

Neutral Citation no. [2006] NICA 43

Ref: **NICF5628**

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

Delivered: **19/10/06**

Corrected on 7/11/06

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

JULIE MCGINLEY AND MICHAEL ANTHONY MONAGHAN

Before: Nicholson LJ, Campbell LJ and Sheil LJ

NICHOLSON LJ

Introduction

[1] Julie McGinley and Michael Anthony Monaghan were convicted on 3 December 2002 at Belfast Crown Court after a trial before Kerr J (the trial judge) and a jury of the murder of Gerald McGinley, the husband of Julie McGinley, and were each sentenced to imprisonment for life. Under the Life Sentences (NI) Order 2001 the trial judge, as required by Article 5 of the Order, fixed the period to be served in respect of the deterrence and retribution requirements of their sentences at 15 years. Both sought leave to appeal against their convictions. The single judge refused leave to appeal in both cases.

[2] Mr Barry MacDonald QC and Mr Tom McCreanor appeared for Mrs McGinley (on the appeal but not at the trial). Mr Gallagher QC and Mr Kearney appeared for Mr Monaghan. Mr Terence Mooney QC and Mr O'Reilly appeared for the prosecution.

[3] Some but not all of the evidence was transcribed. We have read all that was transcribed. Some statements of evidence were read by agreement to the jury. We also have read them. Some of the evidence was not transcribed. This was the choice of the applicants and we are confident that nothing was omitted which was helpful to their cases.

[4] We have consistently borne in mind that the cases against the two applicants must be considered separately and that some of the evidence which we set out below affects one of them, not the other. But it has been impractical to segregate the evidence against each of them as this would involve repetition where the evidence has been admissible against both of them or where a witness has given evidence, part of which is admissible against one and another part of which is admissible against the other. Furthermore, in order to make sense, it has been necessary to divide the evidence into topics or issues and set out all the evidence on the relevant topic or issue together in a coherent whole: thus we have divided the witnesses into different categories as the trial judge did. But this does not mean that we have mixed together in our own minds what is admissible against one but not the other.

[5] We have, needless to say, followed the order in which the trial judge presented the facts to the jury and our indebtedness to him is plain to see because we have adopted much of what he told the jury when he was summing-up the evidence. We are conscious that many of the submissions made to us were based on criticisms of his summing-up and to that extent our presentment of the evidence anticipates a rejection of submissions made to us. But we will deal with the submissions in a separate section of this judgment.

[6] We have also selected the evidence which we are satisfied that the jury accepted. When we use the word "satisfied" we mean that we are satisfied beyond reasonable doubt unless we state otherwise. We have omitted evidence and suggestions made to witnesses when we have been satisfied that the jury must have rejected that evidence or those suggestions. This has necessitated a careful examination of the evidence and the suggestions. It must not be assumed that we have ignored or overlooked cross-examination, for example, merely because we do not mention it. We could have set out the entirety of the section of the trial judge's charge to the jury which deals with the evidence but we have not done so. We have sought to take into account all the points made in written and oral submissions.

[7] We do not claim to have set out in our summary of the evidence a comprehensive review of everything that can be said to form the case for the prosecution or the defence. Some of the evidence has led us to comment on it.

[8] We have stated some of the inferences which we consider that the jury must have drawn or are highly likely to have drawn during our review of the evidence. We have dealt with the application to receive fresh evidence in a separate section.

Summary of the Evidence

Medical evidence

[9] The partially decomposed remains of Gerald McGinley were found in a remote wooded area of Aughnesheelin, near Ballinamore, Co Leitrim, partially covered with black plastic sheeting on 3 June 2001. Dr Marie Cassidy, deputy State Pathologist for the Republic of Ireland, carried out a post-mortem on the deceased at Cavan Hospital on that date. The body was wrapped in plastic which had been opened and exposed the interior contents. There were no remains of clothing or any personal items. Apart from the skull and head there was very little damage to the rest of the body. There were a few small bones missing which did not affect her conclusions about what had happened to the deceased. We comment that the body must have been stripped before it was wrapped in plastic and later dumped.

[10] There was an inverted V shaped fracture, described by Dr Cassidy as an upside down V of the frontal bones of the skull on the forehead. It ran up from the upper margin of the right orbit extending to the left orbit above the nasal bones with radiating fracture lines running upwards and backwards from the centre of this area. The fracture was slightly depressed.

[11] There was a depressed comminuted fracture of the right side of the face involving the cheek bone, running round the side and part of the upper jaw extending almost to the right eye socket. The fracture covered an area of 7.5 centimetres. The nasal bones were fractured and the fracture extended towards the lower end of the left eye socket.

[12] There was a fracture in the region of the mastoid process behind the right ear. The fracture line ran diagonally. The bone was driven inwards on the left side. It measured 2.5 cms by 1.5 cms.

[13] On the left side of the face there were two fractures of the lower jaw. The first of these ran from the lower teeth to the lower margin of the jaw and the second from the lower jaw to where it meets the skull. That fracture was at the site of an unerupted tooth which would have weakened the jaw and made it more vulnerable to injury.

[14] The first injury involved the lower part of the right eye socket internally, that is to say, looking inside the skull.

[15] There was a fracture of the left seventh rib which was an isolated injury as the other ribs around it were intact. She was of the opinion that it could have been caused after death when the body was being removed or transported. It had no effect on her conclusions. Other incidental damage

was caused by animal scavenging. We comment that it is highly likely that this scavenging led to the discovery of the body.

[16] The pattern of injuries indicated a blow on the forehead, a blow from the front to the right side of the face, a blow behind the right ear and a blow to the left hand side of the face. The right side of the face had been stoven in. It was possible that the injuries on the left side were caused at the same time as the injuries on the right side. Force could be transmitted through to the left side of the skull and cause fractures to the left side. In medicine this is called a contre-coup injury. If that was so the head must have been on a solid surface and fixed and would be consistent with a person lying down with his face on a pillow. A great deal of force was used to cause the extent of the damage. The first injury to the area of the forehead would more than likely be associated with knocking the person unconscious. The injury to the right side could cause a lot of bleeding, particularly from the nose and in the unconscious person could lead to death, trickling down the back of the throat so that the person choked on his own blood. The injury to the forehead could also cause the person to die purely from the extent of the damage to the brain. Owing to the decomposition of the body it was not possible to examine the brain.

[17] Defensive injuries to a victim are usually sustained as the results of attempts to ward off blows by use of the arms or, if the person is on the ground by bringing up the legs so that one sees injuries on the outside of the thighs. The body was skeletalised and there was no skin to examine but there was no evidence of trauma to the forearm bones to suggest that they had been struck with a heavy weapon. We comment that in view of the severity of the attack, evidence of trauma to the forearm bones would have been highly likely if the victim had attempted to defend himself and that the jury must have been satisfied that the victim was not in a position to defend himself.

