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(subject to editorial corrections)\**

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**R. v Fulton, Gibson & Landry (No.9)**

RULING ON VOIR DIRE

MR JUSTICE HART: In my ruling of the 13th March 2006 I dealt with the arguments concerning the applications of Article 76 of the Police and Criminal Evidence (Northern Ireland) Order 1989, and I do not propose to repeat my conclusions on the law. However, the defendants have renewed their applications under Article 76 and in a number of instances raised Article 76 issues with the witnesses on the voir dire in respect of some of the evidential tapes in respect of which submissions had not been made before.

As will appear later in this ruling I have considered each evidential tape, and in the course of doing so have considered whether there maybe instances where Article 76 should be applied in the same way that I considered some of the evidential tapes in my ruling of the 13th March.

Before I turn to the submissions made under Article 74 of the 1989 Order, I propose to consider a submission made by Mr Treacy and adopted by Mr Macdonald and Mr O'Rourke, relating to the ambit of Section 26(9)(c) of the Regulation of Investigatory Powers Act 2000, (RIPA), and whether evidence obtained by covert human intelligence source or CHIS, and each of the undercover officers in this case was a CHIS, can be given in evidence. Mr Treacy's submission adopts an argument put forward by Simon McKay in Archbold News, Issue 2, March 8th, 2004. Section 26(8)(c) of RIPA provides that a person is a CHIS if,

*"...he covertly discloses information obtained by the use of such a relationship",*

and that is what the officers did within the meaning of Section 29(a) and (b). Section 29(c) provides that,

*"...a relationship is used covertly and information obtained as mentioned in subsection (8)(c) is disclosed covertly if and only if, it is used, or as the case maybe, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question."*

Mr McKay suggests in Archbold News that a literal reading of Section 26(9)(c) prevents the use in court of information obtained in this way because it would be disclosed to the defendant and thus, he argues, would no longer meet the definition in Section 26(9)(c) because of the phrase "...if and only if..." in the subsection.

To Mr Treacy's submission Mr Kerr advanced two submissions. The first is that Section 26 appears in Part II of RIPA and that RIPA, other than Section 17, does not deal with evidence or its status, rather it is concerned with the circumstances in which authorisation should be granted. He points to Section 27(1) which provides that conduct to which Part II applies is lawful for all purposes if it is in accordance with an authorisation. His second argument was that Section 26(9)(c) refers to the use made of the material at the time it is obtained by the CHIS and not subsequently.

Mr Treacy accepted that the effect of his argument would be that a CHIS could only be used to gather information for intelligence purposes and not for evidential purposes, as the latter would invariably involve disclosure to the defendant by being used in the proceedings.

I am satisfied that such a result could not have been the intention of Parliament, nor could it be said to be the literal meaning of Section 26(9)(c). Section 26 is a definition section, and the provisions of Section 26(9) relate to the time at which the surveillance is being carried out, they do not seek to prescribe how the material can be used subsequently.

The difficulties identified by Mr McKay seem to me to disappear if one views Section 26(9)(c) in that way because it is concerned with the manner in which the information is obtained from the suspect and passed on by the CHIS in accordance with Section 26(8)(c). That is what is meant by disclosure, not its subsequent use in a fashion that brings it to the attention of the defendant. I therefore reject Mr Tracey's submission on this point, and I am satisfied that the

evidential tapes can be given in evidence provided that they are otherwise admissible. I do not consider it necessary to decide whether Mr Kerr's first point is correct.

In my ruling of the 13th March I set out the terms of Article 74 and I do not propose to do so again. Although it was suggested that there was evidence of oppression within Article 74(2)(a), I consider that there is nothing to suggest that any of the undercover officers behaved in an oppressive manner towards any of these defendants, and as I observed at page 3 of my ruling of 13th March, the defence submissions have relied primarily upon Article 74(2)(b).

In the context of the present case, the Court has to consider the admissions in a number of stages; (1) Identifying what was said or done. This is primarily directed at the undercover officers but the actions of a third party, such as Tim Bennetts in the case of Rain Landry, maybe relevant. (2) Identifying whether there were other circumstances likely to render unreliable any confession made by the accused. The test being an objective one. (3) Asking whether the prosecution have proved beyond a reasonable doubt that the admissions were not obtained in consequence of anything said or done. [See Archbold 15-384 and *Re Proulx* [2001] 1 AER per Manse LJ at page 71, paragraph 32 and pages 76 and 77, paragraphs 45 and 46].

A number of aspects of the present case require consideration before I turn to the matters that are specific to one or other defendant. The first is whether the exclusion of one tape or more than one tape requires the exclusion of a subsequent tape or tapes. Both Mr Macdonald and Mr Treacy submitted in different ways that there was a connection between the circumstances in which different tapes were obtained. Mr Macdonald submitted at paragraph 4 of his written argument of 25th April that it would

*"...be wrong to admit subsequent assertions which essentially confirmed to the same officer the suggestion that had previously been improperly elicited by that officer".*

Mr Treacy at paragraph 5 of his written argument of 27th April made a similar point when he said that

*"...the proper approach is for the Court to consider the case in the round and where it inures to the benefit of the accused, consider specific examples of unreliability which have emerged from the evidence of the undercover officers as being not only individual but also symptomatic of the global structural risks".*

Article 74(2)(b) requires the Court to consider the circumstances existing at the time the admissions were made. Here the evidential tapes cover dates that are sometimes widely separated in time and where the circumstances were often very different to the previous occasion when a witness and a defendant were last together. In addition, these were not formal interviews by a police officer where a defendant might be expected to be influenced by what was said or done in an earlier interview only hours or perhaps days before. In each instance the defendant believed that they were talking to or in the presence of a friend and not a police officer and would therefore be less likely to be influenced by what had occurred on another occasion when deciding to say these things.

There are occasions when tapes relate to the same day, where one overlaps with, or effectively is a continuation of the other. In those circumstances what was said or done in relation to one tape maybe of considerable relevance to the other. However, other than in those circumstances, the questions of admissibility must be decided in the light of the circumstances relevant to each tape.

A common feature of a number of the evidential tapes is that alcohol was involved because conversations were recorded in pubs or restaurants. If there is evidence to suggest that a defendant's tongue may have been loosened by alcohol, then consideration has to be given to excluding the tape in question, either under Article 74 because the amount of alcohol involved may affect the reliability of the admission, or under Article 76 because it would be unfair to allow evidence to be relied upon if there was reason to believe that the officers may have supplied the drink to loosen the defendant's tongue. That is not to say that consumption of any alcohol would have that result, because social gatherings on licensed premises are entirely normal and one or two drinks will not be significant because it cannot be expected to have any affect on these adult defendants. It is interesting to note the

comments on alcohol by Manse LJ in *Re Proulx* at page 78 paragraph 51, a case which also involved undercover officers.

