Fulton described how some were damp, saying that he actually saw the bullets come out of the barrel of the gun, one of which hit the wall.

(vi) Philly, who was not in on the plan, not surprisingly believed that it was a genuine attack. He crawled under the dashboard of the Xantia to hide. He had his mobile phone with him which accidentally recorded what happened.

(vii) The police were very quickly on the scene, and Fulton also arrived in the Honda with Gary very soon afterwards.

(viii) Fulton and Gary then went to the house of Jameson, a member of the UVF, and in a shouted exchange through a closed door threatened retaliation. Jameson then came to the scene straight away in an effort to persuade Swinger that he had not been responsible for what happened.

(ix) The implication is that Jameson then drove straight to Belfast where a Brigade staff meeting was summoned in the middle of the night to find out who was responsible for the attack on Swinger.

(x) The UVF were frightened as they thought that this had been a genuine attack, as did Philly, until Fulton told him three months later what had really happened.

(xi) As Fulton ran away from the scene he jumped over a car, and as he did so he rested his hand on the bonnet, although he was wearing rubber gloves at the time.

(xii) Fulton recounted how the description of himself by a number of witnesses were contradictory, and wrong in some respects. Whilst they were correct in referring to the tracksuit, and the baseball cap, the reference to his

wearing red and white trainers was wrong as he was wearing lime green trainers.

(xiii) He said that the police found the first round that "fizzled and popped out" of the 38 he used.

(xiv) He explained this phenomenon by saying that the rounds were damp, but if a few grains of powder were dry they are "the ones that fizzle it just enough to ignite them and pop it" (page 538).

[344] Fulton was not specifically questioned about this. Mr Treacy confined his specific submissions to the point that on Fulton's story there could be no intent on his part to endanger life, or to cause serious injury to property, or to enable others to do so. I agree that there was no intent to endanger life. There is insufficient evidence to say whether any of the bullets hit the building, and nothing to suggest that there was any damage to property that could be described as serious. I therefore find the defendant not guilty on count 61. However, if Fulton's account is reliable and true, it cannot be suggested, nor has it been suggested, that to stage a mock murder attempt, and to fire shots during it, with a view to resolving differences between rival groups of terrorists, can be said to be a lawful object. That being so, if Fulton's account is true then he is guilty of count 62, possession of the gun and ammunition in suspicious circumstances.

[345] Are these admissions reliable and true? For the reasons I have already given I am satisfied that Fulton was not affected by drinks or drugs during this conversation. There is a high degree of conformity with the known facts about the case, such as the type of cars involved, the personnel who were present, and the type of weapon involved. As Fulton describes how the other main actors were his brother and his cousin, it can be argued that he was in a position to learn the details from them, and it would therefore be easier for him to place it in the narrative. As against this, the sheer volume of detail in his account suggests that it is true, in particular his saying that he touched the bonnet of the car. Is it at all likely that he would have been aware of such a detail if he had not taken part? He refers to having not worn red and white trainers but lime green ones. There is no evidence that anyone described the colour of the trainers, but is it really possible that someone who has picked up details from listening to others describing events in which he played no part would have invented such a detail as wearing lime green trainers? As against this, there is his description of the bullets popping out of the gun, which, in the absence of any forensic evidence, seems improbable to say the least. Nevertheless, this was an incident which purported to be an attack on his brother's life, and taking the evidence as a whole, I am satisfied that Fulton's account of what happened is reliable in its essential components and true. I find him guilty on count 62.

Incident 12 – Directing the activities of, and membership of, the LVF between 5 June 1997 and 30 September 1999

[346] I have left counts 41 and 42 to the end because they involve consideration of the evidence relating to the other counts faced by Fulton, but before turning to the evidence I have to say something about the nature of the charges, and this includes the dates contained within both counts. Count 41 alleges that Fulton directed terrorism, contrary to Section 29 of the Northern Ireland (Emergency Provisions) Act 1996, the particulars being that he:

> On divers dates between the 5th day of June 1997 and the 30th day of September 1999, in the County Court Division of Craigavon, directed the activities of an organisation concerned in the commission of acts of terrorism, namely, the Loyalist Volunteer Force.

[347] The offence of directing the activities of a terrorist organisation was created by Section 29 of the 1996 Act.

> Any person who directs, at any level, the activities of an organisation which is concerned in the commission of acts of terrorism is guilty of an offence and liable on conviction on indictment to imprisonment for life.

Section 58 of the 1996 Act defines terrorism as "the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear." What constitutes "terrorism" has been considered on several occasions in the context of the Criminal Injury legislation, as can be seen from the valuable discussion of the authorities in Professor Greer's "Compensation for Criminal Injury" at pages 130 – 137. All the evidence upon which the prosecution can properly rely in the present case to prove the charge under Section 29 against Fulton undoubtedly involved violence for the purpose of putting the public or a section of the public in fear.

[348] However, whilst the offence under Section 29 in the present case relates to the activities of the LVF, an organisation concerned in the commission of acts of terrorism is not necessarily the same as a proscribed organisation, although in the context of terrorism in Northern Ireland that is usually the case. A terrorist organisation, for example, may be in existence for a period before it is proscribed, and may continue in being even though it is no longer proscribed. This distinction, which was not referred to by counsel, is relevant in the present case because both count 41 – directing terrorism – and count 42 – belonging to a proscribed organisation – only refer to the LVF, and allege offences within a specific 28 month period between 5 June 1997 and 30 September 1999. The date of 5 June 1997 was, I was informed by counsel, the date on which the LVF was proscribed. I have no evidence how

long the LVF was in existence before that date, and by its very nature such evidence may not be readily forthcoming. However, whilst it must have been in existence and acting as a terrorist organisation before it was proscribed on 5 June 1997, because it would not have been proscribed otherwise, I do not know whether that was for days, weeks or months. The absence of evidence as to when the LVF was functioning creates a difficulty for the prosecution in the present case because many of the events relied on in support of the charge occurred before 5 June 1997, some several years before then. That being so, these activities do not necessarily prove that they were committed on behalf of the LVF, as opposed to some other organisation.

[349] This is not a mere technicality, because it is apparent from many of Fulton's admissions that he and others, such as Billy Wright, were in the UVF before the LVF was formed by individuals who broke away from the UVF. In those circumstances, if the offences relied upon by the prosecution occurred before 5 June 1997 they do not necessarily establish they were committed as a result of the activities of the LVF. Therefore, unless the evidence relied upon proves that Fulton was a member of the LVF, and or directing its activities within the 28 month period, it may be insufficient to prove these offences beyond a reasonable doubt, albeit there is evidence that he may have been a member of the UVF before the 5 June 1997, because he is not charged with membership of the UVF. An example which illustrates this difficulty is incident 7, the punishment shooting of Buchanan, Birney and Doran on 3 January 1997. There is no evidence to establish whether the LVF was in existence by then, and whilst Fulton undoubtedly organised what happened, this cannot prove that he directed this episode on behalf of the LVF.

[350] A related difficulty faced by the prosecution is that whilst many of the admissions by Fulton that are relied upon in support of the charge of directing terrorism clearly say that he was in various senior positions in the terrorist group, he rarely says when he assumed the specific role, or in which organisation. It is not therefore possible to be satisfied beyond reasonable doubt that every admission relates to a point in time within the 28 month period covered by the charges. This is the case even where Fulton says he assumed a particular role after one of his associates was either remanded in custody or sentenced, because there is no evidence when such events occurred. An example is to be found in B31 at pages 564 and 565 where he describes how Billy Wright nominated him as his second in command when Fulton's brother Swinger was first sent to jail. There is no evidence to establish when Swinger was either remanded or sentenced, nor whether this period refers to the LVF or the UVF. That every admission by Fulton that he was a member of a terrorist organisation does not refer to the LVF can be seen from his admission that he was "provost marshal" when he was "about 24 or 25", which would mean around 1992 or 1993, which must mean that he was in another organisation, presumably the UVF, at that time. It is probable from the tenor of the admissions that at least some of them do relate to that 28

month period, but without some evidence to link the admission to that period the charges cannot be proved to the criminal standard of proof.

[351] For these reasons I consider that there are only a limited number of admissions that may prove either the directing or membership counts. Before considering them I propose, however, to refer briefly to the elements which have to proved on a charge of directing the activities of an organisation concerned in the commission of acts of terrorism under Section 29. Amongst the meanings for "directs" given in the New Shorter Oxford English Dictionary (1993 edition) vol. 1 are "keep in proper order; control, govern the actions or movements of", and "Give authoritative instructions; order (a person) to do, (a thing) to be done; order the performance of". "Give instruction, command that". Walker and Reid observed in "The Offence of Directing Terrorist Organisations" (1993) Crim. L.R. at page 674 that the offence under Section 29 "seems to embody the attributes of being able to order other people and of commanding some obedience from them". I am satisfied that what is required is proof that an accused was in a position in a terrorist organisation that enabled him to give orders to commit terrorist acts in the expectation that other members of the organisation would carry those orders into effect, whether the order was of a specific or a general nature. The inclusion of the words "at any level" make it clear that a subordinate who has such a position over others can commit this offence, and that the offence is not confined to those at the head of such organisations.

[352] Of the individual episodes already considered the three which comprise counts 1 to 13 relating to the murder of Mrs O'Neill, the attempted murder of Janelle Woods, and the attempted murder of Mr Murnin on the night of the 4th and the early morning of the 5th June 1999 can be relied on in support of the charge of directing terrorism as they occurred within the relevant period. I have already dealt with the circumstances of these offences, and Fulton's role in them, and it is unnecessary to repeat the evidence and my conclusions. I need only refer to the following remarks which related to the events of that night.

(i) B5, page 46 "so the night I planned the three of them three different units going out three different places".

(ii) B12, at page 193 "I'd give all the orders that all the rest of the boys were going out and everybody had their check times".

(iii) B3, at page 30 "I'd ordered the fucking two houses hit, with Catholics in them in our area".

(iv) B45, at page 46 "I fucking planned three of them".

These admissions plainly amount to directing acts of terrorism on that night. Two of the attacks were carried out by others at his direction, and the third was also carried out at his direction but he also took part in it. A person who plans such an attack and also takes part in it directs the attack as much as an officer who plans a military operation and then leads his men into action to carry that plan out.

[353] The second incident within the 28 month period that might be said to support count 41 is the attempted murder of the police officers at Drumcree on 9 July 1998. However, there is nothing to show that he "directed" the attack in the particular sense required to ground a conviction under Section 29. The third is the attack on Mr Terry's house in August 1997. Fulton's admissions established that he provided the information about Mr Terry's occupation as a prison officer and his address, thereby enabling the attack to be mounted. Therefore, whilst he has been acquitted on count 37 his admissions may be relevant on this count directing. I do not have to consider whether the admission is reliable because if it is, nevertheless Fulton's role in "setting up" Mr Terry does not seem to fall within the concept of "directing" as earlier defined. After all there are many individuals who have been subjected to terrorist attacks who have been "set up" by others, such as neighbours or workmates, but one would not normally regard the provider of information to be "directing" a subsequent attack brought on the basis of the information provided. I do not consider that this episode can be relied upon in support of count 41.

[354] Nor do I consider that count 41 can be proved by reliance on incident 11 – the attack on the army patrol on Union Street on 9 July 1998, or incident 19, the staged attack on Mark Fulton on 10 February 1999. In neither of these could Fulton be said to have "directed" what occurred. Given that in these instances there are other criminal offences which more obviously apply to the particular circumstances of each episode I do not consider that the meaning of "directed" should be expanded beyond its normal, narrow, meaning.

[355] The great majority of the remaining passages upon which the prosecution seek to rely on support of both the directing charge, and that of membership of the LVF, suffer from the difficulty I have earlier identified because there is insufficient detail to establish that Fulton was either directing the activities of, or was a member of the LVF, within the 28 month period covered by the charges. I do not propose to go through the details of each. In some instances the passage relied upon does not appear as direct speech but is a summary. In such cases I do not consider that a summary is sufficient because, as I earlier pointed out, it may distort the sense of what was said, or leave out relevant material when it is necessary to decide what period of time Fulton refers to. These passages are as follows.

(i) B5, page 45.