[18] Dr Cassidy said that the front part of the skull was probably about the most robust part of the skull and required a great deal of force to break. There could be extensive damage or bleeding from a split in the skin of the scalp and the facial tissues. The injury to the forehead, particularly, would have caused lacerations to the skin. Where blunt force trauma was used, often there was a pattern of staining in the vicinity. The instrument used to inflict the injuries could become contaminated by blood and there could be blood cast off when the weapon used, if it had blood on it, came off the surface of the body. Mr McGinley's death was caused as a result of blunt force trauma to the head. Incapacity through drink could have contributed to his death. Given that the skin of the forehead was broken the damage to the small vessels within the soft tissues would bleed considerably but one would not get a spurting of blood that would occur if a major vessel such as an artery or vein close to the surface was injured.

[19] In her opinion the first blow was the one to the forehead when he was on his back. By looking at the pattern of the fracture lines one could state that it was the first. If the injury on the right side of the face was the first, then the fracture on the forehead would have caused much more extensive damage. A firm mattress would have been sufficient support for the contre-coup effect.

[20] Dr Murphy, an expert in the analysis of human skeletons, agreed with Dr Cassidy's findings. The first and principal injury was a severe blow to the forehead region which had been struck with considerable force in a downward motion. She was able to ascertain that it was downward from looking at the fracture lines which radiated from the injury. At least one, but more likely a number of other blows were dealt to the facial area in the region of the nose and the cheeks, concentrated on the right side of the face. The majority of the radiating fracture lines were oblique and this was a strong indication that they occurred in the peri-mortem period. The fractures were characteristic of having been dealt by a blunt, rounded instrument, having regard to the curvilinear fracture line. The blows to the forehead and mastoid process were downward. The blow or blows to the face were massive and could have been caused in a downward manner but because of the extent of the facial injuries one could not say for certain.

[21] She concluded that the blunt instrument must have been wielded above the victim's head and as he was approximately 5 feet 8 inches or so tall one might infer that the victim had actually been lying down. Because the injuries were so localized to the skull it was very likely that he remained in one position throughout the attack, lying on his back. The rounded object used as a weapon was something like a baseball bat.

We will consider the inferences which the jury must have drawn from this medical evidence at a later stage.

The relationship between Julie McGinley and Michael Monaghan

[22] We consider that this is an important part of the case against them. The decision was made on behalf of the applicants that the evidence of Patrick Owens, Margaret O'Donoghue, Francis McBride, Patrick McHugh, Brian Bovaird and Donna Knowles should not be transcribed and counsel did not refer to the transcripts of the evidence of Josephine and Michael McElroy although reference was made to some of it on behalf of the applicants. We cannot use the statements of evidence made by them for the purposes of the preliminary enquiry because we do not know whether they gave in evidence what was said in those statements. We are content to rely on the summary provided by the trial judge. But, where counsel for the applicants challenged his summary, we are obliged to comment that they decided that the witnesses' evidence would not be transcribed.

[23] Patrick Owens ran a furniture shop on the Tempo Road, Enniskillen where Furniture Direct, a business run by Julie McGinley, Gerald McGinley and Michael Monaghan, was ultimately located. Mr Owens occupied those premises between March 1999 and February 2000. He knew Mr Monaghan through contact in the furniture trade and Mr Monaghan called into his shop quite frequently. He had known him in business for 4 or 5 years. Towards the end of Mr Owens' tenancy in January or February 2000, Julie McGinley began to call at the premises. A pattern developed whereby she arrived shortly after Mr Monaghan did. She would stay outside the shop. Then she developed the habit of coming into the shop and when she did, she and Mr Monaghan would leave the shop and would go outside and talk. She never spoke to Mr Owens and he had the clear impression that her only purpose was to see Mr Monaghan. At first she drove her blue BMW car into Treacy's yard and round to the front door of Mr Owen's premises where it could not be seen from the road. Mr Monaghan referred to Julie McGinley and her husband on a number of occasions and told Mr Owens that Julie was having a hard time from her husband.

[24] Mr Owens said that Mr Monaghan told him that Julie McGinley's husband would beat her up a lot and that she would do anything to get away from him, even to the extent of going to Australia. He said something about what would become of Mr McGinley. Towards the end of the period from January to the end of February 2000 Mr Owens stated that they were meeting a number of times a day at his premises.

[25] In a notebook belonging to Mr Monaghan ESDA examination revealed writing by Mr Monaghan - unless one surmises that someone else wrote in his notebook - clearly indicating that he was composing love messages to Julie McGinley. It is not clear when these messages were composed. In a mobile telephone taken from a van previously owned by Mr McGinley which was being used by Mr Monaghan on 1 September 2000, nine months before Mr McGinley's body was found, the police found a message, "Mick, I love you XXXJ:" The date recorded on the message was 24 April 2000 but it is not possible to be sure that the dating is accurate.

[26] Mrs Margaret O'Donoghue was the office manager for P J Treacy & Son on the Tempo Road in Enniskillen whose yard we have already referred to as Treacy's yard. She was responsible for the letting of industrial units in their business park. Mr Monaghan approached her about the letting of the unit formerly occupied by Mr Owens on 21 June 2000 and Julie McGinley called on 17 July 2000 about the installation of telephone lines and an electricity supply to the premises. Mrs O'Donoghue was familiar with Mr Monaghan because he called into Mr Owens' premises. A short time before the business of 'Furniture Direct' began, one Friday evening she saw Mr Monaghan and Julie McGinley having sexual intercourse in a dark blue

car in Treacy's yard. Shortly after the business began she saw them kissing in a white Transit van.

[27] We do not set out the cross-examination which the trial judge did set out. We do not have a transcript. But Mrs O'Donoghue only saw the blonde hair of the woman who, she said, was Mrs McGinley, according to the judge's charge to the jury. Counsel for Mr Monaghan did not challenge her statement that the male was his client.

[28] There was evidence about DNA material recovered from the bedding in the McGinley's home after his disappearance and the purchase by Mrs McGinley of fresh bedding. DNA material recovered from the bedding matched the profiles of both applicants. The semen which was recovered matched the semen of Mr Monaghan. The other DNA characteristics matched Mrs McGinley. One would expect, said Mrs Knowles, the forensic scientist called on behalf of the prosecution, only one person in Northern Ireland who matched each of these two profiles.

[29] Josephine McElroy also gave evidence as to the relationship between the two applicants. We do have a transcript of her evidence which was not used on behalf of either of the applicants. But it enables us to follow the summary by the trial judge. She had known Mr Monaghan for four years because they were involved in the furniture business. She got to know him fairly well and she got to know his wife, Patricia. She visited his family home in Sligo with her husband. These visits were not very often but they stayed for the weekend. They were social visits. She was fairly friendly with them and described her relationship with him as 'good friends'. He called at their home in Enniskillen, sometimes every day.