An issue common to Muriel Gibson and Rain Landry in particular, is whether the consumption of alcohol or drugs by them can be said to be relevant, because Mr Kerr argued that anything said or done must be external to the accused. Relying on Goldenberg 1989, 88 CAR 285 and the commentary in Blackstone at page 2487.

This issue has additional significance in the case of Gibson in view of the argument that she was suffering from a chronic abnormality of mind caused by multiple drug and alcohol abuse.

Mr Macdonald referred me to page 290 of Murphy on Evidence at 9.8.1, and to Walker [1998] Criminal Law Review 211, on which Mr Treacy and Mr O'Rourke also relied.

There is clear authority that a defendant's mental state maybe part of the circumstances for the purposes of Article 74(2)(b). (See Blackstone page 2488 and the authorities cited in the third paragraph).

I agree with Professor Birch in her commentary on Walker that the better approach is to include a drugged (or drug dependant) state of a defendant as a potentially relevant circumstance within Article 74(2)(b) which might be conducive to the making of an unreliable confession. Walker is consistent with such an approach.

Finally, submissions made by Mr Treacy and Mr Macdonald about a number of the admissions were that their respective clients referred to various matters which were either extremely far fetched, or wrong, or inconsistent with other admissions they had made. Related to that was the submission that corroboration was lacking in relation to a number of the events described. I do not need to refer to these. Some are referred to in paragraph 21 of Mr Treacy's submissions, and at paragraphs 20 and 21 of Mr Macdonald's submissions. Mr Kerr accepted that some of the accounts given by Fulton in particular "appear fantastic".

It is long established that at the voir dire stage the Court is not concerned

with whether the actual confession was untruthful or inaccurate. (See Manse LJ in *Re Proulx* at page 77, C and D). That is not to say that at a later stage such matters are not relevant, because they go to weight. In any event, as Mr Kerr observed at paragraph 19 of his written submissions of the 1st May, the examples given on behalf of Fulton do not relate to Fulton's own wrongdoings "...but are opinion and tall tales about events in Northern Ireland". I accept Mr Kerr's submission that these matters are not relevant to issues of admissibility under Article 74.

I now turn to the general submissions made on behalf of Fulton by Mr Treacy in so far as I have not already dealt with them.

So far as drink is concerned he referred, at page 13, to a number of points which I do not intend to rehearse. As I have pointed out, social gatherings in licensed premises are entirely normal and I do not consider that there was anything improper in the initial, or any subsequent, meetings taking place in licensed premises.

However, there were instances where there was evidence that Fulton may have consumed more than a moderate amount of alcohol on occasions where admissions were recorded. As will be apparent when I deal with the tapes in turn I have excluded a number of tapes where there is evidence to that effect. In some of these instances the evidence suggests that the amount actually consumed by Fulton may not have been particularly significant, but the officers were not always able to say with the requisite degree of certainty that Fulton may not have consumed more alcohol than the expenditure or other records suggested. In those circumstances the benefit of any doubt on the issue must be given to the defendant, not least because there is evidence to suggest that on occasion he would drink heavily, for example on the 24th August 2000 when he arrived hung over and was not fit to drive.

However, it is important to remember that Fulton has not given evidence on the *voir dire*, and many of the tapes relate to car journeys where the uncontradicted evidence of the undercover officers was that he was driving. This was the job he was employed to do, and it is improbable that he was permitted to drive on those occasions if he was obviously affected by alcohol.

The same considerations apply to his consumption of cannabis. The evidence of Max and Robbie shows that on occasion he did consume cannabis. See the references at page 15 of Mr Tracey's submission. So does B33 at page 616 where Gibson gives Fulton 'blow', i.e. cannabis, for £10.

However, I accept that Fulton was anxious to show that he was a reliable and conscientious individual in order to retain the favour of the undercover officers who he believed were employing him in their criminal enterprise. It is likely that on occasions throughout the period of almost 15 months covered by the recordings that he consumed cannabis though there is nothing to suggest that in any of the conversations he was part of he was affected by cannabis, nor has Fulton given any evidence to support such a proposition.

It is suggested that the admissions maybe unreliable because Fulton was dependant upon the undercover officers for money and because he was socially isolated. No doubt he was anxious to impress them in order that they would engage him in the first place and then continue to employ him with the prospect of being given a more responsible role in the organisation. However, his willingness to impress does not, of itself, suggest that his admissions maybe unreliable and I see no reason to exclude the admissions on such a basis nor on the basis of any suggested social isolation.

Over the period of time from the commencement of the voir dire until this ruling, I have considered each of the evidential tapes in the light of the issues raised on the voir dire. I do not propose to refer to the circumstances in which every tape was recorded, although it will be necessary to refer to the circumstances of some. Nor do I propose to refer in every instance to the comprehensive written and oral submissions which I have received. I have taken all of them into account.

I propose to deal with the admissions made by Fulton contained in each evidential tape dealt with by each undercover officer in the chronological sequence in which the tape was recorded. Thus Liz comes first with B27, followed by Robbie, whose first tape is B52 on 3rd May 2000, followed by B53 which relates to the same date. The next two being B36 and B56, both of which relate to 27th May 2000 and so

on.

In Fulton's case the undercover officers referred to 74 evidential tapes in all, although this includes a certain element of double counting where more than one witness may have been present for part or all of a conversation, and each proved it. Thus Gary, Dave and Neil were each present during B51 on 24th April 2000.

When I exclude a tape proved by more than one officer, I will not refer to that tape again when it is proved by another officer. When I say I admit the tape in question it means that I am satisfied beyond reasonable doubt that the admissions contained therein were not obtained in breach of Article 74, and that there are no grounds for excluding it under Article 76.

Liz was present when B27 was recorded on 16th March 2000, and this is the only tape in which she was involved with Fulton. The recording covers the period between 1310 and 1633. Several portions of the exchange have been edited from the papers. The transcript consists of long discussions between Fulton and Gibson, with Liz saying very little. There is nothing to suggest that the transcript should be excluded and I admit it.

Robbie's first tapes were B52 and B53, during both of which Neil was present. Although it is unclear whether there was any significant gap between the two tapes, both relate to a period spent in the Union Rooms public house from 1805 onwards. I do not consider that there was any objectionable questioning during either tape, however some alcohol was consumed. There is nothing on the face of the transcripts to suggest that Fulton was materially affected by alcohol, but Robbie was unable to say how much Fulton had to drink. Neil said that two pints were bought, but he conceded that possibly other drink was consumed. Whilst it is probable that only a moderate amount was consumed, I cannot exclude the possibility that Fulton may have had somewhat more than two pints and in those circumstances I exclude both transcripts under Article 74.