(ii) B6, page 51.
(iii) B8, page 123.
(iv) B27, page 491.
(v) B31, pages 565, 568, 569 and 573.
(vi) B36, pages 644, 650 and 653.
(vii) B55, pages 817 and 818.
(viii) B56, pages 837 and 840.
(ix) B58, page 862.
(x) B62, page 905.
(xi) B66, pages 928, 929 and 930.
(xii) B117, page 69.
(xiii) B118, pages 79 and 85.

[356] The remaining admission which can be identified as relating to the 28 month period covered by the charges is to be found in B63 at page 909. Fulton and Dave had been talking about the death of a police officer on an occasion when a pipe bomb was thrown from a protestant crowd. The following exchange then took place.

> Dave: So I mean how does it work, is it like cause I mean I don't know a lot about it. Is it like you've got like a load of people that are fucking in charge that say right you go out, and you do this you go out and you do that. How's it.
>
> Jim: What do you mean the paramilitaries?
>
> Dave: Yeah. How's it work like.
>
> Jim: Well, I'd ave been in charge. Before I left I was in charge so I'd ave been fucking arranging everything.
>
> Dave: Right.
>
> Jim: I'd be saying right you boys at such and such a time yous be there yous do that there, and then everybody in the whole town knows who you are, so once the crowd builds, you're getting the ordin, the ordinary protestors.

[357] I am satisfied that Fulton was referring to the period when he went to America at the end of 1999 (which provides the closing point of the 28 month period in the charges), and that his statement that he "was in charge" before he left is confirmation that he was the leader of the LVF in this area up until he went to America. That being so, if the admission is reliable it is evidence

both of his membership of the LVF and, as he was in charge, that he was directing its activities in this area, a role which amongst other things involved the organisation of demonstrations. B63 relates to a car journey on 24 October 2000 and covers the period between 2356 and 2254. I am satisfied that Fulton is driving on this occasion as Dave's evidence was that Fulton drove him to Reading Services to meet another undercover officer called Ron. They then returned to Plymouth, and at page 914 it is recorded that Fulton dropped Dave off in Plymouth. For the reasons I have already given I am satisfied that Fulton was not affected by drink or drugs on this occasion. His admission is consistent with his repeated accounts of how he was under the patronage of Billy Wright, and rose through the ranks of the terrorist groups that he was in, succeeding to more important positions when the other leaders were in prison, so that in due course he became the leader of the LVF in the Portadown area. I am satisfied that these admissions are reliable.

[358] In support of the inferences that can be drawn from these passages, the prosecution also rely on a number of photographs, and a video of Billy Wright's funeral, items which were seized during the investigations in this case. I shall deal with the latter first. I have watched the video and it shows a group of men dressed in white shirts and other items of matching clothing who form a guard of honour beside the hearse containing Wright's coffin as the cortège forms up and then moves off through the streets. In his witness statement, which was agreed, Detective Sergeant Carson identified Fulton as one of these in the guard of honour. Whilst Fulton's presence as a member of this guard of honour on its own may not prove that he was a member of the LVF at the time of Wright's death, at the very least his presence in such a group gives rise to a strong inference that he was a close associate of Wright, and not just someone who was a bar-fly who picked up crumbs of information from Wright and other terrorists.

[359] This inference gains additional support from the contents of Exhibit A107, and Fulton's reaction to some of the photographs, particularly numbers 5 and 7. Photograph 7 shows what is plainly a LVF flag being held over the headstone of Billy Wright's grave, the standard bearer is flanked on both sides by men with what appear to be automatic pistols, and all three are wearing balaclavas and military clothing. The same scene can be seen in photographs 1 and 5. From the headstone in photograph 7 it is possible to make out that Wright died on 27 December 1997. This is therefore at the least prima facie evidence of the date of his death. Neil's statement at page 54 part III of the additional evidence was agreed on 23 May 2006. In it he describes Fulton pointing to one of the photographs.

> On seeing the photographs he said `Don't I look well'. He pointed at one of the photographs, which depicted three men in camouflage clothing, standing over the grave of Billy WRIGHT. Jim identified to me that the

> man in the centre was Mark Foulton (sic), with Jim Foulton (sic) on the right and Gary Foulton (sic) on the left of Mark Foulton (sic).

The reference to "standing over the grave" indicates that the photograph was either number 5 or number 7. As all three men are in the same relative positions in both photographs, it does not matter whether Fulton was identifying himself as being on the right in the photographs as one looks at them, or on the right of the standard bearer in the photograph, because the men on either side of the standard bearer are both armed and similarly dressed. Fulton's identification of himself as one of the party is extremely strong evidence that he was not only a member of the LVF, but a prominent one, and is a further contradiction of his assertion that he was a wannabe, a barfly and never in the LVF.

[360] Fulton made no admissions during interview and said that his remarks were complete fiction. No specific defence submissions were made on these charges. It can only be the LVF to which Fulton was referring when he said that he was the leader before he went to America, and I am therefore satisfied that the prosecution have proved that he was a member of that organisation within the 28 month period covered by count 42 and I find him guilty on that charge. The events of 4 and 5 June 1999 occurred shortly before Fulton went to America. By then it is apparent that he had long since transferred his allegiance to the LVF, and to judge from the admissions relating to the events of that night, was the leader of the LVF in Portadown at that time, Wright's death having occurred on 27 December 1997. I am satisfied that count 41 has been proved and I find him guilty on that count also.

The case against Gibson

[361] I now turn to consider the charges against Gibson. I have already referred to a number of issues common to both defendants in the introduction to this judgment at [1]-[23] and I do not propose to repeat what I said there, except to emphasise the following. First of all, no inference adverse to Gibson should be drawn from her being placed under surveillance. Secondly, part of the defence case is that she was a heavy consumer of illicit and prescription drugs on occasion, and in support of this material was placed before the court in which it was stated that she was imprisoned in the United States for a year before returning to Northern Ireland with her family upon her release in 1991. See page 6 of the report from Dr Blacker dated 17 August 2000. No inference adverse to Gibson should be drawn from her imprisonment.

[362] At [14] I have already touched upon Mr McDonald's references to tapes which have been excluded. At paragraph 53 of the written closing submissions he refers to B33, B73, B88 and B89 as examples of tapes where it is suggested that the officers transcribing the transcripts "have sought to

deliberately remove references to alcohol. Each of these evidential tapes has been excluded from evidence, and were there a jury hearing the case the jury would not be permitted to consider the contents of the excluded tapes, and, unless the tapes were excluded after the voir dire, would not be aware of the contents." I agree that is a correct statement of the law and I must therefore ignore the contents of the excluded tapes.

[363] A number of general submissions were advanced in the closing submissions on behalf of Gibson in paragraphs 6, 7 and 8 that as the admissions were not made under caution, and in an informal setting, she had no reason to appreciate the importance of the occasion and the imperative to be measured and accurate in responses to specific police questions.

> 6. It is difficult to overstate the importance of the obvious fact that none of the alleged admissions was made under caution. This is not a mere technical requirement in the system under PACE. The importance of a caution is that a suspect appreciates the importance of the occasion and the imperative to be measured and accurate in responses to specific police questions. At no stage during any of the recordings relied upon against Mrs Gibson did she have any reason to take care to avoid inaccuracy or exaggeration or to expect that anyone would place any reliance on anything she said. It is a common human characteristic, more marked in some than others, to embroider or even invent stories or inflate the importance of one's own role in a given situation. Casual dishonesty of this nature is inevitably more likely to occur in the kind of informal settings in which all the assertions relied on by the Prosecution were made by Mrs Gibson.
>
> 7. The dangers associated with placing reliance on assertions made privately in relaxed circumstances are compounded where the individual in question:
>
> (i) is predisposed generally to lie or exaggerate, either to impress others or because of a limited concern about exactitude or an inflated notion of oneself

(to the extent that he or she may even give misleading accounts without necessarily realising it);

(ii) has particular reason to lie or exaggerate, for example to impress people whose financial or other support it is important to retain;

(iii) may from time to time be under the influence of alcohol or drugs; and/or

(iv) may have mental or behavioural disorders, for example as a result of dependence on drink or drugs.

8. All of these factors are present to a greater or lesser degree in Mrs Gibson's case.

[364] The submissions then develop the headings at 7(i)-(iv). I do not propose to recite these, I have considered each of them and bear them in mind as they are of considerable relevance to the case against Gibson.

[365] Under the heading "Inducements to Lie" paragraphs 12-16 set out various matters which, it is said, meant that she "was offered a range of inducements to make incriminating statements". These submissions are summarised at paragraphs 15 and 16.

15. Finding herself in an isolated situation where she had limited means and no support network, the Defendant was greeted by people who met her needs and who demonstrated a high degree of enthusiasm and interest specifically in the topic of Loyalist paramiltarism.

16. In essence the Defendant, in circumstances where she was aware that she was dealing with police officers was offered a range of inducements to make incriminating statements.

[366] There are a number of comments I make about these points. The first is that there was nothing improper in the undercover officers demonstrating enthusiasm or interest in the topic of Loyalist terrorism, provided that they did not circumvent the protections for suspects contained in PACE. Indeed, their usefulness would be severely limited if they did not display such enthusiasm and interest. The second is that, as will appear, many of the

admissions were made when no undercover officers were present. Gibson's willingness to discuss terrorist crimes at length with her family, and friends such as Fulton, shows that she needed no encouragement to discuss such matters. Admissions made in those circumstances cannot be said to have been made because of her contact with undercover police officers. The third is that to characterise the contacts between her and the undercover police officers as amounting to offers to her "of a range of inducements" to make incriminating statements is unjustified. The use of the term "inducement" implies that an improper incentive has been offered to the accused, as a result of which she has made an unreliable confession. In the past a great deal of effort was expended by the courts in considering whether something amounted to an "inducement", as can been seen from the speeches in DPP v Ping Lin [1976] AC 574. In the evidential transcripts which remain in evidence in this case I am satisfied that there was no improper incentive by the undercover officers to make a "deal" with Gibson to elicit a confession. As is pointed out in Andrews & Hirst on Criminal Evidence (4th Edition), page 581, police officers are still directed by PACE Code C not to offer deals. If "inducement" is given a more restricted meaning of something which may have encouraged the defendant to make an unreliable question, then her social situation is something that has to be taken into consideration in case Gibson may have invented or exaggerated her involvement in the matter she described. However, I have already referred to her willingness to discuss such matters with her family and friends, particularly with Fulton, and the presence of these people removes much, but not all, of the relevance of the point made about her so-called "isolated situation".

[367] Gibson's consumption of alcohol and/or drugs is dealt with at paragraphs 17-26, and the submission summarised in paragraph 26.

> It is submitted that relying on transcripts in circumstances where the evidence strongly supports the suggestion that the Defendant may very well have been under the influence of either drink or drugs, and possibly both, is inherently unreliable.

[368] The issue as to whether Gibson suffered from a mental disorder is dealt with in paragraphs 27-34 of the written submissions.

[369] Both of these matters are of particular importance and, to a considerable degree, interconnected. I do not propose to set out all of the points made on behalf of Gibson in relation to her consumption of alcohol, and use of both prescription and illicit drugs. These submissions, particularly those relating to Dr McDonald's expertise, cover the same ground as the very detailed submissions on these issues that I considered in my ruling of 8 May 2006 on the voir dire at pages 23-28. I have considered all of the points made

on behalf of the accused and my conclusions remain the same as those I expressed at pages 27 and 28 of that ruling.

> Looking at the evidence as a whole I am satisfied beyond reasonable doubt that Gibson did not suffer from an abnormality of mind at the time covered by these tapes.
>
> That is not to say there may not have been occasions when she was affected by alcohol or a combination of alcohol and prescription drugs, and occasionally cannabis, which may on occasion render her admissions unreliable and where there is evidence suggesting that was or could have been the case, I will exclude the relevant tape under Article 74.
>
> I do not accept that, as her instructions suggested, she was drinking heavily or misusing prescription drugs, or taking illicit drugs on a virtually daily basis throughout this period.

[370] Whilst these conclusions were expressed in the contest of considering whether tapes should be excluded under Article 74 of the Police and Criminal Evidence (Northern Ireland) Order 1989, they are equally relevant when I have to determine whether any of the admissions relied upon by the prosecution are sufficiently reliable to prove the charges against Gibson beyond reasonable doubt, and I have had regard to them when considering each evidential tape.

[371] At paragraph 33(iii) of the written submissions the failure of Gibson to answer questions at interview, or to give evidence at trial, is referred to in this context, and it is therefore convenient to deal with this matter at this point. The defence submission was in these terms.