[30] She told the jury that he had said to her that Mr McGinley was a psychopath and was hitting Julie McGinley, that he did not like Mr McGinley and did not like him hitting her. He said that Mr McGinley hit her once in the shop and that would be the last time that he would hit her.

[31] On 9 September 2000 she and her husband went to the McGinleys' home. She told the jury that Mrs McGinley said that she was 'going with' Mr Monaghan. She already knew that for a "good wee while" by the way that they had talked to each other and looked at each other. Mrs McGinley said that Mrs McElroy did not know the kind of life that Mrs Monaghan had given him, that she treated him like a dog. Mrs McElroy told the jury that she knew that this was not the case. She was not challenged by counsel for Mrs McGinley that she had told Mrs McElroy that she and Mr Monaghan were going together. Nor did counsel for Mr Monaghan challenge this evidence.

[32] Francis McBride who lived near Castlefinn in County Donegal said to the jury that he owned a number of shop units in Castlefinn. In mid to late September 2000 two persons approached him. They were Julie McGinley and Michael Monaghan. On second meeting they rented one of the units and took it for two or three months. He saw them virtually every day. Their business was called 'Furniture Direct', so far as he could remember. The business did not fare well and Mr Monaghan told him that they were moving to Stranorgan (sic). The trial judge probably referred to Stranorlar.

[33] Patrick Joseph McHugh owned a house near Lifford, County Donegal. Mr Monaghan replied to an advertisement in a local paper to let the house, viewed the house, said that Julie would have to see it before a decision could be taken, brought Mrs McGinley to see the house and they moved in on 20 October 2000. Mr Monaghan, Mrs McGinley, a man to whom we will refer as PJ and Mrs McGinley's two children occupied the house.

[34] Brian Bovaird (mistakenly referred to in the transcript of the trial judge's charge as Brian Mulvern) was the principal of Robertson National School in Stranorlar. He stated that S, the daughter of Mrs McGinley attended his school from 6 September 2000 to 19 December 2000, having been enrolled by her mother from 27 October 2000. At the same time her other daughter C, was enrolled but never attended the school. Mrs McGinley explained to him that they were missing their grandfather, but made no mention of their father.

[35] Both applicants were arrested on suspicion of murder on 21 March 2001. They were arrested at 10 Windmill Drive, Enniskillen. Clothes belonging to Mr Monaghan were discovered in Mrs McGinley's bedroom. A romantic note was found in a pocket of his jeans. The prosecution claimed that it was from her to him. Contraceptive pills prescribed for her in January 2001 were found. A wash-bag with his name on it and washing materials were found there.

[36] At interview he suggested that the clothes could have been left there to be washed. Later at interview he admitted a sexual relationship. One of the topics about which they were questioned was their relationship with one another. We remind ourselves, although we need no reminder, that what they said at interview was relevant to the case for and against the person interviewed but not for or against the other. Mrs McGinley was interviewed by Detective Sergeant Stevenson and Detective Constable Barr. Her solicitor was present throughout all her interviews with them. At her first interview on that first day she was asked to name the persons with whom she had had affairs during her marriage. She named John Maguire and John Sheerin but denied a sexual relationship with Mr Monaghan. She was asked when she and Mr Monaghan became lovers. Later she denied Margaret O'Donoghue's account of seeing her and Mr Monaghan having sexual intercourse in a large blue coloured car in July 2000. She said that she would have been with her

two daughters. She said that she was only once in Mrs McElroy's house the night that Mrs McElroy's son died. She did not even know the woman except to say 'hello'. Later it was put to her that there was a liaison [with Mr Monaghan]. At the end of the interview she was asked if she was having a sexual relationship with Mr Monaghan. She replied: "Whether I was, whether I wasn't, it's irrelevant."

[37] In later interviews she said that she was not prepared to comment about whether she was having a sexual relationship with Mr Monaghan. She was asked about sharing a house in County Donegal with him but was not prepared to admit that. Nor was she prepared to admit that he shared her house at 10 Windmill Drive, Enniskillen.

[38] Mr Monaghan made a statement to Detective Sergeant Ferris on 6 September 2000 in which he said of Mr and Mrs McGinley: "They seemed happily married. I wasn't aware of any problems between them." On arrest he denied at interviews that he had any sexual relations with Mrs McGinley and, in particular, denied the allegation made by Margaret O'Donoghue. At one stage he said: "If it had happened I would admit it". He used such phrases as "what I'm telling you is the truth. You have asked me to tell the truth and I'm telling you." When he was driven to admit that he had shared a bed with her he still maintained that he had not had sexual relations with her and that he did not find it difficult to resist. Ultimately he was obliged to accept that there had been a sexual relationship. "I did have sex with Julie McGinley. I did", he eventually said. But he refused to expand on it. They just started off as friends but it just developed. What happened and when it happened was between himself and Julie McGinley. He didn't remember exactly when it started. When he was arrested he had spent the night with her in her bed. He was asked when it started and he replied "... say a few months ago" and "it has happened now and again". He refused to say when it started. He was asked whether he was having a relationship with Julie McGinley in June 2000 that her husband would not have known about. He replied: "I'll put that down as a 'no comment.'" He was pressed over and over again and came up with "no comment". His answers at interview are not, of course, evidence against Mrs McGinley.

[39] We are satisfied, first of all, from the evidence about the relationship between Julie McGinley and Michael Monaghan that the jury must have inferred that prior to 4 June 2000 when Julie McGinley and her husband returned from a holiday in Gran Canaria an intimate relationship had developed between her and Michael Monaghan which was of sufficient intensity that it provided a powerful motive to entrap her husband in drug-smuggling which would lead to his imprisonment and enable her to divorce him and obtain custody of their children.

The Blacklion Incident

[40] The case for the prosecution was that Julie McGinley, Michael Monaghan and a man called Tony McNern conspired to 'set up' her husband, Gerald McGinley, at Blacklion, County Sligo where he was stopped in a car by Gardai. A parcel containing drugs which included what appeared to the Gardai drug squad to be heroin and cocaine was found underneath the driver's seat of the car which Mr McGinley was driving. When the drugs were analysed in Dublin heroin and cocaine were ruled out and their value turned out to be £830. We do not know what they would have been worth had they been heroin and cocaine. If he had been convicted of smuggling heroin and cocaine from Northern Ireland into the Republic of Ireland he would have faced a lengthy prison sentence because he had a criminal conviction for rape of a Garda's wife for which he received 9 years' imprisonment.

[41] As it turned out what appeared to be heroin was on analysis kitchen spice and what appeared to be cocaine were, on analysis, crushed up ecstasy tablets. It was established in cross-examination that drug suppliers sometimes double-crossed those to whom they supplied drugs and gave them something less than they had promised. It is an obvious comment to make that only skilled suppliers could deceive members of the Drugs Unit or those purchasing drugs from them in order to 'plant' them on another person.