B36 and 56 both relate to 27th May 2000 and I see no reason to exclude either. I admit them.

B20 relates to the 14th June 2000 and covers the period from 1950 to 2315,



what was described as a social evening during which Dave was also present. The evidence was that Fulton consumed 1 pint, 3 bottles of Chinese beer, 2 small cups of rice wine and 1 tin of beer. Whilst the amount of detail in Fulton's purported recollection of the events of the Northern Bank in Crossgar in December 1991 is considerable, the amount of alcohol, whilst relatively modest, is such as to raise the possibility that Fulton's tongue was loosened by alcohol, and I exclude the transcript under Article 74.

B8, B60, B62, and B67 are all transcripts of conversations when Fulton was either driving or in a car. I admit each. I admit B65. B24 relates to the 30th November 2000 and commences at 1218 on page 421. Fulton was driving. At two points there were exchanges where it was suggested that there was a form of prompting or steering of the conversation:

1. At page 424 when Robbie asked, "*What has been the biggest fuck up you have ever had though?*" This was an unobjectionable response to Fulton saying he had made mistakes.
2. At page 439 Robbie said, "*You never finished your story*" etc. Fulton had raised the Newcastle episode earlier in this conversation and I see no objection to Robbie referring to it. Neither these passages nor those passages at page 437 and 454 which, it was said, were reminiscent of James Bond and inconsistent with other references to the 'Ratpack', render the transcript unreliable. Although Fulton and Robbie met Gary and Neil and had a meal in a pub and Fulton later opened a bottle of wine, all this occurred after these admissions were made and have no bearing on whether these admissions were unreliable. I admit B24.

I admit B39.

B40 relates to the period between 2200 and 2354 on 8th January 2001 in an Indian restaurant. The evidence suggests that, excluding wine consumed after he returned to the flat, Fulton consumed one can in the flat before the meal as well as two rounds he bought in the pub. Dave was also present and consumed, on his account, one and a half pints of Guinness, a bottle of lager and half a glass of wine. It could very well be that Fulton consumed more than a modest amount of alcohol on

this occasion and I consider this renders the admissions unreliable under Article 74 and I exclude it.

B16 relates to 11th January 2001 and is at page 270. At page 272 Robbie remarked, "*Trust, loyalty and friendship, I'm trying to think of the geezer you said you shot*". Robbie denied that this was a direct question and that it was brought up in the context of the talk about loyalty. One might justifiably regard this as a veiled suggestion of hypocrisy on Fulton's part in the light of his reference to the importance he placed on trust, loyalty and friendship that preceded Robbie's remark. I do not consider Robbie's observation renders the admission unreliable nor do I consider it requires the transcript to be excluded under Article 76 and I admit B16.

Robbie's final transcript was B13 which commences at page 211. Questions were directed to remarks he made at pages 227, 233, and 235, but I do not consider that these were forms of direct questioning. However, at page 218, Robbie said, "*I mean, you would never take your own car, would you, and do something like that?*" This led Fulton to describe how he used his wife's car to attack Mr Murnan's house. I consider that this was direct questioning and I exclude B13 under Article 76.

I now turn to the transcripts proved by Max.

B32 relates to a car journey on 10th April 2001. The transcript records references to Fulton being followed by Special Branch on holiday and having discussions with politicians and negotiations with government. I do not consider that these remarks make the admissions unreliable and I admit B32.

B118 relates to 6th June 2001 and commences at page 76 of the additional evidence. It is also linked to the evidence of David who was the person who asked at page 79, "*So what have you missed most about home then Jim?*" I do not consider this question is objectionable and I admit B118. David was also involved with Max in B115 on 7th June 2001. I admit B1115.

I now turn to Gary, he was present during B42, B50 and B51, all of which were on 25th April 2000. Dave was also present during B50 and B51 and Neil was present during B42 and B51. These three transcripts between them cover an evening spent in the Union Rooms having a meal after which they went back to Neil's flat. It is clear

that during the course of the evening more than a modest amount of alcohol was consumed with five rounds at least being ordered and at one stage Fulton bought drinks. Even if he consumed only five drinks this is sufficient to render his admissions unreliable under Article 74 and, in any event, the amount of alcohol and the circumstances in which the conversations were recorded would lead me to exclude the transcripts under Article 76. I therefore exclude B42, B50 and B51.

The next transcript involving Gary is B59. I accept that on that occasion Fulton only had a weak shandy in a pub at lunch time because he was driving that day from Plymouth to Bristol and back to Plymouth after lunch. I admit B59.

B6 relates to 30th August 2000 where Gary and Fulton met in a flat where they were awaiting a phone call from Neil. I am satisfied that Fulton was not affected by alcohol on this occasion. There was a reference at page 73 to, "*Let's have a beer to Rosemary Nelson*". That appears to be an example of black humour on Fulton's part. There were references to other matters such as 'gadget man' and boobytraps which Gary said seemed exaggerated, but they are not a reason for excluding the transcript under Article 74 and I admit it.

B7 relates to 10th September 2000. Gary thought that this was an occasion when Fulton turned up hungover when they met at the Posthouse Hotel. Fulton was said to have carried on drinking until 3.30am and the recording commenced at 1046 lasting until 1524. It is unclear at what point the admissions were made over this passage of time and, given that Gary's evidence lends some support to the account given by Fulton as to his heavy drinking the night before, I cannot exclude the possibility that he may still have been significantly affected by alcohol at the early stage of this transcript and I therefore exclude B7.

B29 relates to 1st October 2000 and is replicated by B45. This conversation occurred during a car journey from Cornwall to London. I admit both.

The last tape involving Gary is B61. Neil was also present and they met in a pizza restaurant. Although there is a record that £35.20 plus a gratuity was spent on a meal and drinks between 2010 and closing time and £8.00 was also recorded as being spent in the Bank Pub, Neil had no record of how many drinks were consumed

and Gary had lost his notebook. It seems from the amounts spent it is unlikely Fulton had more than a very modest amount of alcohol during the recorded conversations. Nevertheless, the failure of the officers to record with some precision how much he consumed means that I cannot be satisfied that Fulton was not materially affected by alcohol and I therefore exclude B61.

I now turn to those tapes proved by Dave which have not been already excluded when dealing with other witnesses who were present at the same time.

The first is B49 which relates to 4th April 2000 and covers the period between 1039 and 1530, part of which was spent in the Union Rooms. The portion of the transcript covering the period after they arrive at the Union Rooms starts at page 775. Afterwards Fulton was left at Plymouth railway station and this suggests or is at least consistent with Fulton having consumed sufficient alcohol to render him unfit to drive. A display ticket was purchased at 1448, the tape ended at 1530 suggesting that they were in the pub for about 40 minutes. During that time Fulton had three pints of Stella purchased for him. He had been paid and had money so he could have bought more drink if he wished. Consuming three pints means that I cannot exclude the possibility that towards the end of the period in the pub Fulton was affected by alcohol. However, the admissions recorded at pages 772, 773 and 774 were made before Fulton and Dave arrived at the Union Rooms. There is nothing to suggest that Fulton was affected by alcohol during that time nor is there any other reason to exclude that portion of the transcript. I therefore admit pages 772, 773, and 774 and exclude 775, 776 and 777 under Article 74.