> (iii) *Failure to answer questions at interview or to give evidence at trial*. The fact that, by virtue of legal provisions, it is now open to a Court to draw adverse inferences in these circumstances does not render an inherently unreliable admission any more reliable. It does not amount to evidence, still less proof, and it is a power that has to be exercised with caution bearing in mind that there may be a multiplicity of reasons why a person in Mrs Gibson's position may be unable or unwilling to put herself in a situation where she is subject to

> cross-examination about a wide range of matters, including individuals with whom she may have associated.

[372] So far as Gibson's failure to answer questions is concerned, the prosecution did not suggest that the provisions of Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 (as amended) (the 1988 Order) should be invoked. Whether Article 3 applies to any of the "facts" asserted on behalf of Gibson as part of her defence, for example the evidence put forward on her behalf and considered by Dr McDonald and Dr Kennedy, was not argued and so I do not consider that Article 3 should be relied on in this case. The position is quite different so far as Article 4 is concerned. Gibson has not given evidence. That is her right. She is entitled to remain silent, and make the prosecution prove her guilt beyond reasonable doubt. Two matters arise from that. One is that she has not given evidence to undermine, contradict or explain the evidence put before the court by the prosecution. The second is that I may draw such inferences as appear proper from her failure to do so. It is for me to decide whether it is proper to hold her failure to give evidence against when deciding whether she is guilty. Had Gibson given evidence there can be no doubt that a great many questions would have been put to her. For example, when and how much alcohol and illicit or prescription drugs did she consume? Why did she deny to Dr Bownes in 2005 that she used illicit drugs other than to smoke Cannabis "occasionally"? Had she been drinking, or was she likely to have been drinking, during the period between 0857 and 1310 on 16 March 2000 contained in B28? There were no undercover officers present on that occasion, so why were she and Fulton discussing the topics they did? What did they mean when she and Fulton discussed individuals such as Swinger and Don Marno coming to her house to have a bath. What did she mean when she said "I was a nervous wreck" (page 503)? In B69 when she was discussing the murder of Adrian Lamph with her daughters Rain and Aiesha did she not say "I was supposed to take the gun away", and if so what did she mean? Other questions would no doubt be where did she get the information if she was not a participant in the events she described herself as playing some part in? These are just some examples of the many pertinent issues that would undoubtedly have been explored with Gibson had she given evidence. I am satisfied that it is fair to draw an adverse inference against her from her decision not to give evidence, and I do so because I am satisfied that the only sensible explanation for her failure to do so is because she has no explanation for making these admissions that could have stood up to cross-examination. I remind myself that I should not find her guilty only, or mainly, because she has not given evidence, but I take Gibson's failure into account as some additional support for the prosecution case, and when deciding whether the explanation she gave to the police, and the explanations advanced on her behalf, are, or might be, true.

[373] At paragraphs 35-43 of the written submissions on behalf of Gibson the absence of corroboration of Gibson's admissions is raised. I have dealt with this at [79] and [80] where I refer to some parts of Detective Chief Superintendent Mawer's evidence about Gibson. I do not consider that it is necessary to repeat what I said about the absence of corroboration and I approach the case against Gibson in the same way. I would only add that in some instances the conduct admitted to was such that corroboration would not be available in any event, or might be impossible to obtain years after the event. Thus at page 970 she refers to the immediate aftermath of the murder of Adrian Lamph and says "I sent some of the boys, quick go and get the fucking bike". However, where the admissions relied on are inconsistent with the known facts of the incident, then that inconsistency is an important matter when the reliability of the admission, and hence the guilt of the defendant, is being considered. That is because the inconsistency may well be of greater importance than any consistency with the known facts precisely because it is inconsistent. Whether that is the case in relation to a particular admission and charge has to be decided in the context of the evidence relating to that charge.

[374] At paragraph 41 emphasis is placed on the denial of access to the spreadsheet which was referred by Detective Chief Superintendent Mawer and others. This was described as being a document on which offences referred to by the accused were recorded, and then inquiries were made to see if the episode could be identified or not. This was explored by Mr Treacy with Mr Mawer on 19 December 2005 in the context of corroboration, see pages 9-13, Having dealt with the existence of the spreadsheet, Mr Treacy turned to a related issue, that is whether there was a "tracking system" or "audit trail" of all the important things that were occurring during the investigation. At pages 12 and 13 there occurred the following exchange.

> Q. I'm not trying to test your recollection at the moment, I'm more concerned about the actual process itself, but there was a tracking process, Mr Kincaid essentially would have been in charge of that process?
>
> A. Yes.
>
> Q. That clearly would have generated, I suspect, a substantial volume of records?
>
> A. Well the normal process, I can't say whether it is the case in this case, in a major incident room would be —— actions would be generated then there would be results on those actions that would then be fed back into the system.

Q. If the tracking process had revealed that certain information was inaccurate and unreliable would you be made aware of that fact?

A. I think it is more the other way, I would be made aware of what was valuable or useful as opposed to what wasn't.

Q. So when you talk about valuable and useful you are really thinking in terms of corroboration and proof that somebody committed an offence?

A. Yes.

Q. You were less interested in material which you would have regarded as inaccurate and unreliable?

A. Well, there is another aspect too because a lot of things that were being discussed were historic. So it is not necessarily were unreliable or didn't happen, it is that there wasn't records available or there wasn't the ability to show that they had happened in the [way in] which they have been described.

Q. For example, if somebody said they were involved in a specific offence at a specific location at an identifiab1e time it would be easy for the police in Northern Ireland to check out to find out whether or not a crime that crime had or had not been committed?

A. You would think so, my Lord, yes. But, in fact, there was some considerable difficulty around some of the information, seeking corroboration around it. Sometimes, because the information wasn't detailed enough, we couldn't tie down dates. It is not actually as straight forward as it might appear.

Q. Could I just pass from that for the moment? I take it you would accept as a general proposition that during the course of any investigation, particularly a large investigation such as this,

anything of importance that takes place, it would be incumbent on those who are involved to make a record?

A. Sorry, just repeat that.

Q. If there is anything of significance happening during the course of an investigation it would be important that that is transparent and there is an audit trail, if you like, of all the important things that were occurring during the course of an investigation?

A. Yes, that's correct, my Lord.

Q. If anything of significance was said or done during the course of an investigation there should be a record kept of it?

A. There should be, yes, my Lord.

[375] This passage is relevant for two reasons. First of all, it refers to the difficulty in obtaining detailed information to show that an episode occurred in the way in which it had been described. This bears on the issue discussed above at [373]. Secondly, it confirms efforts were made to establish if there was corroboration and proof that somebody had committed an offence. The tenor of the complaint that the defence had been denied access to the spreadsheet is that it may have revealed material which undermined the case against Gibson, or assisted her, and that she has thereby been disadvantaged. The trial was interrupted for long periods while the disclosure judge, Mr Justice Higgins, dealt with disclosure issues, and there was the opportunity for the defence to raise this issue before him. I must decide the case on the evidence before me, and not speculate as to whether the contents of the spreadsheet would have benefited Gibson's defence in some way.

[376] Under the heading "lack of safeguards incorporated in Operation George" submissions are made in paragraphs 44-55 as to the effect of what is described as "the failure to brief the transcribing officers to address the issue of alcohol, in circumstances where the defendant's drinking was known to the officers managing the covert surveillance operation" (paragraph 54). I have already considered the evidence relating to the consumption of alcohol (and drugs) by Gibson on a number of occasions during the trial when these specific occasions relied upon by the defence were considered. I do not propose to rehearse the evidence, or the arguments, or the conclusions to which I came. It is sufficient to say that I have borne in mind throughout my consideration of the evidence at this stage of the case that the reliability of any

of Gibson's admissions cannot be assessed without taking into account whether she was, or may have been, affected by alcohol, or a combination of alcohol and prescription drugs, and occasionally Cannabis, which may render her admissions unreliable. This is an issue of particular importance.

[377] One matter to which I feel I should refer at this point is that it is said at paragraph 52 that "little effort was made to ensure sound quality by, for example, deploying noise filtration systems", and reference is made to the evidence of Michael Kielty on 12 June 2006. As was evident on many occasions when some of the evidential tapes relating to Gibson were played, it is sometimes difficult to make out exactly what is being said, and by whom. Mr Kielty is an audio engineer, and he explained how the clarity, and hence the intelligibility, of the conversations could have been improved by a process he described as filtration. If this process had been applied from the outset he was of the opinion that it was unlikely that the improvement would have been much less than 40%. Were the process to be applied retrospectively the results would not have been as good.

[378] Mr Kielty accepted during cross-examination that he had only been retained a week before he gave evidence. That being the case, his thesis had not been put to any of the transcribers, the last of whom had given evidence several weeks before. However, no application was made by the prosecution to recall any of the transcribers, or to call rebuttal evidence. In the absence of any challenge by the prosecution to Mr Kielty's qualifications or his thesis, I accept that a filtration process could have been applied to the recordings at the time they were made, and that this would in all probability have significantly enhanced the clarity and intelligibility of the tapes in general. However, that such a process was not carried out does not mean that the tapes are inadmissible.

[379] Mr Kielty's evidence does not take the defence very far, because Mr Kielty only examined two tapes, B69 and one other where he was unaware of the number. Issue about the accuracy of the tapes, or the audibility of background events such as the possible opening of cans or bottles, was only taken in relation to some tapes or some parts of tapes. I shall consider those in due course, but where issue was not taken with the content of evidential tapes I infer that the transcription has been accurate where the words can be deciphered, and that if there was something which showed, or might show, that Gibson was affected by alcohol or drugs the relevant portion would have been played in court, as was done for some tapes, such as B69. I repeat what I said at page 4 of my ruling of 24 May 2006 when refusing the renewed application on behalf of Gibson to stay the proceedings.

(1) The defence have had the opportunity to listen to all the evidential tapes.

(2) The defence have transcripts of the evidential tapes.

(3) During the trial I have considered all those tapes or portions of the evidential tapes which the prosecution or defence wished to play to me.

[380] If it was believed by the defence than an examination by Mr Kielty of any of the tapes, other than the two he was asked to examine, would have given grounds for arguing that the passages relied upon by the prosecution "are unreliable, had been distorted, or when placed in a different context, bear [a] different meaning to that which the words transcribed suggest" (to repeat what I said at page 4 of my ruling of 24 May 2006) then no doubt Mr Kielty would have been asked to examine them. Therefore, save in respect of portions of those tapes were issue was taken, and to which I shall refer when necessary, I am satisfied that that the tapes have been accurately transcribed, and that where admissions have attributed to Gibson she uttered the words in question. As in the case of Fulton, I have referred to the alleged admissions as "admissions" in the interests of brevity.

[381] The issue of direct questioning was the subject of written submissions by the defence at paragraphs 56-70. At paragraph 70 it is submitted "all of the taped conversations between the defendant and Sam and or Dave S amounted in effect to the functional equivalent of an interrogation and should be disregarded." To a considerable extent these submissions repeat points which I have already considered when ruling on the admissibility of the evidential tapes and I do not propose to rehearse again my reasons for holding that the evidential tapes which have not been excluded were not the functional equivalent of an interrogation.

[382] A point upon which considerable reliance is placed is that Gibson was no longer free to resile from admissions she had made in conversations that have been excluded, and indeed was liable to expand upon them. At paragraph 58 the matter was put in this way.

> The exclusion of specific recordings on which direct questions can be heard does not in our submission adequately [cater] for the continuing effect of admissions made in these circumstances. Having made claims in circumstances that render those claims suspect, the Defendant was no longer free to resile from them and was liable to expand upon them. Although the Court is bound to exclude from its consideration the contents of other tapes that have already been ruled inadmissible (such as B73), this can paradoxically operate to the disadvantage of Mrs Gibson insofar

> as it leaves the Court with the misleading impression that admissions made in the admitted tapes were genuinely spontaneous and unprompted when in truth they arose in a sequence initiated improperly by the undercover officers. Even though the admissions may be separated by significant periods of time, it is impossible to say that the later (admissible) admissions would have been made even if the earlier (inadmissible) admissions had not. This is a factor that ought to weigh heavily with the Court in respect especially of admissions made to Dave S and Sam, who repeatedly breached the rule that direct questions were not permitted to such an extent that they were removed from the covert surveillance operation.