[42] In the course of her evidence to the jury Garda Pauline McDonagh, a member of the Drugs Unit attached to Sligo Garda station told the jury in cross-examination that in all her years in the Drugs Unit it was the first time that that she had been part of a team which seized kitchen spice that she was convinced was heroin when she looked at it. She had never before come across ecstasy tablets that were crushed up and looked like cocaine. We were supplied with a transcript of her evidence to that effect. It was open to the jury to infer and we consider it highly likely that they did infer that the package of drugs placed under the driver's seat of that car was believed by those who had it placed there to contain dangerous drugs which could have led to the imprisonment of Mr McGinley for a lengthy period of time.

[43] The prosecution relied on the evidence of Garda Feeney, of which we have read a transcript, although the transcript was not referred to in these applications. There was also significant evidence given by Sergeant Lee and Garda Davey, but their evidence was not transcribed. There was also strong reliance placed by the prosecution on a telephone chart which was an exhibit. It is apparent that counsel for the applicants were content to accept the summary of the evidence provided by the trial judge. But that did not inhibit criticism of it by them in this court.

The telephone traffic

[44] Secondly, we propose to examine the evidence laid out by the trial judge about a number of telephones involved in telephone traffic in order to shorten the summary of evidence which we consider necessary. The prosecution case was that the details of Mr McGinley's movements could only have come from Julie McGinley who was supplying them to Michael Monaghan, who, in turn, was relaying it to McNern.

[45] We propose to refer to the last three digits of each telephone number. The first is '905' which is the telephone number of Mrs McNern, the wife of Tony McNern and is a landline. The second is '663' which is a mobile phone number in the Republic of Ireland. Mr Monaghan admitted in interview with the police that this was his mobile phone number. The third is '776' registered to 'Karen Johnston' at an address near where Mrs McGinley lived. Mrs McGinley and Karen Johnston worked together at BT. Karen Johnston told the jury that she did not register that mobile phone; as the address given was near where Mrs McGinley lived, it was chosen according to the case for the prosecution as a convenient location for false registration. The prosecution claimed that Mrs McGinley registered another mobile phone in the name of Carmel McManus who also worked at BT and lived at Glebe Park close to where Mrs McGinley lived. Evidence was called to show that Mrs McGinley gave that mobile phone to her father but had it available for her own use. So, the prosecution said, this was the clearest possible indication that she had done the same trick on another occasion. The prosecution referred to these as "ghost telephones" used by Mrs McGinley. Mrs McGinley did not go into the witness box to deny that she was the owner of this mobile telephone. So the prosecution invited the jury to conclude that Mrs McGinley used it at the material times. The fourth is '156' which Mr Monaghan gave to D/S Ferris as the one on which he could be contacted and admitted using. He also admitted being contacted on that number by Detective Sergeant Ferris. It was the same number as the flier (or advertisement) for Furniture Direct, the business started by him, Mrs McGinley and Mr McGinley. The trial judge pointed out to the jury that there was clear evidence that McNern used it on one occasion. The fifth is '178' which, the prosecution said, was McNern's mobile telephone. The subscriber was shown as a Ms Connolly who gave evidence that she had owned it but did not own it in June 2000. Documentation in Mr Monaghan's possession which was seized by the police recorded that it was McNern's mobile telephone.

[46] We are satisfied that the jury must have inferred that Mrs McGinley, Mr Monaghan and McNern not merely had access to these telephones but used them at the material times recorded on the telephone chart, notwithstanding the contentions of counsel for the applicants to which the trial judge referred and with which we will deal briefly when we refer to the submissions made to us. Garda Feeney gave evidence that on Friday 2 June

2000 he was at home and at about 8.00 pm received a telephone call from McNern who said that he had information about a large quantity of drugs being conveyed from Enniskillen to Sligo. He said that he would be able to supply details of time of delivery, the route to be followed and the number of the vehicle to be used. The route would be through Blacklion (which is 150 yards from the border). The value of the drugs would be in excess of £10,000 and would include heroin. Garda Feeney knew about the drug problem in the area and that there was very little smuggling of heroin across the border into the Republic. The information was of considerable interest to him and he was told by McNern that he would get back with the date and time that it would take place. Garda Feeney gave his mobile number to McNern. On Sunday 4 June McNern telephoned again to say that he would be in touch. Garda Feeney got in touch with his own Sergeant and with Sergeant Lee of the Drugs Unit and spoke again to Sergeant Lee on 5 June.

[47] On 5 June 2000 at 7.58 am Garda Feeney received a further telephone call from McNern, telling him to go to Blacklion right away. Garda Feeney picked up Garda Pauline McDonagh and as they were travelling towards Blacklion received another telephone call from McNern who said that they should be looking for Gerald McGinley and that he would be driving a dark coloured BMW registration no. WXI and would be bringing the stuff to a man called Alistair. He gave the surname. Garda Feeney relayed the information to Sergeant Lee. McNern telephoned several times that day. He said that Mr McGinley was having difficulty with transport as he was taking a child to hospital. At about 6.00 pm McNern telephoned to say that the vehicle would be a white Nova, registration number JUI 6412. Eventually at midnight McNern said that the drugs would not be going through that night. At 10.00 am on 6 June McNern telephoned Garda Feeney to say that he had seen Mr McGinley with the drugs, that he was still having difficulty with transport but was under pressure to deliver the drugs that day. Around 5.00 pm McNern telephoned to say that Mr McGinley was preparing to leave Enniskillen. At 5.50 pm McNern telephoned to say that Mr McGinley would be travelling in a BMW, registration number WXI 1022 and that a brown package containing the drugs would be found under the driver's seat and Mr McGinley would be heading for the yard in Blacklion. Shortly before 7.00 pm Garda Feeney received a telephone call from Sergeant Lee that Mr McGinley was in custody. Garda Feeney telephoned McNern to tell him and McNern telephoned back, possibly on three occasions, to see how matters were progressing.

[48] Garda Feeney accepted in cross-examination that he had been sent on 'a wild goose chase', but he may not have been aware that Sergeant Lee and Garda McDonagh had believed that what they had seized was heroin and cocaine and that the 'wild goose chase' was because Mr McGinley's car did not contain heroin or cocaine.

[49] At 12.01 pm on 3 June 2000 Garda Feeney had received a telephone call from McNern lasting almost four minutes. At 12.13 pm McNern telephoned Michael Monaghan eight minutes after he had finished his conversation with Garda Feeney followed by a further brief call. Four calls were made by Julie McGinley to Michael Monaghan on 4 June between 3.49 pm and 6.30 pm. They talked together for approximately 51 minutes. Between 5.40 pm and 6.30 pm the telephone traffic between them was virtually continuous. Incidentally Mr Monaghan admitted at interview that she had telephoned him from Gran Canaria whilst on holiday.