B43 and B116 both relate to 16th May 2000 and they overlap. At page 720 in B43 Dave asked, "*Do you ever get anything like that over your way?*" I consider this was an innocuous question in the context of the house fire in the south of England. I admit both B43 and B116.

B21 and B57 both relate to 15th June 2000. B21 started at 0728 with a remark by Dave at page 347, "*I was just thinking this morning about that, what you were saying last night about putting on the old rozzer's uniform and all that.*" That and the following remark by Dave were not challenged but whilst they were not direct questions they

were framed in such a way as to steer or point Fulton into revisiting what he had said on an earlier occasion. I consider this had the effect of circumventing PACE and I exclude B21 under Article 76.

B57 is a continuation of the journey covered by B21. At page 846 Dave asked Fulton how he became involved in the organisation in Northern Ireland. Whilst this refers back to the conversation covered in B21 it is objectionable in its own right as it may be said to steer Fulton into discussion of criminal activity. I exclude B57 under Article 76.

I admit B68 and B37.

B5 commences at page 42 and relates to 16th August 2000. A number of issues were raised with Dave:

1. At page 42 Dave said, *"Heard on the news yesterday your mate got a bit of bother, didn't he?"* Dave denied that he was trying to get Fulton to talk about Northern Ireland although that was, at the very least, a possible motive behind the question. However, steering a conversation towards discussion about Northern Ireland, even in this fashion, was not objectionable provided that it was done in a manner that did not impliedly seek to elicit an admission.
2. At page 45 Dave said, *"Which is your lot, isn't it?"* However I see no objection to making such an inquiry about the various terrorist groups. Dave was saying moments later, *"I get fucking confused I do"*.
3. At page 48 Dave asked, *"So are the grenades like etc"*. This was an understandable response to Fulton's reference at page 46 to going into Provie country with a grenade and was a permissible display of interest.
4. Fulton's remark at page 52 that, *"Nothing goes down in Portadown unless you say so"* if a boast has to be seen in the context that Fulton had told Dave that he was in charge of the LVF following his brother's incarceration.
5. The remark at page 53, *"Like this fucking collusion thing"* was an understandable response to the reference by Fulton to collusion just before that on the same page.

I do not consider that B5 should be excluded under either Article 74 or Article 76 and I admit it.

I admit B22.

B15 relates to 24th August 2000 which covers the period from 1153 to 1342. Dave drove as Fulton was tired. He accepted that this was either because Fulton was unfit or because Dave was directed to, of which there is no note. The decision log confirms that Fulton was considered unfit to drive and the typed tape summary for 23rd and 24th August 2000 shows that Fulton got very drunk on the night of 23rd August. The evidence suggests that Fulton may well have been under the influence of alcohol by noon on 24th August or, at the very least, that cannot be excluded as a reasonable possibility. I exclude B15.

I admit B63 and B66.

B31 relates to 7th January 2001. Dave said that Fulton had a pint of Stella with his meal. I see no reason to doubt that as the conversation was from 1037 to 1221. I admit B31 as the amount of alcohol was modest and could not render the admissions unreliable.

B12 relates to 12th January 2001:

1. At page 189 Dave observed, "*They reckon you can make a bomb out of just about anything.*"
2. At page 191 he said, "*What do you use them for like just?*"
3. At page 198 Dave said, "*And those, were those pipe things you were telling me about then?*"

I consider that these were unobjectionable in the context of the conversation. I admit B12.

I admit B41.

I now turn to the transcripts proved by Neil starting with B19 relating to 30th March 2000:

1. Page 327 Neil asked, "*So what, what one were you then, were you?*" To which Fulton replied, "*LVF*". Neil then responded, "*LVF. You know there is that many*". That has to be seen in the context of Fulton's references to the UVF and LVF on the previous page. Neil's answer that he was trying to understand is credible when one remembers he was not familiar with the various loyalist terrorist groups.

2. Reference was made to Fulton describing Neil as a millionaire, inventing money for him and other matters, all of which were untrue. However these were understandable as efforts by Fulton to impress his mother. In any event their truthfulness is not relevant at this stage.

I admit B19.

B35 is a separate episode later on 30th March 2000. I admit it and I admit B3.

B54 and B55 both relate to 23rd May 2000 and overlap in time. In B55 Neil says, "*I take it you didn't like Turkey then?*" at page 816. I do not consider this to be objectionable, it followed from references to Turkey by Muriel Gibson and Fulton at page 811 of B54. It is nothing more than an understandable comment.

I admit B54, B55 and B114.

B58 and B44, both relate to 9th July 2000, I admit both.

B14 relates to 4th August 2000. There are a number of passages where it is clear that Neil can be said to be prompting or steering the conversation in a way that either took the form of a direct question about criminality or prompted an admission of criminality.

1. At page 241 Neil said, "*Did they make it themselves then?*"
2. At page 243 he asked, "*So how do these blast bombs -- are they easy to make?*". I exclude B14 under Article 76.

I admit B9.

B38 relates to 12th October 2000:

1. At page 661 Neil asks whether Fulton has left any money hidden in the roof. However, this followed Fulton's description of how he told his wife to check the roof space of their house and Neil's probably jocular comment has to be viewed in that context.
2. Page 675, Neil says that he can't believe that Gary etc just folded up. This was an understandable observation in the light of Fulton's earlier remarks during that conversation. Neither of these justifies the exclusion of B38 under Article 76 and I admit it.

B30 relates to 17th October 2000. The transcript starts at page 545 and Fulton

describes making a hoax bomb and then described his shooting William Fletcher in place of Derek Wray. There then occurs what's described as a lengthy period of no conversation at page 553 followed by a question from Neil: "*It must have been shit ammunition you used then?*" It is not clear what this relates to, but presumably it was connected with Fulton's description of the shooting because Fulton then described the gun as a good one and said most of the shots passed right through Fletcher. At page 556, after a period of quiet Neil said, "*Is that 9mm, is that a good gun then?*" Whereupon Fulton describes the capabilities of various weapons. I consider that these remarks by Neil were more than just expressions of interest and were attempts to steer the conversation towards further admissions. I exclude B30 under Article 76.

I admit B64, B117 and B46.