[383] As the defence concede (see [362]) the court is bound to exclude from its consideration the contents of other tapes that have already been ruled inadmissible. Where the admission was not prompted, then there is nothing to cause the defendant to choose to speak, even if she repeated or expanded upon admissions she had made on other occasions, usually weeks, if not months, before. In those circumstances I do not consider that what Gibson may have said in an excluded conversation can be said to "taint" a later admission. On the later occasion she was completely free to decide whether to talk or not, and the admissions appear to be entirely voluntary and spontaneous. To suggest that her decision to talk about criminal offences she had apparently committed could be regarded as "tainted" by what happened long before is, in my opinion, unsustainable. It is an entirely different situation to that where a defendant makes, or repeats, an admission having been offered an inducement by a person in authority, at most usually only a few hours before. In those circumstances the inducement could well continue to operate on the mind of the accused. There is no reason to believe that Gibson's decision to volunteer information on a later occasion was, or could have been, influenced by direct questioning a long time before. She, like Fulton, was quite prepared to boast about her terrorist activities to those she thought she could trust, such as her family and/or Fulton. Unfortunately for her, her loquaciousness betrayed her when she was speaking to people who were, unbeknown to her, undercover officers. I consider that there is no basis for regarding her admissions as unreliable on that ground.

[384] At paragraph 71 the following submission is made in respect of Gibson's character.

> The Defendant's criminal record has been adduced in evidence. Apart from convictions for drug

> offences, Mrs Gibson has a clear record. Specifically, she has no record for violence or involvement in terrorism of any kind. In our submission, the learned Trial Judge should direct himself to have regard to her good character when considering the credibility of the denials and exculpatory answers given to the Police during after caution interviews (Archbold 4.406). Likewise, the court ought to direct itself that Mrs Gibson's good character is relevant to the likelihood of her having committed the offences charged.

Gibson's convictions were put in evidence by the defence.

(1) She received a conditional discharge for 12 months at Bow Street Magistrates Court on 21 August 1969 on a charge of possessing a controlled drug. She was then 19.

(2) On 27 June 1990 she was sentenced to 16 months' imprisonment for possession of control (sic) substance for sale. At that time she was 40.

(3) On 9 January 1996 Craigavon County Court affirmed sentences of 3 months' imprisonment suspended for 2 years on 2 charges of possession of a Class B drug on 1 April 1995. At the time of committing those offences she was 45.

[385] The 1990 conviction must have taken place during the period she spent in the USA and presumably relates to an incident she described in her instructions to her solicitor on 17 September 2005, where she maintained that she had been framed for drug use "during the custody battle with [presumably this should be "about"] my youngest child. I still maintain that the stuff was placed in my bag in the US". The 1969 conviction was long ago, resulted in a very light sentence, and is of no relevance now. However, the convictions in 1990 and 1996 resulted in custodial sentences, albeit suspended sentences in 1996. In addition, in the instructions of 17 September 2005 she claims to have used illegal drugs in the form of Ecstasy between 1996 and 1999 whilst living in Portadown, and Cocaine on occasions between 1999 and 2001 whilst living in Cambourne. Her drugs convictions and claimed drug usage mean that she cannot be regarded as being of good character.

[386] I remind myself that I should not assume that Gibson is guilty, or is not telling the truth during interview, just because she has previous convictions. Those convictions have no bearing whatever on the likelihood of her having committed the offences with which she is charged, and they are relevant only as to whether I can believe her denials during interview. I consider that in the

circumstances of the present case they do not help me to decide whether she was telling the truth. I should also point out that in B1 she refers to having been questioned by the police. I remind myself that I should not draw an adverse inference against her because of that.

[387] During interview Gibson largely exercised her right to remain silent. Nevertheless, she did make some responses on occasion. I shall where necessary refer to her responses in relation to specific allegations, and a schedule was prepared by the defence which referred to most of the denials or comments she made. On several occasions she denied that she was a member of the LVF or of any organisation within loyalism. See for example pages 481-483, 612-613 and page 761. When the tapes were played she said that she did not recognise her own voice at page 606. In relation to some specific allegations she made some limited response. For example in relation to the Lamph murder she said that she was sorry for the Lamph family and their loss. In relation to the allegation that she had been involved in an attempt to bomb Dublin she said that she had heard the story in a bar. See page 725.

Incident 20 - Withholding information about the shooting of William Fletcher on 6 January 1997

[388] I now turn to consider the specific offences with which Gibson is charged, and the first is count 65, withholding information contrary to Section 5(1) of the Criminal Law Act (Northern Ireland) 1967. The particulars of offence do not specify a particular episode, other than to allege that she failed to give information on a date unknown between 6 January 1997 and 30 September 1999 "other persons having committed an arrestable offence, namely wounding with intent, contrary to Section 18 of the Offences Against the Person Act 1861". However the prosecution case throughout has been that she failed to give information about the shooting of William Fletcher on 6 January 1997. Thus in interview C52(b) at page 614 et seq she was questioned about her knowledge of this episode. She was again questioned about this during interviews C53(b) and C54(b). She replied no comment when the matter was raised, except that at page 633 she said that she would not know if Mark (that is Mark Fulton), and Billy (that is Billy Wright), were seen by the police in Deramore Drive that night.

[389] I have already set out the material facts relating to the shooting of Mr Fletcher at [235]-[238]. I recounted at [239]-[245] what Fulton said during the conversation that is recorded in B28, and again it is unnecessary to repeat much of what I said there, although it will be necessary to refer again to some of the matters in order to consider the case against Gibson.

[390] It was submitted at page 74 of the defence closing submissions that it is not clear from B28 that the event described was the shooting of Mr Fletcher.

At page 504 Fulton says "I actually all I wanted to do was hit him in the limbs cause it wasn't Derek Wray. I was looking for Derek Wray", and in his written statement Mr Fletcher said that when the masked gunman entered his living room the gunman asked where Derek Wray was, to which Mr Fletcher replied "he's not here". See [236]. From this and from Fulton's description of what he did which I have earlier at [240] and [241] there can be no doubt that Fulton was talking about the shooting of Mr Fletcher and I am satisfied that this is the case.

[391] At page 505 Fulton describes how he found that Philly (Philip McLean) had already gone up Alexandra Avenue, at which point Gibson interjects "Philly was just away like a fucking rocket". At page 506 Fulton then described how he made way back to Gibson's house. There then occurred the following exchange between them.

> Jim: I dandered across and I dandered across, there was Swinger. He'd left the car on up the walk a wee bit to block the road. Says he where to fuck will ye hurry up. Here's me, right, right, right. I was that shattered and that stoned I could hardly get over your fence. `Sargy' he was shaking like that (inaudible) you know waiting to take the gun and all. Time I got over the back I was fucked, I mean, I was destroyed, I swear to fuck, that's me, smoking that fucking blow.
>
> Muriel: And then the sitting up the stairs waiting on the fucking radio.
>
> Jim: On the hour every hour then at 12 o'clock a report came in man shot dead. Ah, here was Philly, oh, oh. Oh I'm going to crack up.
>
> Muriel: (Inaudible) dead (laughs).
>
> Jim: Here's me. Let me tell you something. The rule, the golden rule is the next time somebody tries to attack you (inaudible). It's up to your own decision. (Mimics Philly) I'm going to go mad. So they did like started to go mad. Then they started arguing with each other, Swinger and Billy.
>
> Muriel: Then it turned out alright.
>
> Jim: Aye, arms and legs and all (laughs).

> Muriel: Those legs and hands fucking shot right through (laughs).
>
> Jim: Through his ankles and all aye. He got hit seven. Seven times he was hit or something.
>
> Muriel: I don't know.
>
> Jim: Seven times cause I always maintain that he run.
>
> Muriel: Philly sitting with a big cigar you know and the bottle of fucking champagne and all the rest of it. He soon walked out with it didn't he.

[392] Gibson's references to Fulton "sitting up the stairs waiting on the fucking radio", and to Philly sitting with a big cigar and champagne very strongly suggest that she is recalling what she observed that night, and that in the immediate aftermath of the shooting she was fully aware of what had occurred, and Fulton's part in it.

[393] I say that Gibson said certain things, but, with the exception of B89 (see my ruling of 23 May 2006 at page 4), it has not been admitted that she was present on any occasion, or that it was she who said the words attributed to her by the transcribers. In that ruling at page 4 I said that I was entirely satisfied that, with the exception of one brief passage, Gibson had been correctly identified as the speaker in the passages attributed to her. At pages 4-7 I explained why I arrived at that conclusion. For the avoidance of doubt I repeat that I am satisfied that she was the speaker on all the occasions attributed to her unless I say otherwise. At page 7 I dealt with the portion of B28 starting at 1236 on 16 March 2000 I repeat what I said there.

> B28 starts at 0857 on the 16th of March 2000 but the portion relied on starts at page 497 by which time it is 12.36. Throughout Gibson could be clearly heard, she spoke precisely, and her speech flowed easily. At all times she sounded as if she was speaking perfectly normally and there was nothing to suggest any impairment of thought or speech either by alcohol or drugs. No request was made for any other portion of the tape to be played.

[394] B28 is a recording obtained by a probe when no undercover officer was present, and it starts at 0857. The portion of the conversation from page 500 onwards that concerns that discussion by Gibson and Fulton of the aftermath

of the Fletcher shooting was established as starting at 1253. As I have already held, from page 497 there was nothing about Gibson's speech to suggest that she affected by alcohol or drugs. There is no other evidence to suggest that she was. As no undercover officer was present there is no basis upon which it can be argued that what transpired was the functional equivalent of an interview. I am satisfied that her account on that occasion is reliable, and that she and Fulton, who had recently come to the West Country following his return from America, were reminiscing about what they had done.

[395] The prosecution also rely on B34, which relates to a conversation on 24 May 2001, that is more than 14 months later, between 1618 and 2024. As in the case of B28 this recording was obtained by a probe and no undercover officers were present. Again the issue of whether what was said could be alleged to have been said during the functional equivalent of an interview does not arise. The passage relied upon is to be found on page 620. It was established that the transcription starts on page 619 at 1622 and ends on page 621 at 1625. At page 620 is to be found the passage that I am satisfied was wrongly attributed to Gibson by the transcribers, because I accept, having listened to the tape, that it was Rain Landry who said "here's Billy with a cigar going `fuck it' and `you stupid, don't even speak to me'". See my ruling of 23 May 2006 at pages 13 and 14.

[396] This conversation occurred in mid afternoon. Having listened to the tape I was satisfied that she was not affected by alcohol or drugs, and the reliability of her admissions is not therefore called into question by these factors. In her account Gibson describes what Fulton, who is not present during this conversation, has said about the shooting in the past. She then described what happened in her house.

> Muriel: I think, I think I've put about, er, five in him, he said. Billy goes 'right' and he had a bottle of champagne and a cigar and then the next thing it come on the news. A man has been shot dead, (inaudible) sitting quiet cos I was burning all the clothes, it was summertime and the house was just boiling, you know, and then I was burning all the clothes and they were sitting around in shorts, listening, our man has been shot dead, went "yes", in Belfast, went that's not him and another man has been shot in Portadown, but not killed. (Laughter) (inaudible) (Rain speaks). It came out all perfect about your mans has been fatally wounded, and we're all 'yes' (inaudible). He did take five bullets but he took them everywhere (laughter). (Pause). It was fucking hilarious that night because Thelma kept, she, thought that I was

> screwing Swinger and she kept phoning up and I couldn't tell her there was an operation going on (inaudible). I know he's there, I heard his voice. I know he's there, and im going he's not fucking here I don't know where he is, and I know theres listening on the phone and Im saying I'll kill her Swinger, I'll kill her and Swingers going you're not going to have to I'll kill her I'll kill her, I can hear his voice an all she's shouting into the phone, I'm going I haven't seen Swinger, I don't know where he is. Sitting with the big cigar (pause).

[397] This account differs from her earlier account in that:

(a) she now says that she was burning all the clothes;

(b) Fletcher was hit five times and not seven;

(c) she now refers to pretending to Thelma that Swinger was not there, presumably because Thelma had not been told that Swinger was involved in the operation; and

(d) that this occurred in the summertime, whereas the Fletcher shooting occurred in January.

(a) and (c) do not contradict what she said before, and (b) is not a significant inconsistency. Her wrongly attributing the events to the summer is of greater significance.