[50] On 5 June there were two calls from McNern to Garda Feeney at 8.41 am and 9.45 am. Less than a minute later McNern telephoned Mr Monaghan. Eight minutes later McNern telephoned Mr Monaghan. The prosecution said that this was evidence of Mr McNern reporting back to Mr Monaghan about his contact with Garda Feeney. On 6 June the pace of telephone traffic picked up. At 11.23 am Julie McGinley telephoned Michael Monaghan for over 12 minutes. At 12.14 pm Mr McGinley telephoned her at her father's house where she had stayed after returning from Gran Canaria. Within a short time she telephoned Mr Monaghan. Then there were two calls from McNern to Garda Feeney followed by two calls from McNern to Mr Monaghan. Then there were three telephone calls in quick succession from Julie McGinley to Michael Monaghan. At 2.36 pm Julie McGinley rang Michael Monaghan. Then McNern rang Mr Monaghan. At 3.08 pm Julie McGinley rang Michael Monaghan. She rang again at 3.14 pm and at 3.35 pm Mr Monaghan rang McNern. McNern rang Mr McGinley at 3.57 pm and 4.04 pm and 4.37 pm. Mr McGinley later told the Gardai that he had been telephoned by a man about a lorry Mr McGinley was selling. This man told Mr McGinley to ring him when he got to Blacklion and gave him a telephone number. There were three calls from Julie McGinley to Michael Monaghan, starting at 4.09 pm. She rang him again at 4.30 pm. At 5.47 pm Mr Monaghan rang McNern. Within 2 or 3 minutes McNern tried to contact Garda Feeney. At 6.05 pm Julie McGinley rang Michael Monaghan and he then rang McNern. She then rang Michael Monaghan again. McNern rang Garda Feeney. Mr McGinley was approaching Blacklion where the Garda had set up a checkpoint. McNern rang Mr Monaghan. Julie McGinley rang Michael Monaghan as soon as that telephone call was over. At about this time Mr McGinley was being stopped by the Gardai at Blacklion.

[51] Pausing there, we are satisfied that the jury must have concluded that Julie McGinley, Michael Monaghan and McNern had set up Mr McGinley. Only she knew his exact movements. She was giving them to Michael Monaghan who relayed them to McNern who then informed Garda Feeney.

[52] The telephone traffic continued. McNern learnt from Garda Feeney that Mr McGinley was in custody after 7.00 pm. Mr Monaghan was in contact with McNern before 8.00 pm and then was in contact with Julie McGinley. At

8.08 pm Julie McGinley telephoned McNern twice and then rang Michael Monaghan. In the early hours of 7 June at 1.35 am and 1.44 am she telephoned Michael Monaghan. The prosecution invited the jury to conclude that the only conceivable conclusion to be reached from this telephone traffic was that each of these three individuals was complicit in the setting up of Mr McGinley.

[53] We do not consider it necessary at this stage to deal, as the trial judge rightly did, with the points made by the defence in respect of the telephone chart or the calls by McNern to Mr McGinley, to take two examples. Of course Mr McGinley knew that he had been set up and, if the case for the prosecution was right, so did Mrs McGinley. Her concern would have been that he suspected her of setting him up. She went down to Manorhamilton Garda Station and joined with him in claiming that he had been set up.

The drugs charge

[54] Following the analysis of the suspected heroin and cocaine the Drugs Unit, having charged him with simple possession of drugs under Section 3 of the Misuse of Drugs Act which would carry a penalty on a conviction of a fine, then released him.

[55] Garda McDonagh told the jury that she received numerous phone calls from Mr McGinley on his release. She explained the charge to him and assured him that there was no question of a jail sentence. He did not really express any concern about the pending court case. His main concern on every call was to establish the identity of the person who, in his words, "had set him up". She met him once in Sligo with his wife and children. He asked her if she could find out who had set him up. Mrs McGinley asked her if the tout or the informant's name was found out whether it could be given in court.

[56] Later she conveyed to Mr McGinley on the telephone that Sergeant Lee said that he did not feel that he could recommend a prosecution. Mr McGinley was very happy, she thought, that Sergeant Connolly believed him. In one call he alleged that a man called John Maguire was having an affair with Mrs McGinley and that both of them were involved in the set up. He said that Julie wanted him out of the way. On one occasion he hung up and rang back shortly afterwards, saying that he did not want Julie to hear what he was saying. He again alleged that she was involved in the whole set-up. Julie came onto the phone on a couple of occasions and on one occasion asked her if she thought that she was involved in the set up. Julie's main concern seemed to be whether the Gardai could establish the name of the informant. In his last few calls before he disappeared Mr McGinley made it quite clear that he was annoyed that Garda McDonagh was not giving him the name of the informant. On one of his last calls he gave her a number of names which she wrote down and gave to her authorities. He said that if

anything happened to him he wanted her to pass them on. On 12 August he told his sister that he did not think the drugs charge was going ahead. In cross-examination Garda McDonagh said that she did not believe that the names he gave her were the names of people that he believed were badly disposed towards him. She felt that he was grasping at straws to come up with names.

[57] The unchallenged evidence of Garda McDonagh and Sergeant Lee was that he would not have been sent to jail and Garda McDonagh said that she told him that, prior to the decision not to prosecute him.

The inferences open to be drawn

[58] The prosecution were saying that it was highly unlikely that he would have left his house in Derryraghan for the reasons that Mrs McGinley claimed that he did. Mrs McGinley said at interview that she was never made aware that it was unlikely that he was going to be prosecuted. Garda Davey told the jury that she had told him that her husband had told her that the case would not go ahead and she wanted to know if this was true. She told him that her husband would not tell her anything about the case.

[59] The trial judge reminded the jury that Mr McGinley did not point the finger at his wife or Mr Monaghan and indicated to the jury that they would want to take into account whether he knew that his wife was conducting an affair with Mr Monaghan. If he did not, that might have some bearing on the omission of them from the list which he gave to Garda McDonagh. He also reminded them that Mr McGinley may have been contacted on the telephone by someone who gave him a false name and a false telephone number. He referred to the three telephone calls from McNern to Mr McGinley in the afternoon of 6 June but warned them against speculation, directing them to draw inferences from the evidence. The account that he gave Garda McDonagh led Mr McGinley to produce a scrap of paper from his pocket with a mobile number written on it. This account did not preclude the possibility that he had been provided with this information incorrectly by someone else in a telephone message. On the evidence he would have been unlikely to recognise McNern's voice on the telephone. The caller may have disguised his voice.