B11 relates to 5th December 2000 and covers the period from 1043 to 1535. It appears that Neil and Fulton met at the White Hart Hotel in Exeter before the journey during which B11 was recorded. The expenses sheet shows that Fulton was given a pint of Stella but there is no evidence that he had more than that. Neil said that he went to the hotel at five to eleven. So it seems that Fulton drank at most one pint before starting on the journey. I do not consider this amount significant and had Fulton had more or shown signs of being affected by alcohol Neil would not have allowed him to drive. I see no reason to exclude B11 under Article 74 and I admit it.

B17 relates to 6th February 2001 and commences at page 279. The tape runs out at 8.45. At page 276 Neil makes a remark about Molotovs, presumably meaning Molotov cocktails or petrol bombs. And at page 283 he said, "*So did you hear about that pipe bomb? Remember I was telling you the other day.*" On other occasions he asked questions about petrol bombs and whilst some of those could be regard as showing interest, looking at Neil's involvement in the entire conversation, there are occasions when he appears to be directing the conversation into criminal activities and I exclude B17 under Article 76.

B47 relates to 13th March 2001. At page 754 Neil asks Fulton, "*Did you have rank, did you actually?*" And Fulton then proceeded to describe his becoming second



in command. This was a direct question about the defendant's involvement in criminal activity and lead to Fulton describing his role in the LVF. I exclude B47 under Article 76.

I now turn to B25 which is the last evidential tape proved by Neil. This relates to 3rd April 2001. At page 457 Fulton remarked that the police did not like to be out in bad weather. Neil then says, "*Well yeah (pause) that's how your ammunition gets damp though, must it Jim (pause) is that how you used to plan it all then, wait for a (pause) get the weather report, pick out a rainy day?*" Fulton's response was to say that the winter was perfect for the banks and later in the conversation he described the Newcastle bank robbery attempt. Neil's question was an attempt to steer the conversation into criminal activities and I exclude B25 under Article 76.

I summarise the position so far as the tapes proved by the undercover officers in relation to Fulton as follows. I exclude the following: B52, B53, B20, B40, B13, B42, B50, B51, B7, B61, that part of B49 from page 775 to page 777, B21, B57, B15, B14, B30, B17, B47 and B25. I admit the remaining evidential tapes against Fulton.

As the evidential tapes obtained by probes were not required to have the transcripts proved for the purposes of the Voir Dire and as no submissions were made specifically in relation to their contents I propose to consider them in numerical sequence starting with those identified by the Prosecution as relating to Fulton.

I admit the following: B1, B2, B4, B10, B18, B26 (so far as it relates to Fulton), B27, B28 (so far as it relates to Fulton), B48 (so far as it relates to Fulton), B54, B112 and B113.

I now turn to consider those submissions made on behalf of Muriel Gibson which I have not dealt with so far. As in the case of Fulton I have had the benefit of written and oral submissions which I have considered and I do not propose to rehearse them in this ruling. Gibson did not give evidence on the Voir Dire but called evidence by Doctor Graeme McDonald, a consultant psychiatrist, and the Prosecution called Doctor Christine Kennedy, also a consultant psychiatrist in rebuttal. Neither Doctor McDonald nor Doctor Kennedy had examined Gibson at any time and both were asked to consider a substantial quantity of material which was also placed before the

court to parts of which both referred. An unusual aspect of the Voir Dire was that although Gibson did not give evidence, amongst the papers provided to Doctor McDonald, Doctor Kennedy and to the court, was a four page document containing instructions given by Gibson to her solicitor on 17th September 2005, "*regarding drug and alcohol abuse*". As is apparent from Doctor McDonald's report on 29th March 2006, he refers to it and relies upon it when reaching his conclusions. Properly speaking this statement is inadmissible because its contents have not been given in evidence by Gibson. However, no objection was taken to it being put in evidence in this way and I have had regard to it. Of course it is a self-serving statement which has not been tested by cross-examination and so it is subject to the infirmities inherent in such a document.

In it she describes her drug and alcohol use over many years, and in particular says that she engaged in regular drug and alcohol misuse in Cornwall from 1999 to 2001. That is during the period covered by the evidential tapes in which she appears. These may be summarised as follows: (a) she used cocaine on occasions, and regularly used cannabis, smoking up to five to six joints every other day. She had court appearances in 1995 for possession of Class B drugs, and a conviction for possession of a controlled drug in 1969, presumably cannabis.

(b) She was a heavy user of prescription drugs. These put her into a world of her own. If she lay down she fell asleep, and if she took alcohol at the same time she also became drunk very quickly.

(c) She was a heavy user of alcohol, drinking on a daily basis. She said "*I sometimes started drinking in the afternoon*" and "*would get drunk most nights*".

I have considered the various points that were made to Doctor McDonald and Doctor Kennedy by counsel, and the medical reports: (a) Illegal drugs. Her claim to the regular use of cannabis in particular, is not substantiated by the medical records. Indeed it is contradicted by her accounts to Doctor Blacker in August 2000, and to Dr Bownes in 2005 when she denied using illicit drugs other than to smoke cannabis "occasionally". I accept she may have taken cannabis on occasions.

(b) Prescription drugs. I accept that she was taking several prescription

drugs at the same time, and misused them on occasion. In April 2000 there is a record that she was misusing up to 5 Diazepam daily and "*can't control it*". In July 2000 she was recorded as a drug dependant and on 27th July 2000 was described as being "long term Temazepam, Zopiclone addict".

Doctor Kennedy conceded that the reference to misusing Diazepam in April 2000 suggests that Gibson was dependant on Benzodiazepines. Doctor McDonald referred to the effects of such drugs on pages 7 and 8 of his evidence on 3rd April 2006, when he said they could cause a disinhibiting effect similar to that found in mild intoxication with alcohol. This can result in people being more truthful, or it can result in distorted views of the truth being revealed, with exaggeration, over representation of ability or achievement, or false attribution of ability or achievement.

(c) Alcohol consumption. The evidence of the undercover officers was that there were occasions when she drank heavily, for example 9th May 2000, 1st June 2000 and 26th July 2000. Liz saw her drunk on occasions and said that whilst Gibson would drink every day, so did she, in other words they would have a drink but did not drink heavily every day. Sam described her as a binge drinker, but did not think it was a common state of affairs that Gibson was not sober.

There is contemporaneous medical evidence relating to her consumption of alcohol and prescription drugs in 2000. When she saw Dr Blacker he observed at page 14,

*"She did not disguise the fact that she had misused tranquilizers, hypnotics and alcohol (including black market supplies)",*

and at page 17 he said,

*"She has done well to cut down her drinking and tranquilizer use".*

Of course honest accounts of drug and alcohol consumption are not always given to doctors, and the evidence of the undercover officers of her drunkenness on 26th July 2000, the 1st June 2000 and 9th May 2000, cast some doubt on the reliability of her account to Doctor Blacker in August 2000 that "...she now drinks only two pints of beer twice a week". Page 11. However, Doctor Blacker also observed that "*...she did*

*not smell of alcohol and had no tremor indicative of chronic alcohol misuse".* That being some objective evidence that her account on which Doctor McDonald relied was not reliable.