[398] When questioned Gibson made no comment, other than to say that she would not have known where the people lived, page 633, and that she was not a member of any terrorist organisation, page 638.

[399] In view of her very clear admissions in B28 14 months before I do not consider that her mistake about the season in B34 is sufficient to raise a reasonable doubt as to the reliability of her admissions, and I am satisfied that on 6 January 1997 she knew that Fulton had committed an arrestable offence because he came back to her house after the shooting and told those present, including her, that he shot Mr Fletcher several times, and it was not until they heard the news on the radio that they realised that Mr Fletcher had not died. Once she had learnt what Fulton had done, she was under a duty to give that information to a constable within a reasonable time. She did not do so, and there is no suggestion that she had a reasonable excuse for not doing so, nor can I conceive of one. I therefore find her guilty on count 65.

Incident 21 – The murder of Adrian Lamph

[400] On Tuesday 21 April 1998 Adrian Lamph was working for Craigavon Borough Council at the Fair Green Amenity Centre, Portadown when he was shot once in the head and died as a result of this wound. Professor Crane's post-mortem report stated at page 7 that "death was due to a bullet wound in the head. He had been struck in the centre of the forehead by a single bullet". Professor Crane found that the entrance wound was 8mm in diameter and perhaps had been fired from within 30mm. Just before the shot David McCandless, a fellow employee who was working at a nearby lorry, saw a cyclist ride past on what seemed to him to be a dark coloured mountain bike. He described the rider as wearing a baseball cap and a scarf over his nose and face. He was of slight to medium build, wearing darkish clothing and a bomber jacket. Mr McCandless said that

> … from the short time I seen him the thing that stood out most was the colour of the scarf over his face. It was light blue in colour with white coloured bars and on the white coloured bars there were narrower red coloured bars.

[401] The shooting occurred about 1535. The 999 call to the Ambulance Service was responded to by Mr McReynolds at 1539, and at Portadown Police Station was noted by Reserve Constable Warnock at 1542. At about 4.00pm Mr John McNabb found several items burning on the ground in the alleyway outside his back yard at the rear of 5 Fox Street, and he put out the fire. As can be seen from the map Exhibit 76A this alleyway is not far from The Fair Green, and could rapidly and easily be reached by someone on a mountain bike, for example by Duke Street, Church Street and then by either Jervis Street or Craigavon Avenue. Ranfurly Road is in the vicinity of Fox Street.

[402] Constable Ardis, a scenes of crime officer, recovered several items from the fire at the rear of 5 Fox Street. The seat of the fire is clearly visible in photograph 17 of Exhibit A75, as is a Swan brand can of lighter fuel. He also recovered a burnt trainer shoe, pieces of black and of a blue garment and a shoelace. The recovered items were later examined by Lawrence Marshall of the FSANI, and he found them to include:

(i) the peak of a baseball cap;

(ii) an elasticated cuff with a fragment of maroon material adhering to it;

(iii) the burnt remains of a blue tracksuit bottom;

(iv) a black t-shirt with the lower front of the garment burned away. He described this as having a "smiling face" logo with some burnt writing

below. This can be seen in the leaflet issued by the police in their request for information, Exhibit A113.

[403] I am satisfied that the murder of Adrian Lamph was a sectarian murder; that the gunman was the person seen on a mountain bike by Mr McCandless; that the gunman removed his clothing soon afterwards, and that it was burnt in the alleyway behind 5 Fox Street in an attempt to destroy all the clothing, and hence destroy evidence linking him to the crime. Rosemary Cassidy sold two tins of Swan lighter fuel over a 10 minute period at about 11.30 on the morning of the shooting. This was unusual as normally she would only sell one tin a week. I am satisfied that the lighter fuel had been purchased from her in preparation for, and was used for, the attempted destruction of the clothes worn by the gunman in the fire at the rear of 5 Fox Street.

[404] Although extensive searches of the area were made by the police in the aftermath of the murder, and in succeeding days, the bike has not been recovered. On the morning of Wednesday 22 April Sergeant Beck found a new, black "Townsend Beartooth" make mountain bike in the back yard of a building he ultimately established was 84 West Street, and it was pointed out to Detective Constable Jones. However, there was some difficulty at the time in establishing precisely to which house the yard belonged, and when Detective Constable Jones returned at 0930 on 23 April this bike had gone. Whether this was the bike used by the gunman cannot therefore be established.

[405] Gibson is charged with the murder of Adrian Lamph – count 66; and with possession of a handgun and ammunition with intent to endanger life, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981-count 67. The prosecution case is that she assisted in the preparations for the murder, whether she knew that Adrian Lamph was to be the specific target, or because, as Mr Millar put it in his written closing submissions, "she knew the specific target in advance her experience would have led her to know the nature of that attack and that death or really serious bodily harm was the intended result".

[406] However, he submitted that were Gibson to be found not guilty of murder, it would be open to the court to return a verdict of guilty of the offence of assisting offenders on this count, as Section 4(2) of the Criminal Law Act (Northern Ireland) 1967 permits a conviction under Section 4(1) as an alternative verdict. Section 4(1) provides that:

> Where a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence or of some other arrestable offence, does without lawful

> authority or reasonable excuse any act with intent to impede his apprehension or prosecution, shall be guilty of an offence.

When this was first suggested in the submissions on the application for direction, on 24 May 2006 Mr McDonald, whilst he did not concede that the relevant passages were reliable or admissible, recognised that some of the admissions could support such a conviction. See also the defence submissions at [410]. I shall return to this option later in this judgment. Gibson is charged with possession of the handgun and ammunition on the basis that she took it from the gunman afterwards, and helped to spirit it away.

[407] The prosecution have to rely on four evidential tapes, the first of which is B69. This tape relates to a period starting at 2123 on 25 May 2000 and finishing on 26 May at 0007. No undercover officers were present, and the recording commenced when Gibson and her daughters Rain and Aiysha returned to Gibson's house having been at a pub. At page 949 Rain introduces the topic of someone called "Sargy" telling her about a shooting. It has been established that she started to discuss this at 2324. Gibson then joins in by describing her part in the events relating to the shooting of Adrian Lamph. Between pages 950 and 953 (by which time it is 2327) she says a number of things.

(i) It was Philly (Philip McLean) who was supposed to burn the clothes afterwards, but he was late.

(ii) When Gibson arrived Gary (ie Gary Fulton) had already stripped off his clothes and was naked because he had nothing to change into, so she told him to hide behind a gate.

(iii) She said she would take the clothes and the gun because Philly had not turned up.

(iv) She got away with the gun.

[408] However, these admissions came after, and have to be viewed in the context of, her opening remarks on the matter, remarks which are the basis of the prosecution case on the murder charge. At page 950 there occurred the following.

> Muriel: I know, I know, tell me about it. After LAMPH was shot.
>
> Female Landry: Aha.

> Muriel: And I run away with the gun, Philly was supposed to burn the clothes, I was supposed to take the gun away.
>
> Female Landry: Philly was late and you had to fuck'n.
>
> Muriel: Philly showed up late. Poured lighter fluid all over the clothes (overtalking) put it next to a gas tank, in somebody's back so they called the Fire Brigade, they put it out and got half a Tee-Shirt with Stoned Again.

[409] The reference to lighter fluid being poured over the clothes is consistent with (v) Gibson burning the clothes because Philly was late. However if he was to do this, how was she equipped to do so? The key phrase is "Philly was supposed to burn the clothes, I was supposed to take the gun away". This, the prosecution submit, shows that Gibson's role was made known to her before the shooting, in which case she must have known that a murder was intended, and so is guilty of murder as a participant in a joint enterprise, or conspiracy, where she knew her part before the murder, and not that she simply helped afterwards without knowing what was intended beforehand.

[410] This is a crucial distinction, and the defence addressed it in paragraphs 83 and 84 of their written submissions.

> 83. Indeed, later in the same tape (page 952), Mrs Gibson is recorded as describing how she was running up Ranfurley Road when she heard a bang which she was clearly not expecting. She is recorded as saying "I said oh fuck that's somebody's killed". (page 952). The prosecution's reply to this on the application for direction was that Mrs Gibson was not talking about the Lamph shooting but was more likely to be expressing her concern about Gary or Philly. That is an illustration of the problems associated with the interpretation of ambiguous comments made loosely in a casual conversation. As with the earlier comment ("I was supposed to take the gun away"), it is open to more than one interpretation. In other words, the Court cannot exclude the reasonable possibility that Mrs Gibson was either referring to an arrangement made after the event

> or to an arrangement which did not embrace anyone's murder.
>
> 84. The inescapable conclusion is that all of the comments attributed to Mrs Gibson in this tape are explicable on the basis of involvement in assisting offenders after an event the nature of which was unknown to her.

[411] Before commenting on these submissions I propose to deal first with the submissions that had been made about the reliability of Gibson's admissions in B69. As already indicated she and her daughters had just returned from a pub, and the defence submit that the court must have doubts as to the accuracy and reliability of the admissions Gibson made because of the amount of drink she had consumed in the pub and consumed, or may have consumed, after they returned home. Parts of the tape were played on several occasions during the trial, and I have again listened to the material parts of the enhanced tape on the equipment provided by the defence. I have considered all the points made during the trial, and those at paragraph 85 of the defendant's written submissions. In view of the conclusion I have come to on the remaining evidence on this charge it is sufficient to say that, whilst there is evidence that Gibson had been drinking, she is speaking clearly, fluently and unambiguously at all relevant times and I see no reason to doubt that the reliability of her admission is impaired.

[412] The next evidential tape is B70 which relates to 3 July 2000 and covers the period between 0816 and 1226 when Gibson is in the company of Dave S. At their height these admissions only relate to what happened afterwards and do not support the case that she had prior knowledge of what was intended. I am satisfied Gibson was not affected by drink or drugs when she made these admissions.

[413] I will refer to B72 at this stage even though that is to take it out of chronological sequence as it relates to a conversation on 15 September 2000 between 1651 and 2057 when Gibson is speaking to her daughters Rain and Talutha. No undercover officers are present. Gibson says at pages 982 and 983 that she was seen by John Smith and someone she refers to as "Wee Michael" when she went out to pick up the gun after the Lamph shooting and found Gary Fulton naked in the alleyway. This does not indicate prior knowledge, although it does provide further confirmation that she moved the gun afterwards. I am satisfied that she was not affected by alcohol or drugs when she said this.

[414] I now turn to B71 which relates to a conversation between Gibson and an English friend named Vanessa Howarth at Gibson's house between 1306 and 1711 on 25 July 2000. The prosecution now rely on the passage starting at

page 965 with the words "that's a lot of bollocks" and it has been established that this portion starts at 1432. In an extended passage lasting until 1444, some 12 minutes, and finishing at the bottom of page 975, Gibson describes her role in the events relating to Adrian Lamph's murder in considerable detail. I do not intend to set out the entire conversation, but the following are the relevant admissions.

[415] (i) The rider was wearing a red, white and blue scarf around his face, a baseball cap and a t-shirt that said `stoned again'.

(ii) Gibson dressed "them all up for the occasion. I did'nt know what I was dressing them up for but I was dressing them up anyway."

(iii) The gunman rode the bike past Lamph, called to him and " shot him right between the eyes, took the whole head off".

(iv) She ran up to "Ronnie and Jill's yard" and found the gunman naked. "And I go, what, what, what do you want me to do what have you done."

(v) The gunman then told her to take the gun, which she did and arranged for it to be hidden.

(vi) As she was receiving the gun Philly came up, was given the clothes and told to burn them. The implication is that it was the gunman who did this, although Gibson had asked him to give her the clothes.

(vii) Philly then poured lighter fuel over the clothes in the alley.

(viii) Only part of the t-shirt was burnt. It had what she described as "two big round squibley eyes on it".

(ix) She then arranged for some boys to collect the bike. The bike is collected by "Don" and he brings it to her house, so she tells him to put it anywhere, in somebody's alleyway.

(x) Very soon afterwards her grandson Axel comes and tells her that he is riding about on the bike which has been left in "our", i.e. his alleyway.

(xi) Gibson then phones Don and berates him for leaving the bike in Talutha's alleyway and tells him to move it.

(xii) She tells Don to throw it in the river which he does, and so the bike is never found.

(xiii) She told Swinger that she had lent him, i.e. the gunman, the t-shirt. She described it as unique.

(xiv) When it is realised that because the t-shirt is so distinctive she destroys six photographs of men wearing it.