[60] Garda Davey gave evidence about approaching Mr McGinley's car at Blacklion, telling him that he was detaining him for the purposes of a search under the Misuse of Drugs Act and Mr McGinley's violent reaction. He was interviewed that evening and asked what he thought when he saw the checkpoint. He said that he did not think anything of it and in fact put his seat belt on. He drove up to the checkpoint, saw Sergeant Lee and said: "Oh, here he is going to hassle me". He also gave an account of his movements that day, describing the journey from his house with his wife and his two

girls. He was driving the BMW which was missing and cutting out, so he had to get to her father's house to get the loan of her father's car. The reason he needed to get her father's car was to take the younger daughter to the hospital to get her a meningitis injection. Julie drove the father's car and dropped him and his daughter off. Garda Davey gave evidence that he had a conversation with Gerald and Julie McGinley after his court appearances at Manorhamilton District Court. Mr McGinley gave him to understand that he would appear at every court hearing and would prove his innocence. Mrs McGinley asked whether the person who had given the information would be brought to court.

[61] Garda Davey said that he had a number of telephone conversations with Mr McGinley. He got on reasonably well with him but on the last occasion Mr McGinley had been aggressive. He said that he had been set up in relation to the drugs matters and knew exactly what had happened and would sort it out himself. Garda Davey said that he encouraged Mr McGinley to pass any information on to a member of the Gardai to investigate his allegations. Mr McGinley said that if anything happened to him a lot of things would come out and the Gardai would then know that he was being set up.

[62] We consider not merely that the jury must have concluded that Mrs McGinley, Mr Monaghan and Mr McNern were complicit but that the jury were entirely justified in reaching that conclusion. Moreover it was open to the jury to infer that the trio considered that Mr McGinley had not been caught with a small cargo of drugs worth £830 but a significant consignment, although the trial judge did not spell this out in his charge to the jury. We acknowledge that when he was sentencing Mrs McGinley and Mr Monaghan he used the phrase that it was "highly likely" that the jury concluded that they were involved in the Blacklion incident. But the jury had convicted them of murder and we attach no significance to the use of those words in his sentencing remarks, such as was sought to be placed on them by counsel for the applicants.

We acknowledge, of course, the relevance of the evidence on one topic to the evidence on another. The evidence cannot be separated into compartments and isolated, as the trial judge pointed out to the jury. For example, the evidence about the relationship of Julie McGinley and Michael Monaghan is relevant to an assessment of the Blacklion incident and vice versa. We repeat that the jury were entitled to conclude that Mrs McGinley and Mr Monaghan sought to entrap Mr McGinley in a major drug-smuggling incident which did not succeed, but if successful, would have led to a long term of imprisonment for him.

The events of 12 and 13 August

The arrangement for a babysitter

[63] Miss McGirr gave evidence that her mother received a call from Julie McGinley on Friday night, 11 August 2000, asking Miss McGirr to baby-sit the following night. The next morning Julie McGinley arrived asking Miss McGirr to baby-sit. She explained that she could not. Her mother said that she would take the children into her house and look after them but Mrs McGinley declined. Mr McGinley telephoned Miss Heather Edwards to see if she would baby-sit at 9.50pm on Saturday evening, 12 August. There was evidence that Mr McGinley telephoned Mr Monaghan to join him and his wife for a drink at the Fort Lodge Hotel. Mrs McGinley stated in her police interviews that she was not particularly anxious to go out, that it was her husband's idea and told her interviewers that he bought clothes in the afternoon of 12 August which he wore that evening and pressed her to arrange for a baby-sitter. She told Sergeant Stevenson that the night out was a belated celebration.

[64] Heather Edwards gave evidence that she lived at Derryraghan with her sister and parents. They lived about half a mile away from the McGinleys. She did not baby-sit frequently for them. On the evening of 12 August Mr McGinley telephoned and asked her and her sister to baby-sit. He said that he and his wife would be home about 12 midnight or 1.00 am. Heather agreed to do it by herself. He collected her and she said that he was wearing a blue shirt and jeans. The McGinleys left shortly after 11.00 pm. She watched television. She checked the children and they were sleeping. She did not fall asleep herself and there were no telephone calls while she was baby-sitting.

The Fort Royal Hotel

[65] A number of witnesses gave evidence that Mr McGinley was in good humour. There was evidence that he drank 6 to 7 or 7 to 8 pints of beer in the hotel. Mr Beacom, the doorman, who appeared to have a fairly fleeting contact with Mr McGinley said that, if anything, he was soberer that evening and left earlier than usual. On the other hand it was common case in this court that it was about 10 minutes from the hotel to the McGinleys' home and they arrived home about 2.30am. This would suggest that they left the hotel rather later than Mr Beacom suggested and nearer the usual time that Mr McGinley left. In interview Mrs McGinley said that her husband had been drinking rather more than usual. She also gave him whisky before they went out to the hotel, according to the story which she told the police.

The return home

[66] At about 2.30am the McGinleys returned to their home and Julie McGinley entered the house alone. She told Heather that she had telephoned from the hotel to say that they would be late. Miss Edwards said that the telephone had not rung while she was there. Mrs McGinley pressed 1471 and Heather could hear a recorded message that the telephone had been called but not the time. She offered to walk home but Mrs McGinley said that she would drive her home. They left the house together and Miss Edwards got into the passenger seat. Mr McGinley had not yet come into the house. The car was parked outside facing a transit van belonging to the McGinleys. She asked Mrs McGinley where her husband was and she said that he was round the back of the house. When she was leaving she saw a man in a white t-shirt coming round the side of the house. It was the case for the prosecution that this was Mr McGinley who removed the new blue shirt when he went round the back or earlier and was wearing a white shirt underneath. Otherwise it would have meant that he was still out of sight when Miss Edwards left and went into the house after the man in the white t-shirt. Miss Edwards saw the man for a very short time and her view was obscured by the van and she had only a glimpse of him as he walked through the door. The trial judge told the jury that Miss Edwards may have been mistaken about the man's clothing and in any event if there was a man there for some criminal purpose, the jury might take the view that it was highly unlikely that he would have taken the risk of allowing himself to be seen by Miss Edwards when she had just got into the car or was about to do so. He was apparently unconcerned about being seen by Miss Edwards and this might be the best clue as to whether it was Mr McGinley. Mrs McGinley told Sergeant Stevenson that the blue shirt was a size too small for him. We comment that this may have been one of a number of reasons for taking it off. In our view the person who entered the house was Mr McGinley and the jury must have taken that view, as they were entitled to do.

Sunday 13 August

[67] The next time that Miss Edwards saw Julie McGinley was when she and her sister brought back a motorised Quad belonging to one of the children about 12.50 pm on Sunday 13 August. Mrs McGinley came out of the house with the children as she and her sister approached. Usually the sisters would be invited into the house. This was the only occasion on which they had not been invited into the house. Barbara Edwards, her sister, gave evidence that Mrs McGinley came out of the house with the children and said that she was in a hurry to go to her father's house. Barbara said: "She just wanted rid of us". She also told the jury that Mr McGinley doted on his children.