In addition, Doctor Kennedy pointed out that liver function tests were carried out on 2 or 3 occasions and were normal. That is objective and contemporary evidence casting doubt on Gibson's asserted level of drinking.

Doctor Kennedy, both in her written report and her oral evidence placed some emphasis on the records showing that between September 1999 and June 2001 Gibson was seen by her GP on at least 31 occasions. (See paragraph 3.5 at page 10 and paragraph 4.1 at pages 11 and 12 of her report and page 37 of the transcript of the 24th April).

I have referred to these matters as they are the principal features of the evidence against which the evidence of Doctor McDonald and Doctor Kennedy as to Gibson's state of mind during the period covered by these tapes has to be viewed. Doctor McDonald maintained that although there was much uncertainty, there was a substantial likelihood that for at least some of the period 1999 to 2000, Gibson's mental state was affected to some degree. He conceded that there was no evidence of Gibson being in a trance like state as she inferred when she said she was in a world of her own. Nevertheless, he maintained that there was more than a fanciful possibility of her being unable to think clearly, attend or concentrate, and he was satisfied that there was a substantial likelihood her mental state was affected by drugs and alcohol. He could not say for how long or at what times or to what degree, it might have been at a time when she was making admissions but it may or may not have been.

Doctor Kennedy did not think that there is factual evidence to support the presence and chronic abnormality of mind. She lay particular emphasis on two matters which are of considerable importance when considering the differing views of Doctor McDonald and Doctor Kennedy because they provide contemporary medical evidence as to the level of Gibson's consumption of drugs (whether prescription or illicit) and alcohol at the material time.

(1) The many face to face consultations with her GP. (2) The contents of Doctor Blacker's report of August 2000. As Doctor McDonald conceded at page 20 and page 21 of the transcript of the 24th April 2006, it is the only contemporaneous examination we have by someone qualified to make such an examination and who might have been expected to comment on some of the issues Doctor McDonald was asked to address.

I consider that Doctor McDonald's opinion is undermined by the absence of any oral evidence from Gibson herself, by the contradiction between her account to her solicitors and the accounts she gave to Doctor Blacker and Dr Bownes as to the extent of her drug and alcohol abuse, and by the two matters referred to above upon which Doctor Kennedy placed emphasis, that is the contemporary medical evidence. 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.

Before I consider each tape relating to Gibson, I shall refer to the reliability of the undercover officers concerned: Although they denied engaging in direct questioning, I accept that direct questioning did occur on occasions, as will be apparent when I deal with the individual transcripts. I accept the evidence of Liz as to the nature of her relationship with Gibson. I do not propose to refer to each of the points made by Mr Macdonald in the written submissions at paragraphs 11 to 18 inclusive, I have had regard to them.

I consider that Sam and Dave S were less careful than other undercover

officers in how they conducted themselves, and their superiors were concerned about their attitude at the time. The explanations that Dave S gave about the amount spent on drink on 26th April 2000 and 20th August 2000, were contradicted by the transaction master sheet and were unconvincing, I considered he was plainly chafing at the restrictions placed upon him by his superiors, and felt he should spend more time with Muriel Gibson and that this would lead to more evidence being obtained. The catalogue of criticisms in Defence Exhibit G2 are instances where, at best, he in particular was departing from instructions and acting on his own initiative in ways which were considered unsatisfactory by his superiors.

I have considerable reservation about the evidence of Sam and Dave S where they deny that anything occurred which might render Gibson's admissions unreliable. However, it must be borne in mind that Gibson did not give evidence and, for the reasons I have already given, I do not accept Gibson's assertions as to her drinking heavily, misusing prescription drugs or taking illicit drugs on virtually a daily basis over this period.

In addition, many of the conversations were at times of the day, or in circumstances where it was improbable that Gibson was affected in the way she claims.

I propose to consider the 14 evidential tapes relating to Muriel Gibson in the same fashion as in Fulton's case that is in the order the undercover officers gave evidence, and in chronological sequence within their evidence. Thus I commence with Liz whose remaining tapes are B82 and B27 in that order, followed by Sam and then by Dave S.

B82 relates to the 24th February 2000 and was part of a much longer period spent by Liz with Muriel Gibson that day. It was suggested to Liz that she showed Gibson a picture from a newspaper showing rifles on a floor. Liz denied this and seemed genuine. Gibson did not give evidence to support this suggestion. I accept Liz's denial. This tape covers a long car journey and there is nothing to suggest she was affected by alcohol or drugs when she made these admissions. I admit B82.

B27 relates to the 16th March 2000 and primarily relates to Fulton, although

Gibson was present. I admit B27.

I now turn to B74, to the first of two tapes proved by Sam. It was suggested that her questions could have had the effect leading to incriminating answers. It is noteworthy that her reference at page 1014 to the pretence of bombs being thrown the previous night, that is in the events of B73, could be seen as an attempt to steer the conversation back to what was said and done then. More significantly, at page 1016, Sam asked "*Have you always been involved in it like since you were a kid*", plainly meaning the LVF. Gibson denied this yet at page 1017, Sam returned to this saying "*I thought you had always been involved in it*". I am satisfied that these were direct questions designed to illicit admissions and I exclude B74 under Article 76.

B85 relates to the 9th July 2000 and the period between 0900 and 0930. Sam was asked about her question about what was meant by a blast bomb at page 1097. However, the topic of blast bombs had been raised by Gibson and there could be no objection to asking what blast bombs were as part of the conversation.

I see no reason to suspect that Gibson was affected by alcohol or drugs at this time. I do not consider that there is any reason to exclude this tape under either Article 74 or Article 76 and I admit it.

I now turn to the tapes proved by Dave S starting with B79. B79 relates to a period on the market stall on 3rd June 2000 and starts at 1230. There are a number of occasions when Dave S asked questions, such as referring to 'grassing' at page 1048, and at page 1050, when Gibson was talking about explosives and he said "What is it". These are unobjectionable because they are remarks showing interest in and responding to what Gibson was saying. I see no reason to exclude the tape under Article 76.

There is no evidence to suggest that Gibson was affected by drink or drugs at this time, and I see no reason to exclude the tape under Article 74. I admit it.

B83 relates to 17th June 2000. I consider that Dave S was prompting Gibson by his references to Powergel at pages 1089 and 1090, and again at 1091 by his reference to "*...an all time classic*". That appears to refer back to previous occasions when Gibson had described the properties of Powergel, I exclude B83 under Article

76.