[416] I am satisfied that the admissions in B71 are reliable. They were entirely unprompted by any undercover officer or agent of the State. Gibson chose to describe her exploits to her friend Howarth. The admissions were made over a 12 minute period in the early afternoon. The tape was played in court and there is nothing to indicate that Gibson was affected in any way by drink or drugs. In this instance it is not just Gibson's voice in the tapes that allows that conclusion to be made, but, as I pointed out at page 17 of my ruling of 23 May 2006, at 1424, that is 8 minutes before the start of the passage relied upon, Gibson said "I'm fully recovered I got back on the wagon", and then "I died the death last night about 11:00 last night". I am satisfied that she meant by this that she had recovered from having been drinking two days before and had not been drinking on this day.

[417] B71 contains the fullest account by Gibson of her involvement in the Lamph murder, and the tenor of it is unmistakably that she did not know beforehand what was intended. She said that she did not know what she was dressing them up for, and her statement to the gunman "what do you want me to do, what have you done", if true, suggests that she did not know in advance that her role was to take the gun afterwards. It is thereby at variance in her statement in B69 that "I was supposed to take the gun away".

[418] A number of the interviews were deleted from the papers. In the remaining interviews Gibson made no reply when questioned about the Lamph murder, save that in C47(b) at page 581 she said that she was sorry for the Lamph family and their loss.

[419] Having considered all of the evidence I am not satisfied that the prosecution have proved beyond reasonable doubt that Gibson had prior knowledge of what was intended, nor am I satisfied that she knew that death or really serious bodily harm was the intended result when she dressed "them", whoever "them" may be. I am, however, satisfied on the basis of B71 that she played a major role in what happened afterwards. She came across Gary and was in no doubt that there had been a shooting. She did everything she could to ensure that all evidence would be destroyed or removed by asking for the clothes, and then taking the gun, which she said was "still hot", away and arrange for it to be hidden. When she learnt that the bike had not been removed she took steps to see that it was, and arranged for someone to throw it in the river. I am further satisfied that this person, whom she referred to as "Don", was in fact Don Marno to whom she made several telephone calls on Wednesday 22 April (1), and Thursday 23 April (6), accordingly to Mr Telford's analysis of the phone calls. See Exhibit A112. By removing the gun she was not merely determined to impede the gunman's

apprehension or prosecution, but intended that it would be preserved for another occasion.

[420] For these reasons I find Gibson not guilty of murder on count 66, but guilty of doing without lawful authority or reasonable excuse an act with intent to impede the apprehension or prosecution of the murderer of Adrian Lamph. I also find her guilty on count 67.

Incident 22 – Conspiracy to place a bomb in Dundalk in 1997

[421] On 25 May 1997 as a result of an anonymous telephone call to UTV an explosive device was found in Clanbrassil Street, Dundalk. It was contained in a grey plastic carrier bag bearing the logo "KaKa Craigavon Shopping Centre". Commandant Farrell carried out a controlled explosion and recovered the remains of a thermos flask which had contained approximately 1lb of "Powergel". He found that it contained a commercial detonator that had functioned. This had been attached to a mechanical alarm clock connected to a 9 volt Duracell battery. As can be seen in Exhibit A91, album 1, photograph 3, a grey plastic substance had splattered the adjoining wall when the device partially exploded.

[422] The device was examined and described by Garda Quinn, who found that a mechanical clock with the hands missing had been used as the timer, and that the detonator was "blown". The explosive was Powergel, a commercial, slurry type explosive. Powergel is manufactured by Orica UK Ltd, and David Reid of that company described how removing it from its original sealed plastic packages, handling, or placing it in other containers not designed for such use could accelerate its deterioration, which could create the smell of ammonia.

[423] Gibson faces two counts relating to this bomb under the Explosive Substances Act 1883, both between 1 January and 25 May 1997. The first is count 70, conspiracy to cause an explosion of a nature likely to endanger life or cause serious injury to property in the Republic of Ireland, contrary to Section 3(1)(a). The second is count 71, possession of the device with intent by means thereof to endanger life or cause serious injury to property in the Republic of Ireland, or to enable some other person to do so, contrary to Section 3(1)(b). These charges depend upon admissions made by Gibson on two occasions, in B48 and in B79.

[424] B48 is the result of a probe where no undercover officers were present, and covers the period between 2143 and 2337 on 30 March 2000. The portions between pages 766 and 768, and then a further passage starting on page 768 and ending on page 777, are brief, with the latter portion of the transcript established as starting at 2243 and lasting for 42 seconds. One of the issues raised by the defence at an earlier stage was that B48 should be ruled

inadmissible because Gibson was affected by drink or drugs. I rejected this contention so far as B48 was concerned at page 8 of my ruling of 23 May 2006. As part of the defence case an enhanced copy of B48 has been produced, and it is submitted on behalf of Gibson that it sounds as if she under the influence of alcohol, see paragraph 91 of the written closing submissions. In view of my conclusion on these counts I do not propose to deal with this issue at this stage, although I will return to it in connection with some of the remaining counts.

[425] The portion of B48 upon which the prosecution rely in support of these charges is to be found on pages 769 and 770, and is as follows.

> Muriel: No you, see whenever he brought me them detonators you know before the bomb in Dundalk, he brought me them detonators and, he was expecting Swinger to be there, eh, it was a total shock to him. think it was his way of putting Swinger in a hole.
>
> Jim: Yeah.
>
> Muriel: And ah, Swinger sent me and I said have you got eh something for Swinger and he says eh aye I have, but em, but I dont think I should be giving it to you and I says, well then you wont be giving it to anybody and then he went out and he put them all in a sock and give them to me. But the powergel that we got from him didn't work.
>
> Jim: I know it didn't work, fuck sake, sure (inaudible) didn't we swap fucking weapons for it.
>
> Muriel: Mmm.
>
> Jim: Fuck sake, twice.
>
> Muriel: It didn't work, I was, I smelt it, it was fucking like rotten eggs and it kept bubbling, then it kept settling down, then it kept bubbling, it wasn't, it isn't right.
>
> Jim: Powergel, that powergel was off fuckin a long time ago for fuck sake.
>
> Muriel: I actually think there was something added to it.

> Jim: No, it was just, it was old stuff, fucking sell past date, long sell past, date stuff been lying fucking years and they kept on blaming the detonators. The detonators, the detonators, the detonators weren't powerful enough to set it off.
>
> Muriel: Well the detonators came from Sparky too.
>
> Jim: Aye, but don't forget they weren't fucking eh, military dets, they were only small commercial dets. ,
>
> Muriel: I know.
>
> Jim: For one wee stick of fuck'n, what do you call it, powergel.
>
> Muriel: Ahem.
>
> Jim: Know what I mean they were sticking fuckin 2 or 3 in them try and set off a fucking a bomb then fucking height. The military det was a big fucking, big fucking.
>
> Muriel: He knew.
>
> Jim: Course he fucking knew, he was in the Army. He was handing over fucking commercial detonators.
>
> Muriel: But that night that I went to pick up them detonators, that really really shocked him, because he, he (pause) and Kathy KERR was in on it.

[426] In this passage Gibson admits that she obtained a quantity of detonators for Swinger from someone she refers to as "Sparky", and then says "But the Powergel that we got from him didn't work", to which Fulton replies "Didn't we swap fucking weapons for it". Gibson put this "before the bomb in Dundalk". However, there is no reference to either the detonators or the explosive being intended for use in the Republic of Ireland. Whilst Gibson is clearly familiar with its properties, she says the Powergel did not work, to which Fulton replies that it was swapped for weapons, an exchange which suggests that this consignment of Powergel could not have been used in the Dundalk bomb.

[427] The connection with the Dundalk bomb in particular depends upon B79. This relates to a recording of Gibson and Dave S on 3 June 2000 as they work at a market stall from 1230 onwards.

Muriel: The problem with the Prods is they could never make fucking decent bombs (Dave S laughs). Honest to God they couldn't (inaudible) blowing up all kinds of fucking things, trying to make bombs. No good. They're good at shooting.

Dave S: Yeah.

Muriel: Good accurate, accurate marksmen you know. That's why you always here (sic) about Catholics getting shot and Protestants getting blew up (inaudible).

Dave S: Cause they're trying to make their own bombs.

Muriel: (Inaudible) (Dave S laughs) (pause) the last one we sent down to Dublin went off in fucking Dundalk.

Dave S: How far's that from Dublin.

Muriel: About er half way there.

Dave S: (laughs) what like. On a timer or just.

Muriel: Well see, I was running round for days buying these er wind up watches. You couldn't have.

Dave S: What the old style.

Muriel: Do you know how hard they are to find now. They're really hard to find now.

Dave S: I think you'd have to buy like erm you know those railwayman's watches.

Muriel: Yeah.

Dave S: Things where you gotta pull the thing out like that.

Muriel: Yeah.

Dave S: Yeah. That's the only ones I've ever seen like of like.

Muriel: Well you need one of them you need a wind up watch. I had every wind up watch in the town (inaudible) run round in the taxi (inaudible) was hilarious so it was. Then we sent that one down.

Dave S: (Inaudible talk and laughter) was anyone hurt.

Muriel: Yeah, there were a couple of them (inaudible) but none of ours I can tell you. They (inaudible) fucking smelt it burning you know.

Dave S: (Inaudible).

Muriel: (Inaudible).

Dave S: Does it.

Muriel: Yeah. It starts to bubble and then it starts to stink.

Dave S: And you can hear it.

Muriel: Ah ha. You can see it (laughs) you can see it bubbling (inaudible) fuck. Get out of here (laughs).

Dave S: Jesus Christ. Get out of that fucking things as quick as you can say jack shit.

Muriel: You're supposed to keep it er at the same temperature all the time.

Dave S: What is it.

Muriel: Its em power gel.

Dave S: Its what.

Muriel: Power gel.

Dave S: Whats that.

Muriel: I don't know, I just know it, eh, to see it (inaudible) the smell of it. I could pick the smell of it out a mile away. It smells like fucking rotten eggs (inaudible).

Dave S: (Laughs) but what causes it to heat up.

Muriel: Just on its own, it fucking, it sweats, it sweats (inaudible sentence)

They then deal with customers at the stall for several minutes and Muriel talks to a customer about Ireland. She then continues talking to Dave S.

Muriel: Yes its starts to bubble then and then it starts to seep, fuck and you can't get it offa yer.

Dave S: (Inaudible) a liquid or.

Muriel: Yeah (pause) its gel (inaudible) starts bubbling you can't stop it, you know.

Dave S: (Inaudible) (laughs).

Muriel: No you can't stop it unless you've got a freezer, something sitting there you can stick it in, you know and stop it.

Dave S: (Inaudible).

Muriel: Ah ha that's it (inaudible).

Dave S: (Dave and Muriel overtalking).

Muriel: No (inaudible) Dundalk the next day (serious interference) blew up in the (inaudible) and caught a couple of boys that were coming out (both laugh) it was (inaudible) after that.

Dave S: Oh well.

[428] Gibson discusses the properties of the bomb in detail, showing considerable familiarity with the properties of Powergel. Twice she refers to "we" sending the bomb down, and she refers to her obtaining the timing devices. The use of the term "we" in conjunction with her description of herself obtaining devices to be used as timers, together with what she said in

B48, raises a strong inference that she was an active participant in the preparation of a bomb that was to be exploded in Dublin.

[429] Nevertheless, there are three respects in which her admissions are inconsistent with her involvement in the preparation of the device found in Dundalk on 25 May 1997.

(i) She twice refers to obtaining watches for use as a timer but the evidence is that a clock, not a watch, was used in the Dundalk bomb.

(ii) The reference to the device having "blew up" is consistent with its partial explosion, but she goes on to infer that two people were injured in the explosion when she says it "blew up in the (inaudible) and caught a couple of boys that were coming out". There is, however, no evidence of anyone being injured.

(iii) The reference to the Powergel not working.

[430] These are significant inconsistencies, and weaken the otherwise strong inference to which I have referred. In interview C63(b) she was questioned about this allegation, and she denied involvement. At page 725 she said that she had heard about it in a bar, and at page 728 she said that she was not involved in making this bomb. At page 740 she said that she had "heard it in the pub anyway". Whilst it may well be the case that Gibson had possession of detonators and other materials used in the construction of explosive devices at some time prior to 25 May 1997, these inconsistencies give rise to a reasonable doubt as to whether she was implicated in the preparation of the bomb that was found in Dundalk on that day, and I find her not guilty on counts 70 and 71.