[68] Heather Edwards said that she saw two men standing at the bottom of the slope leading into the back yard whom she recognised as Michael Monaghan and the man to whom we have referred as PJ. She also saw Mr Monaghan's van which she identified from an album of photographs.

[69] Robert Elliott who lived about a mile or a mile and a half from the McGinleys' home gave evidence of contact with the McGinleys on 12 and 13 August. He called to their furniture shop on the Tempo Road, saw Julie McGinley who said something about her husband buying clothes and later saw Mr McGinley in the shop wearing a blue shirt, jeans and a pair of black shoes. They conversed about Mr McGinley driving one of Mr Elliott's vintage lorries at a festival the following week and the possible purchase of an orthopaedic bed by Mr Elliott. Mr McGinley said that he would be getting one in the following week and would keep it for Mr Elliott. The prosecution said that this showed that Mr McGinley had no intention of going away.

Shortly before 1.00 pm on Sunday 13 August Mr Elliott went to the McGinleys' house in his Land Rover. Mrs McGinley came running from the back door, said that Gerry was away, that she was in a hurry, getting the children ready and making the dinner. They spoke through the window of the Land Rover.

The telephone traffic

[70] We deal now with the telephone records, as the trial judge did. The mobile telephones which are relevant are the one with the '156' telephone number ascribed to Michael Monaghan when the evidence about the Blacklion incident was being discussed and the telephone registered in the name of Carmel McManus whose married name was Carmel Wilson and who worked at BT. At some stage this telephone was given by Mrs McGinley to her father but it was the prosecution case that Mrs McGinley used that mobile telephone, having registered it in the name of Carmel McManus who had lived near her and who worked, like Ms Johnston, for BT in the same premises as Mrs McGinley. The last three digits were '143'. At interview it was put to Mrs McGinley that she had given the phone to her father after Christmas 2000.

[71] We are satisfied that the jury must have inferred that Mrs McGinley used '143' and Mr Monaghan used '156'. The telephone records show that from half past six on the early evening of Saturday 12 August until 10.38 pm on the same day, they were in contact or at least attempted contact with each other on 10 occasions. The prosecution case was that she activated this telephone on 8 June and used it to communicate with Michael Monaghan. Between 6.30 pm and 10.37 pm they spoke to each other for 25 minutes and 4 seconds. It was the prosecution case that Mr Monaghan also spoke to her from his mobile phone to the land line at Derryraghan. Also calls were made

from Furniture Direct to '156' and vice versa. The prosecution suggested to the jury that the number of telephone calls between the mobile phones was highly unusual and indicative of planning. The periods of the calls were relatively short. The baby-sitting was arranged at 9.50 pm and at 9.56 pm Michael Monaghan, the prosecution claimed, contacted the landline at Derryraghan and the call was returned shortly afterwards and there was a further call from Derryraghan to Mr Monaghan at about 10.05 pm and then Mrs McGinley used '143' to speak to Mr Monaghan. The jury were invited to look at the pattern of calls. The landline at Derryraghan was used to ring the hotel at 2.42 am. Three or four minutes after that call ended, there was a call from a payphone in the foyer of the hotel which, the prosecution said, was made by Mr Monaghan and at 3.24 am Mr Monaghan telephoned the landline at Derryraghan. We comment: what was said? Was Mr McGinley then asleep? Only the two applicants know what was said on the telephone but they did not give evidence at the trial.

The reporting of Mr McGinley's disappearance to the police

[72] Mr Gerald McGinley senior told the jury that before 13 August 2000 he was in contact virtually every day with Mr McGinley, his son. His son set up a haulage business and was very close to his daughters. He had four or five Scania lorries and had bought a Mercedes box van two or three weeks before his disappearance. One of the Scania lorries was delivered to a purchaser in the week after his son disappeared.

[73] He first became aware that his son was missing when he received a telephone call from his daughter-in-law on Tuesday night, 15 August 2000. Julie McGinley asked whether two friends of her husband were at home. They had been living in London for some years. Then she told him that Gerry had disappeared, leaving home on the Sunday morning. The father said that he had been trying to contact Gerry. She told him that he had left in a car, that she had been wakened by the sound of Gerry putting his clothes in a bag. He said: "I'm going, you don't know how they work." He had taken clothes and £1000 in cash. The father then went to see Mr Monaghan on Thursday 17 August at the Furniture Direct shop on the Tempo Road. He went with his son Harry. Mr Monaghan told him, he said, that he last saw Gerry when they closed the shop between 5.00pm and 6.00pm on Saturday, 12 August. Mr Monaghan said that he had not been up at Gerry's house on Sunday 13 August. Then Mr McGinley senior and Harry went to see Julie. She, the girls and her father were in the house. He asked her whether there had been anyone at the house between Thursday and Sunday. She said that no one had called except Robert Elliott on Sunday and she had not time to speak to him. He asked her if she had contacted the police and she replied that she had been speaking to a Sergeant from Ballinamallard who had told her not to make a report for a week or so because Gerry was an adult. He tried to force her to

make immediate contact with the police but she said that Gerry would kill her when he came back if she reported it.

[74] He then gave evidence about a telephone call from Mr Monaghan on 29/30 December 2000 who asked him to call off his men, that there were two or three cars with six men on board touring the estates of Enniskillen, looking for him. He told Mr Monaghan that this was nonsense, that if he wanted to speak to him he would meet him. Mr Monaghan said that he was his friend and added: "I don't know what Julie is up to, I'm on the inside looking out. When I get information I will tell you, I have been with the police a few times just trying to help." Mr McGinley said that he had learnt that Mr Monaghan was with Gerry until the early hours of Sunday morning in the hotel. Mr Monaghan made no reply. He kept pressing Mr Monaghan who said: "It wasn't a professional hit, you know." Mr Monaghan promised to give him the names of the men that had been sent after him but never contacted him again. Mr McGinley senior was not especially concerned about the lack of contact with Gerry on Sunday or Monday because Gerry might have been delayed or broken down. He rang Julie again on Wednesday because of his concern. He said that he asked her on the Tuesday to report to the police immediately that Gerry was missing. In cross-examination he agreed that he told the police that Mr Monaghan said that he did not know what was going on with Julie, not that he "didn't know what Julie was up to." There had been threats allegedly by the Real IRA to Gerry's life earlier in 2000 before June and Gerry had told him of them. As a result Gerry and his family went to stay with him for a week or so. Gerry had been told by the police of the threats. A code name had been used which made them more likely to be authentic.

[75] Mrs McGinley said in interviews with the police that she was not especially close to her in-laws. She told the police in interviews that she did not want to discuss her personal life with others. Judging by the telephone calls, she was, however, in regular contact with Mr Monaghan from Sunday to Tuesday.