B84 relates to the 19th June 2000 when Dave S was present during a telephone conversation between Gibson and someone referred to only as Lisa. There is nothing to suggest Gibson was affected by alcohol, I admit B84.

B80 relates to 21st June 2000, it starts at 0914 at page 1054. At page 1060 to 1061, he refers to Powergel and although Gibson had brought up the issue of explosives just before, the comments of Dave S would suggest that he was trying to steer the conversation towards the Dundalk episode. I exclude B80 under Article 76.

B70 relates to the 3rd July 2000 between 0816 and 1226. There was a suggestion that Gibson was hung over on this occasion, although this was not pursued. Even if she was, and there is no evidence that she was, this would not in itself be a reason to exclude the tape under Article 74 unless there was reason to suspect that her mind was still materially affected by alcohol or drugs at that time. However, the transcript suggests that she was in full command of her faculties to judge by the detailed discussion she had with Talutha on the telephone at page 955. I admit B70.

B77 and B 86 both relate to the 24th July 2000, and whilst B86 follows B77 there appears to be some overlap, B77 lasting from 1230 to 1631, and B86 from 1220 to 1410. Dave S spent part of the day laying paving slabs in the garden and said there were three tapes, the first starting 0700, one at 1025 and the third at 1220, with him leaving at about 1405 which would seem to be B86.

It seems clear from the evidence that Gibson had been drinking the night before, and that for at least part of this time Dave S had been with her as there was an expenses claim for £19 for drinks. At page 1043, after Dave S had left, Gibson said during a phone call that she had been drunk the night before. Not only that but it seems her intention on the night of the 23rd July had been to spend the next day, that is the 24th, in bed, suggesting that she anticipated being very drunk.

However, she is clearly up and about by 1230 when B77 commences, and she produces photographs and talks at length, all of which suggest that she felt up to conversing at length and her mind was no longer affected by alcohol to any material



degree. The same pattern as evident in B86, I admit both B77 and B86.

B87 relates to the 5th August 2000 and covers from 1345 to 1500 whilst Gibson was working on the market stall. There is nothing to suggest that she was affected by alcohol or drugs. I admit B87.

B88 and B92 both relate to the 20th August 2000, and B92 appears to follow B88. Both cover a period, perhaps up to three hours in all, whilst Gibson, Dave S and Talutha Landry are together in the Waggoners pub. During this time at least three rounds were bought, and I did not find the evidence of Dave S convincing when he sought to explain how much was spent on drink when confronted with the details shown on the expenditure record. I cannot exclude the possibility that Gibson may have been materially affected by alcohol during at least part of the total period covered by both tapes and I exclude both B88 and B92 under Article 74 and Article 76. I had already excluded it against Talutha Landry.

So far as Muriel Gibson is concerned, I therefore exclude the following tapes: B74, B83, B80, B88 and B92. I admit the remaining evidential tapes against Gibson.

A number of evidential tapes obtained by means of probes relating to Gibson were dealt with by the parties in the same fashion as those relating to Fulton. I will consider them in numerical sequence also.

I admit B62 and B28 in so far as both relate to Gibson. I admit B33, B34, B48 so far as it relates to Gibson. B69 relates to the 28th May 2000 and covers the period from 2123 to 0007. At page 948 the transcript records that Muriel Gibson, Rain Landry and another return to the house saying they had been to the pub. This reference, in the absence of evidence from Muriel Gibson or other evidence, is not sufficient to suggest that she was materially affected by alcohol on this occasion. I admit B69. I admit B71, B72, B78, B89, B90, and B91.

I now turn to the submissions on behalf of Rain Landry. In the written and oral submissions at the end of the voir dire, Mr O'Rourke advanced a number of submissions on behalf of Rain Landry in which it was again argued that the admissions should be excluded as they were obtained in breach of the defendant's

Article 8 Convention rights; that they were obtained in breach of the relevant statutory or non-statutory provisions; that they were obtained in breach of the defendant's right not to incriminate herself under Article 6 of the Convention, and as a result should be excluded under Article 76 of the 1989 Order.

For reasons which will become clear I do not consider it necessary to revisit these arguments and I propose to consider whether the admissions should be excluded under Article 74(2)(b).

Rain Landry's evidence on the voir dire was that she had no recollection of what happened during the occasion recorded on B75. This covers the period from 1445 to 1852 on the 2nd May 2001. But it was preceded by an earlier conversation that day which was recorded on tape PJH571 covering the period from 0834 to 1234, and reliance is placed upon the transcripts of both prepared on behalf of the defence, and I shall refer to these defence transcripts 571 and defence transcript B75.

Rain Landry does not appear on defence transcript 571 which records a number of telephone conversations by Muriel Gibson with different relatives. On three occasions Muriel Gibson was heard describing in graphic terms how she came about Rain in a pub the previous night and found her to be very drunk, so much so that she made Rain come home with her in a taxi and put her to bed. The next morning she found that Rain had left the house, and she believed that Rain had gone to Timmy Bennetts' house, Bennetts being her boyfriend at the time.

By the time defence transcript B75 commences at 1445 that afternoon, Rain is back at her mother's house. In the early part of the transcript she is heard to make the admissions relied upon by the prosecution, and she accepted that it was her voice. She says that having listened to the tape she sounded spaced out, and that it was not like her, by which I take it she meant she does not sound as if she was in a normal frame of mind.

Whilst she has no specific recollection as to whether she took drugs that day she infers that she did because she said that she is speaking with a pronounced American accent, something that she has been told she does when she is high on drugs. She was born in the United States of America and lived there until she was

15, and the implication is that when under the influence of drugs she reverts to an American accent.

It is argued on her behalf that the circumstances of that day, and indications in the conversation recorded in defence transcript B75, point to her having taken drugs. She described how it was her practice at the time to drink for several days, usually for at least two, and sometimes three or four days, during which she would also take Speed, that is amphetamines, to keep her going, as she put it, as well as cannabis, and if they were available that day she would have taken them.

She also said that Timmy Bennetts supplied her with these drugs and that he would have them available. She says that he sounds as if he was affected by drugs and therefore the inference is that he also supplied her with drugs on this occasion and that she was affected to such a degree that she went to bed after making these admissions. Support for the inference that she took cannabis that afternoon is said to be gained from a number of remarks that suggest that she had done so made by herself or others on the tape. At page 16 Rain says, "*I can't even talk right*" whilst trying to say, "*ocean roaches*", having been discussing her dislike of lobster which she described as ocean cockroaches. At page 18 Bennetts makes remark to her which is partly inaudible but includes the expression, "*skin up*" which, it is said, is a description of rolling a cannabis joint. On the same page he is heard to ask someone, "*Roll that up for you*" followed by asking, "*Have you got a razor blade*". At page 23 Muriel says, "*Go lie down*" and it is suggested that this was directed to Rain who then left because she is not heard again on the tape.