Incident 23 – Possession of detonators

[431] Count 72 charges Gibson with possession of detonators with intent "by means thereof to endanger life or cause serious injury to property in the United Kingdom or in the Republic of Ireland, or to enable some other person so to do" between 1 January 1995 and 30 September 1999, contrary to Section 3(1)(b) of the 1883 Act. This charge depends upon the references to Gibson being given detonators in the passage from B48 already quoted at [425]. In this passage the time to which Gibson is referring is only identified as being "before the bomb in Dundalk", which infers that it was before 25 May 1997, but is not otherwise precise. She describes how Swinger sent her to someone she refers to as "Sparky", who put detonators in a sock and gave them to her. At paragraph 106 of the closing submissions it was argued that it was not clear whether Gibson was aware that she was in possession of detonators, but her references to detonators are clear evidence that she was fully aware of what they were after she had received them from Sparky, and I am satisfied

that if the admissions are reliable there is ample evidence to establish that Gibson had physical possession of the detonators, that she knew what they were, and that she intended that they would used to initiate a bomb on some occasion.

[432] At paragraph 107 of the closing defence submissions it is argued that there is no evidence that they were used either in the Dundalk bomb or any other explosion where life or property was endangered. That is correct. But the count alleges that the intent was to endanger life or cause serious injury to property, not that life was endangered, or that serious to property was caused. It also alleges that this was to be in either the United Kingdom or the Republic of Ireland, and any Loyalist explosion would be bound to be in either jurisdiction. Finally, the intent is alleged "to enable some other persons so to do". The admissions on their face clearly establish the necessary elements of the offence alleged.

[433] During interview C63(b) at page 728 Gibson denied involvement in making the Dundalk bomb, and although she was not asked about possession of the detonators separately, her general denial of involvement in the Dundalk bomb should be treated as a denial of this charge. B48 is the sole basis for this charge, and when referring to B48 at [424] I said that I would return to the issue whether Gibson was affected by drink or drugs during that conversation, and I now do so. B48 covers the period between 2143 and 2337, and the admissions are contained in a passage that comprises most of the 42 second period from the foot of page 768 to the end of direct speech at the bottom of page 770. It is asserted by the defence that the enhanced tape, presumably the other tape prepared by Mr Kielty, shows that "the defendant sounds as if she is under the influence of alcohol. Her speech is slow and halting". Whilst preparing this judgment I have listened carefully to this passage on the enhanced tape several times, and I remain of the view I expressed in my ruling of 23 May 2006. Gibson can be heard speaking clearly, distinctly, coherently, with no sign of confused thought or expression, nor is there any apparent slurring of speech. Although this conversation takes place late at night at 2243, I am satisfied that there is nothing to suggest that Gibson is affected by drink or drugs. I am satisfied that the admissions are reliable and I find her guilty on count 72.

Incident 24 – Possession of pipe bombs

[434] Count 73 alleges that she had possession of a quantity of pipe bombs with intent to endanger life etc, contrary to Section 3(1)(b) of the 1883 Act. This charge appears to be based solely on the following brief extract from B85, a recording covering the period between 0900 and 0930 on 9 July 2000. This part of the conversation comes after a discussion between Gibson and Sam, one of the undercover officers, a conversation brought about by the news coverage about Drumcree. During that conversation Gibson is recorded as

having spoken about plastic bullets and injuries which individuals have received from them in previous years.

> Muriel: I got hit on a rebound, so I did, fucking, my leg was black, you know crawling across that no mans land, you know the field. There were they dig it all up and they'd put a moat around it you know and filled it up full of old muddy water you know and we got this corrugated tin and threw it down over it, you know, so that we could crawl across it and get into the field, you know to get closer to the Police, you know so we could you know distract them while the other ones threw the blast bombs at them. And we were, we were lying in that field and all of a sudden, they done a big switch around (inaudible) before us going what the fuck are they doing you know and I said hit the ground, everybody, everybody hit the ground. And the bullets just came fucking flying, you could hear them going right past your ears and I got a rebound one. Rebounded off the ground, hit me on the leg and that was, I mean I was limping. It was fucking black, it was really, really black, and that was just a rebound, you know if would have hit my leg it would have broken it.
>
> Sam: Is a blast bomb over there, what we call a petrol bomb here.
>
> Muriel: No, a petrol bomb is made in a milk bottle, with sugar and petrol and a rag, a blast bomb, its made of a piece of steel pipe and er, you fill it full of black powder and then you fill it up, or part of it full of, you know the pebbles out of a cartridge.

[435] In order to secure a conviction on this count the prosecution have to show that Gibson was party to a joint enterprise whereby she would assist others who had physical possession of blast bombs by creating a diversion to enable the blast bombers to get closer to the security forces so that they could throw their blast bombs at the security forces.

[436] Although Gibson does not refer directly to Drumcree, it is clear from the context of her earlier comments about Drumcree, and from those comments being made on 9 July 2000, a time when the tension over Drumcree would be high, that her description does relate to Drumcree. Her description of the ditch also makes it clear that she is referring to the confrontations between the demonstrators and the police that were a feature of Drumcree,

and which, for example, gave rise to the charges relating to Fulton considered earlier in this judgment.

[437] Gibson was questioned about these remarks in interview C62(b) when the relevant parts of the tape were played to her. Between pages 713 and 715 she said "no comment", and at page 715 she denied strapping the blast bombs around herself. This conversation occurred between 0900 and 0930 and there is no suggestion that she was affected by drink or drugs at that time of day. At paragraph 113 of the defence submissions the case was put as follows.

> She was claiming that she was trying to get closer to the police so that '*we could you know distract them while the other ones threw the blast bombs at them*.' (page 1097). She does not claim to have been party to a joint enterprise to throw blast bombs at the police. Nowhere in the conversation does she claim to have been in possession or control of pipe bombs. The fact that she was able to describe how they are made does not constitute evidence of possession. Nor is her suggestion that '*you could strap them all the way round you and walk them through the fields'*. (page 1098).

[438] Her statement that she was doing this "… to get closer to the Police, you know so we could you know distract them while the other ones threw the blast bombs at them" is an unequivocal admission that she was acting as a decoy with full knowledge that others had blast bombs which they intended to throw at the police, and that her intention was to help the bombers by distracting the police. By doing so she was aiding and abetting the bombers and was part of a joint enterprise to attack the police with blast bombs. I am satisfied that her statement is reliable and I find her guilty on count 73.

Incident 25 – Possession of firearms

[439] Count 74 alleges that that Gibson had possession of a quantity of assault rifles with intent to endanger life or cause serious injury to property, or to enable some other person by means thereof to endanger life or cause serious injury to property, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981. The offence is alleged to have occurred between 1 January 1995 and 30 September 1999. This charge depends upon B82, which is a brief extract from a conversation between Gibson and Liz, one of the undercover officers, whilst they are in a car together on 24 February 2000 between 1343 and 1738. When Liz was cross-examined on 13 March 2006 it was established that they drove to Plymouth that afternoon, although they were in each others company for the rest of that day as well, and into the early hours of the next day. See page 59 of the transcript.

[440] Parts of the recording are of poor quality, but the relevant passages are to be found at 1087.

> Muriel: You know I don't know how many of them there was but apparently there was quite a few (inaudible) but they must have all, eh prepared their weapons and everything in (inaudible) house because eh, there must have been residue on everything, must have been real sloppy about it, like I mean I've had A, AK's lying on the floor, everything, and they've never found no, eh residue, you can always put down a black plastic bag and newspaper and eh, you know put something like that on the carpet.

[441] When Liz was cross-examined about this episode it was suggested to her that she had newspaper cuttings in the car which she handed to Gibson, and the cuttings had at least one photograph of rifles on the floor of a house that had been raided in Northern Ireland. It was suggested to Liz that it was the production of the newspaper clipping that led to the remark about guns, and that Gibson was talking about somebody else, something she does not really know much about. Liz responded that she could only go by what is on the transcript of the conversation. See pages 60-63 of the transcript of her evidence.

[442] No suggestion was made to her that Gibson was, or could have been, affected by drink or drugs on that occasion, nor was I asked to listen to the tape. I see no reason to assume that she was so affected on this occasion. As Gibson has not given evidence there is nothing to support this suggestion that, as I understand the cross-examination, she was simply commenting on pictures that she was being shown. Whilst her initial words infer that she was commenting on something that had happened earlier, her statement "like I mean I've had A, AK's lying on the floor and they've never found no, eh residue" is a definite statement that she had AK's in her presence on the floor on some occasion, and that residue from the weapons had not been found when he house has been searched. When questioned Gibson denied having possession of any of the guns she was asked about. At paragraph 120 of the defence submissions there is a reference to part of B82 that was transcribed by the defence, defence Exhibit G12, but this exert from the tape does not appear to have any bearing on the passage relating to AK's quoted above.

[443] I am satisfied that the reference to "AK's" is to assault rifles of the AK 47 type, and that Gibson was saying that she, not others, had such weapons lying on the floor in the past. In the absence of any other explanation, that is sufficient to establish that she had the necessary physical possession of these weapons, and the knowledge that they were firearms, that would render her guilty of possession of assault rifles with the necessary intent to endanger life

or enable others to endanger life under Article 17. No other explanation has been forthcoming, nor can I conceive of one.

[444] While count 74 alleges that the offence was committed on "a date unknown between the 1st day of January 1995 and the 30th day of September 1999", unless the date is an essential part of the alleged offence it is well settled that the date is not a material matter. See Archbold 2006 at 1-127. Here there is nothing in Gibson's remarks to suggest when she had such weapons lying on the floor, and as the date is not an essential part of this offence it is not necessary for the prosecution to establish that she was referring to a time within the dates averred in the particulars of offence. I find her guilty on count 74.

Incident 26 – Membership of the LVF

[445] The last charge Gibson faces is count 75, membership of the LVF "on consecutive dates unknown between the 5th day of June 1997 and the 30th day of September 1999." In support of this charge the prosecution rely on material found in her home; on various remarks that she made recorded in the evidential tapes; and, as Mr Kerr put it when opening the case, on her admitted activities on behalf of that organisation.

[446] The pictures and other items seized from Gibson's home in Cornwall shown in the photographs in Exhibits A106 and A107 demonstrate that Gibson was very interested in the LVF. On their own they do not establish membership, but they certainly suggest a keen interest in that organisation, and the photograph at Exhibit A107 of her holding a placard at a demonstration referring to "LVF prisoners' of conscience" at photograph 2 suggests that her interest was not merely academic, but that she was at least a supporter of the LVF.

[447] The nature and extent of her interest in, and support for, the LVF was described by Liz at page 68 of the transcript of her cross-examination on 13 March 2006.

> A. But the way she has portrayed herself to me from the day I first met her was that she was very proud of her involvement in the LVF. She very proud of the people, they are very close, and she considered herself – this is how it came across to me – she considered herself to be important and played an important role, and she often use to crack jokes about having to get them out of trouble, 'the boys' as she called them, getting them out of trouble when they got in trouble.

> Q. She didn't know how they could survive without her?
>
> A. She gave the impression to me that she considered herself to be important to them, yes, and they were all very close.

I accept that this assessment of Gibson's attitude is truthful, not least because it is consistent with the many references by Gibson to the LVF and individuals prominent in it, such as Billy Wright, that appear throughout the evidential transcripts, and her subsequent denials of membership of the LVF when questioned has to be weighed against this interest and support. These documents and her interest in, and support for, the LVF and its leading personalities in the Portadown area do not of themselves establish that she was a member of the LVF at the time alleged in the charge, but they are relevant when considering the remarks made by her and on which the prosecution also rely, and her other admissions about her activities.

[448] The first direct reference by Gibson to the LVF in this context is to be found in B71 at page 976 during her discussion with Vanessa Howarth. Howarth says:

> But it looks like Loyalists and the UFF are joining together.

To which Gibson replies:

> The LVF and the UFF, the Loyalist Volunteer Force, that's us.

[449] I have already explained at [416] why I am satisfied that the admissions in B71 are reliable, and that there was nothing to indicate that Gibson was affected by drink or drugs. At paragraph 127 of the defence submissions the following points are made about the inference that might be drawn from these remarks.