That Tim Bennetts supplied Rain Landry with drugs around this time is corroborated by an entry to that effect in Detective Sergeant Frost's notes of TTS TSH 283 for 12th June 2001 that he supplied Rain and Ayesha with Ecstasy on that date.

There is considerable evidence that Rain Landry was prescribed anti-depressants in the form of Fluoxetine around that time with a prescription on 23rd May 2001, and Temazepam prescribed on the same day. The reference to a razor blade earlier was inferred to be a reference to a razor blade being used to chop speed or cocaine into fine powder to swallow or snort the drug.

During cross-examination Mr Kerr pointed out to her that she had told Dr Mangan in April 2005 that she had never taken amphetamines, cocaine or heroin, and this contradicted her evidence. Her response was that what she told Dr Mangan was not true and she must have been lying and that she was telling the truth. I am satisfied that her evidence about her drug consumption in general terms was untrue. It is noteworthy that she described to Dr Mangan taking other drugs in the form of Ecstasy, cannabis, magic mushrooms and LSD. I can see no reason why she would have denied to him she would also have taken amphetamines, cocaine or heroin if she had done so.

Mr Kerr also asked her whether she had been using a computer during that conversation, and she said that it was possible. I am satisfied that she was. Between pages 17 and 21 of Defence transcript B75 the sound of typing is noted several times. Her comments at page 19 and page 20, and Tim's at pages 20 and 21, all indicate that she was trying to type and was having difficulty with the computer. That she was trying to use the computer may suggest that she was not under the influence of drugs but is not necessarily incompatible with her being affected at that time.

That Rain Landry drank heavily on occasions is clear, for example, on 1st June 2000, Dave S found her in a pub in a drunken condition (see Defence exhibit G2). She, Ayesha and Muriel Gibson had apparently been there for four hours when he bumped into them. On 7th June she had been drinking before she went surfing, see page 36 of my ruling on 13th March 2006. It would not therefore be surprising if she had been drinking heavily the night before B75 was recorded as Muriel Gibson's remarks would indicate nor would it be surprising if she took some drugs on 2nd May 2001, and the remarks of Bennetts quoted earlier are consistent with him offering her drugs later in the conversation.

I have listened to the early part of B75 in which the admissions occur and her voice is usually quite clear. I did not detect traces of a specifically American accent. On a number of occasions her voice was loud and excited, on others less so with sudden changes in her voice, sometimes in the course of the same sentence.

It is for the Prosecution to prove beyond reasonable doubt that she was not

affected by drugs on this occasion and having considered all of the evidence there remains a reasonable doubt in my mind as to whether she was. I therefore exclude B75 against her as the Prosecution have failed to prove beyond reasonable doubt that she was not materially affected by drugs when she made these admissions and that is a circumstance which was likely to render the admissions unreliable within the meaning of Article 74(2)(b).

That being the only evidence against her, as I understand, I propose to enter a verdict of not guilty. You are free to go.

THE DEFENDANT: Thank you.

*(The defendant withdrew).*

MR JUSTICE HART: In due course gentlemen you will be provided with a copy of the ruling.

MR MACDONALD: My Lord, in relation to the transcripts attributed to Liz, your Lordship has ruled that you will be admitting B27, that's not evidential against --

MR JUSTICE HART: I beg your pardon?

MR MACDONALD: That's not evidential against Mrs Gibson, the Crown don't rely upon it.

MR JUSTICE HART: It was referred to, I have admitted it. Whatever weight it amounts to is not the issue as such, but the reason I included it was there were references by you to, I think, an earlier tape which had been excluded, so I simply admitted it. I appreciate it is not relied on. It may be assumed you might want to refer to it for some purpose. I appreciate it is not an evidential tape in the sense of supplying evidence against her.

MR MACDONALD: Obligated. In relation to the probes, your Lordship ruled that you were admitting B62, that's the first of the series. I wonder if your Lordship meant B62?

MR MILLER: I think, my Lord, it might be B26.

MR MACDONALD: That's what we were wondering. B62 is not evidential against Mrs Gibson. It may be in the sequence that your Lordship meant B26.

MR JUSTICE HART: Yes, B62 also relates to Fulton. Just give me one moment. This relates to the probes, is that right?

MR MACDONALD: That part of your ruling did relate to that, my Lord, but B62 is not a probe, in fact, as I understand it.

MR JUSTICE HART: I don't see a reference here to B62, I must have made a slip when I was reading it out. What I intended to say was I admit B26.

MR MACDONALD: That is what I wondered, my Lord.

MR JUSTICE HART: Which is what I have written down. I must have made a mistake in that. Well I admit B26 and B28.

MR MACDONALD: Yes, my Lord.

MR JUSTICE HART: Allow me to check my text. Yes, I don't make any reference to B62 in this part of the ruling.

MR MACDONALD: Two other probe tapes, my Lord, are B75 and B76. I know your Lordship has dealt with B75 in relation to Rain Landry. Unless I missed it I don't think your Lordship referred to either B75 or B76 when dealing with the probe tapes against Mrs Gibson.

MR JUSTICE HART: Yes, you are quite right I overlooked those when I was preparing my ruling. Just give me a moment. You say I didn't mention B77?

MR MACDONALD: B75, my Lord, or B76.

MR JUSTICE HART: Well now, certainly I meant to say that I excluded B75. Now B76 wasn't identified to me as a probe.

MR MACDONALD: I think it should have been my Lord. It was recorded on 23rd March 2000, the DAT tape, the Crown were relying upon it.

MR JUSTICE HART: This is B?

MR MACDONALD: 76, my Lord.

MR JUSTICE HART: It wasn't amongst those identified by Mr Kerr as a probe which is why I haven't considered it.

MR MILLER: My Lord, I have just clarified that matter. I apologise, that had been omitted from the list of probes but it ought to have been included.

MR JUSTICE HART: Which page does it appear at?

MR MILLER: It starts at page 1029, my Lord, and concludes at 1037.

MR JUSTICE HART: I haven't considered that because I wasn't referred to but I will consider it now. (Pause) Well evidential tape B76 relates to 23rd March 2000. It covers a period from 0852 to 1107. I see no reason to exclude it and I admit it.

MR MACDONALD: As your Lordship pleases. My Lord, that appears to mean that there is no evidence against Mrs Gibson on Count 68, possession of pipe bombs in relation to Knox's shop. I think my friend may want to time to consider that is the position.

MR JUSTICE HART: I appreciate that it may give rise to arguments of that sort. Of course, the stage at which one considers that is the end of the Crown case. I appreciate that everyone will wish to review the state of the evidence in the light of

my ruling.

MR MACDONALD: Yes, my Lord.