> This is a good example of why assertions such as this cannot be taken literally. First of all, this remark was made on 25th July 2000, 10 months after the end of the period specified in the indictment. It is not, therefore, an admission of membership during the relevant period. More importantly, it was said at a time even on the Prosecution case, when Mrs Gibson was apparently not in the LVF or involved in any paramilitary activity and had allegedly left Northern

> Ireland the previous year in order to escape from that arena. Nevertheless, she was still identifying herself with the LVF. In other words, remarks which appear to constitute an admission of membership are really no more than an expression of identity or support. Expressed in the language appropriate to the issue that arises at this stage in the trial, it is a reasonable possibility that remarks such as this do not indicate membership.

[450] As this submission concedes, Gibson is still identifying herself with the LVF when she makes these remarks. But whether this is no more than "an expression of identity or support" is something that cannot be decided in isolation from the entirety of the evidence relating to this charge, and that applies equally to the remaining passages upon which the prosecution rely.

[451] Mr Millar referred to remarks made by Gibson in B77 at page 1039 about photographs that had been smuggled out of jail and were re-touched, and at page 1042 to her possession of Loyalist magazines, but in my opinion these do not advance the prosecution case.

[452] The next reference on which the prosecution rely is to be found in B84, part of a conversation on 19 June 2000 between 2109 and 2218. Gibson, her daughters Rain and Ayesha, and Dave S are present. Gibson telephones a friend called Lisa who, to judge by the content of Gibson's remarks, is in Northern Ireland. Rain then speaks to Lisa, whereupon Gibson interjects and then resumes her conversation with Lisa.

> Muriel: Tell Lisa I want her to take my place over in the LVF. (Laughter).
>
> Muriel then speaks to Lisa on the phone again.
>
> Muriel: Lisa, you're going to take over my place over there cause I, I gave the prisoners all your numbers is that alright? (laughs) they need somebody to help them out over there and I thought well like you're not doing nothing so I gave them your ma's number and your mobile number is that alright so they'll give you a wee ring whenever they need a protest or anything like that alright (laughs). It'll give your Ma something to do as well.
>
> Overtalking from Rain.

> Muriel: Alright and we're going to show you where the arms dumps are alright where all the weapons are you can only give them out if they're fucking sober right don't give them to anybody drunk okay (laughs) that's the only rules okay oh good (laughs) thanks Lisa.

[453] Whilst Dave S was present, there is nothing to suggest that he instigated, or played any part in, this conversation. It cannot therefore be impugned as being the functional equivalent of an interrogation. This tape was played. Gibson can be heard speaking very clearly and distinctly, and I am satisfied that she was not affected by alcohol or drugs. As is apparent, these remarks were made in a jocular vein, but that does not necessarily mean that they do not have an element of truth in them. At paragraph 128 of the defence submissions it is said that:

> Dave S, who was present during this conversation, agreed that Mrs Gibson 'could well have been [joking]'.

It is, however, clear from the entirety of the remarks of Dave S on this issue at pages 117 and 118 of his cross-examination on 21 March 2006 that he was not conceding that Gibson was necessarily joking. As he said on several occasions, when asked if these remarks were consistent with being said in jest, they could be taken "either way". The full answer in which he said that Gibson could have been joking also made this point.

> A. Oh, she could well have been. I mean, at the end of the day, I don't, I don't know who she is speaking to on the other end of the phone.

[454] Reference was made to comments made by Gibson in B86 at page 1099 to page 1104 when she appears to be showing various Loyalist publications to Dave S. I do not consider that these advance the prosecution case.

[456] B87 records remarks made by Gibson to Dave S between 1345 and 1500 on 5 August 2000 when they were working on a market stall. There is nothing to suggest that she was affected by alcohol or drugs, nor was any suggestion that she was, or may have been, made to Dave S when he was cross-examined on 22 March 2006. See pages 21 to 26 of the transcript. I am satisfied that she was not so affected.

[457] One of the passages relied on in this tape is between pages 1106 and 1108 where Gibson describes how money was extorted from various sources such as bars and building sites. As will be seen, at one point she referred to

building workers as being beaten up, implying on one reading that she had done so. Gibson is a small woman, and as Dave S accepted, it would be nonsensical to think that Gibson would be able to do this herself. At paragraph 131 of the defence submissions it is suggested that this tape could not seriously be relied upon to support the contention that "Mrs Gibson went round building sites intimidating workers and claiming to be in the LVF". However, Gibson's remarks on this have to been in the context of the entirety of her admissions on this topic.

> Muriel: But I used to give him an envelope twice a year and I'd go round all the businesses twice a year and put in an envelope, Loyalist prisoners of war on it donations please, but it wasn't donations if you don't put nothing in it you'd fucking get petrol bombed. Collect (inaudible) every single shop in town had to pay, every pub. A pub couldn't give you under forty quid a taxi service couldn't give you under a hundred.
>
> Dave S: Really.
>
> Muriel: And then if you got a builder, say we had a Catholic builder in a Protestant area building, used to watch out for them. Go up to them and say to them I'm with the LVF its gonna cost you five grand to work here or else your going be run off this site, the contracts going to somebody else.
>
> Dave S: They'd pay up.
>
> Muriel: Yeah.
>
> Dave S: And then you just walked away.
>
> Muriel: No you'll let them do their building they're not gonna build in our areas for nothing, you know, if they didn't then they'd one at the time you'd grab the workers and got them on their own, beat the shit out of them left them out the road you know, then they always paid up.
>
> Dave S: Bad way of doing business.
>
> Muriel: (Laughs) we had what 30 fucking families or something to take care of (inaudible) shit what are we going to do this week you know.

[458] It is apparent from the entirety of this passage that the process Gibson described did not involve her personally attacking building workers. What she described was a process that involved a demand by her for payments from businesses, backed up by the implied threat of violence, in other words that she was demanding money with menaces to use the old expression. There is nothing implausible about her doing that on behalf of the LVF as she could call on Fulton and others to back up her demands. What she went on to say was that if a Catholic builder did not pay up then one of the workers would be beaten up. She said "you'd grab the workers", not that she would do it herself. There have been many prosecutions of Loyalist terrorists for attempts to distort money from builders and other businessmen, and Gibson's description of systematic extortion is all too real. It is suggested that inviting donation for Loyalist prisoners of war "does not amount to evidence of membership of the LVF" (see paragraph 132 of the defence submissions). However, I consider that this is unrealistic for the following reasons. First of all, Gibson describes how the person who goes up to the building worker says "I'm with the LVF" and, secondly she concludes her remarks by saying "We had what 30 fucking families or something to take care of." These remarks reveal the reality of the situation, namely that she was involved in extorting money to provide financial support for the families of LVF prisoners. Providing financial support for the families of members in this way is a function that is integral to the operation of all terrorist groups in Northern Ireland, and one that is most unlikely to be placed in the hands of a non-member. When considering this passage, I have excluded the passage which follows in which Gibson is said to have referred to telephone conversations because it is not in direct speech for the reasons I have given in relation to other such passages earlier in this judgment.

[459] A central function of any terrorist organisation is the storage and safeguarding of its weapons and ammunitions. Whilst use might be made on occasions of sympathisers to make premises or vehicles available for the storage or transportation of munitions, where an individual is clearly involved in these matters on more than one occasion, I am satisfied that such a level of involvement may, depending on all the circumstances, support an inference that the individual is not merely a supporter of, but is a member of, the organisation concerned. However, while such activity could support such an inference, other evidence of membership would also be necessary before such activity could prove the charge of membership of a proscribed organisation. Were other evidence not required, then merely to supply arms, or to be involved in the transportation of them from a supplier to a terrorist organisation in question, could of itself justify a conviction for membership even if the supplier or transporter was plainly not a member of that organisation. That would clearly be wrong.

[460] One of the occasions when Gibson describes possession of weapons in circumstances that suggest she was responsible for their safe keeping was in the passage in B87 which immediately preceded, and lead up to, the money gathering activities considered in the preceding paragraphs. At page 1106, Gibson described how she would never allow individuals such as Philly (Philip McClean) to take weapons from her when they were drunk. It is clear from this that she was entrusted with the guns and had sufficient standing to refuse to hand them over to someone who was drunk. Although there is nothing in the references to the weapons to show that this occurred between the dates alleged in the charge, it is plainly within the overall context of the activities of the LVF she was describing. This can be seen from the references to the LVF and the extortion of money on its behalf that occur in the passage which follows in the transcript and which has already been cited.

> Muriel: I would never have let them have weapons whenever they were drinking you know.
>
> Dave S: No.
>
> Muriel: They'd have to come to me to get them, I would never le them have them, I got called some names fucking bastard you give us a gun you know.
>
> Dave S: I bet they thanked you for it after though.
>
> Muriel: No, there was nothing said really after it only thing they'd say afterwards would be don't fucking tell Swinger I was down here drunk looking for a gun, please don't tell him, sure you wont tell him yeah I'm gonna tell him, fucking right I'm telling him. Whenever they were getting all these engraved they wanted to put on mine I'm telling Swinger (laughs).
>
> Dave S: Smart that actually.
>
> Muriel: That (inaudible).
>
> Dave S: What's the actual thing on the front.
>
> Muriel: The LVF.
>
> Dave S: It is.
>
> Muriel: Lead the way.
>
> Dave S: Solid gold, its nice. What that say.

Muriel: No comment (pause) they're all saying what do you want put on yours, what do you want put on yours some were getting on the rat pack and some were getting on this that and the other, I said I want no comment put on mine they said is she fuck you're gonna get I'm telling Swinger (laughter) cos they had to be punished but you know what I mean so that they wouldn't keep doing it again and he was the only one that could scare them, so that way they didn't get in trouble, they didn't they just got a smack in the mouth you know and it made them think again before they'd come back drunk again and ask for a gun.

Dave S: Yeah.

Muriel: You had to do something though.

Dave S: Could be fucking bedlam otherwise.

Muriel: A fuck'n madhouse it would be I had Philly at my door at fucking 3 o'clock in the morning get me a gun get me a gun. How long have you been drinking, two days, what what's it to you. Who are you going to kill. The man that owns the pub. By now he should be like killing you, fuck off you're getting nothing.

(Pause in conversation as they tend to customers).

Muriel: Instead of letting Philly shoot the barman, the bar owners, I barred him from the pub you know he's not allowed in that pub no more.

Dave S: (Muddled speech) barman owed you a proper drink didn't he.

Muriel: He gave me forty ounce of vodka.

Dave S: Yeah.

[461] Another occasion when Gibson admitted possession of weapons in circumstances which strongly suggest that she was a trusted associate of members of the LVF was when she removed the gun used in the shooting of

Adrian Lamph, an offence which is also within the period covered by this charge.

[462] While some aspects of the evidence relied upon by the prosecution in support of the charge of membership of the LVF may be stronger than others, weighing all of the evidence as a whole: that is the photographs; her portrayal to Liz of being involved in the LVF; her remarks about her place in the LVF; her role in extorting money for the businesses for the LVF, and her actions in connection with firearms, I consider that the cumulative effect is to give rise to an extremely strong inference that Gibson was not merely an active supporter of the LVF, but was a member of it. In the absence of any evidence from her to explain or to contradict that inference, despite her repeated denials in interview that she was a member, I am satisfied that the proper, indeed the inescapable, conclusion from all of this evidence is that the prosecution have proved to the requisite standard of proof beyond reasonable doubt that Gibson was a member of the LVF and I find her guilty on count 75.

Addendum

[463] I wish to correct a number of typing errors in the transcript of my ruling of 23 February 2006.

(i) Page 2, line 3 ”had” should read ”how”.

(ii) Page 3, line 3 “trail roller” should read “tailor”.

(iii) Page 19, line 6 “I’d” should read “aide”.

(iv) Page 40, line 9 should read “..September 2005). Given the sensitivity”.

(v) Page 40, line 19 should read “I see no reason not to accept this”.

(vi) Page 44, line 4 should read “the defence”.

(vii) Page 44, lines 10 and 11 should read “”I can consider”.

(viii) Page 44, line 17 should read ’’so far as (6) the FBI material”.

(ix) Page 46, line 24 should read “that requires me to consider”.

(x) Page 50, line 19 should read “”February 2005”.

(xi) Page 51, line 26 should read “solicitor in ?”.

(xii) Page 53, line 9 should read ”substantially”.

(xiii) Page 60, line 23 “should read “ensure”.