[76] Mr Monaghan was at the McGinleys' house with PJ on 13 August. The case for the prosecution was that he lied to Gerry's father about it because there was no innocent explanation for it. But, the trial judge reminded the jury, it did not follow that he was involved in the murder. Mr McGinley senior confirmed in cross-examination that his son had told him that his wife had had affairs with a number of men and that he told him that Garda Davey had pressurised him for information about drug activities and that if he did not give names he would go to jail. But he had assured his son that he would not be going to jail some time after the conversation with Garda Davey. He also said in cross-examination that he had been told by a lorry driver that his son was the victim of a hit man.

[77] Harry McGinley, the deceased's brother, gave evidence that Gerry was devoted to his daughters. He was never without his mobile phone. He had put a Scania lorry through the MOT the week before he disappeared. On 13 August he went to Mullan Market about 3.00pm. He noticed that Julie and her two daughters arrived in Gerry's Vauxhall car. He noticed that she was tired looking and was not 'dolloed up' as she usually was. She said that she really did not know why she came to this mart. After finishing their conversation he noticed her going to the bedding stall directly where she bought bedclothes and then walked back to the car. It appeared that she was not interested in the other stalls, he implied. She said nothing about Gerry's disappearance earlier that day. Although she said she did not know why she went to the mart, she went straight to the stall where she bought bedclothes and then left the mart. She said in interview with the police that she expected Gerry to return home and that she did not want to run the risk of his reaction if she had broadcast the fact that he had gone away. Harry McGinley said that Mr Monaghan told Mr McGinley senior that he was not at Derryraghan on Sunday.

[78] On the Thursday evening after Julie described Gerry's departure, packing three pairs of trousers and two sets of shoes into a bag, Harry McGinley and his father went to see Robert Elliott. She did not know that they were intending to do so. On their return to her they told her that she must contact the police. She started laughing and said that Gerry would go mad if she did and he subsequently turned up. They told her that they would take the blame. Her father also encouraged her to tell the police and she said she would contact them the following morning. His father told her that if she did not, somebody else would. She did not appear to show any concern about Gerry's disappearance. She later claimed in interview that she had been told by Sergeant Stevenson at Ballinamallard not to report the disappearance as Gerry was an adult.

[79] Sergeant William Stevenson gave evidence that Mrs McGinley telephoned him on Wednesday 16 August to find out why he wanted to speak to her. There was an outstanding warrant for the sum of £80, a fine imposed on her husband. She said that she would call down to Ballinamallard to pay the fine. She did not do so. He called at the house on the Thursday. She told him that Gerry had left on the Sunday morning at 7.00 am, after packing a bag, taking £1000 and leaving in a car parked outside. She said that she and her husband were on good terms, although they had been through a rough patch in the past. She told him that the previous Thursday Gerry had had a heated conversation with a Garda officer and that Gerry had said that he would not do the Garda's dirty work. Gerry also told her that he was not going to do time for the drugs offence. After the phone call with the Garda Gerry went to Dunnes Stores and bought a shirt which was too small for him and shoes which did not go with his outfit. He wore the clothes on the Saturday night when they went for a belated celebration and he was in really

good form. She said that on Tuesday she had received two telephone calls that she thought might have been from him on a very bad line. The Sergeant asked her whether she wanted to report him missing and whether she had a photograph of him. She told Sergeant Stevenson that her father-in-law had told her to leave the police out of it. She told Mr McGinley senior that Sergeant Stevenson had suggested that she should not report it for a week because Gerry was an adult. In the event she did not provide Sergeant Stevenson with a photograph and told him that there were no matrimonial or financial problems. She did not tell her father-in-law that Sergeant Stevenson asked her if she wanted to report it.

[80] Mrs McGinley contacted Inspector Norman Cairns by telephone on Friday 18 August between 10.00am and 11.00am and said that her husband had gone missing and she wanted to talk to someone. She saw him at the police station at 12.30pm. She told him the story about her husband leaving home in a blue Toyota car and the number plates which indicated a Dublin or Donegal registration. She said that her husband believed that drugs had been planted on him and that the police or the Gardai had been involved. She said that her husband was irrational, that they were in debt in the haulage business but he had a good interest in the new furniture business. The Inspector formed the impression that she was the prime mover in the new business. She told him about a period of separation and liaisons which they had formed while apart. She talked about the threats he had received, that the McGinley family had investigated them in Republican circles and could not find anything out about them. She made a short statement in writing. The Inspector treated it as a missing person's enquiry, contacted Sergeant Lee at Sligo and acting Sergeant Liston. He was unaware that she had spoken to Sergeant William Stevenson.

[81] Acting Sergeant Liston spoke to her on the telephone that day and asked her whether she had any more information to provide. She said that she did not. Mrs McGinley said that the Sergeant should make an appointment with Mr McGinley senior. Before the Sergeant could do that Mr and Mrs McGinley senior arrived at the police station. Acting Sergeant Linton and Detective Sergeant Trevor Stevenson went to Furniture Direct and saw Mrs McGinley there. They asked her to come to the police station and saw her there between 8.00pm and midnight. She made a written statement. In the course of it she said: "Lately things are good in our marriage. Gerry seemed to have got a really good grasp of the furniture trade and was enjoying it."

In relation to the Saturday evening she said:

"We sat drinking and Gerry was in great form. I would say that Gerry had seven or eight pints. I took two West Coast Coolers. At about 12.45am I tried to

get through to ring Heather from a pay phone in the hotel but I couldn't get through to Heather, the phone just rang out."

In relation to the following morning she said:

"I woke early to the noise of a plastic bag being rustled. I could see Gerry at the foot of our bed putting clothes into a plastic bag. This was a large bag. I think it might have been the Dunnes bag he had got the clothes in on Saturday. I have now gone through his clothing and found three pairs of his trousers gone and some of his t-shirts, his work boots, a pair of black shoes. At the time I said to Gerry, 'What are you doing?' Gerry said something about it all being a set-up with the Gardai, that he was not going to do jail, that he was set-up before and he was not going to be set-up again. I told him if he ran off he was only going to make things worse. Then Gerry lifted money from our top drawer. There would have been over three grand in his drawer and I estimate he took about a grand. A car then landed on our street. Gerry says to me, 'I'm away, I have to go.' I went to the kids' room and looked out. The last thing Gerry said to me was, 'I will ring you later.' As I looked out the kids' bedroom window I saw a large bright blue Toyota car going down the lane. The driver had short dark hair and I only got a glimpse of them. The Toyota was big, either a Carina or Avensis, it was a Republic of Ireland registration with D or DL in it. I hadn't seen this car before. I went back in the room and seen that it was coming up to 7.00am."

[82] She made a number of statements to Constable Brian Forde during the next few weeks. On 29 August she made a statement in which she confirmed that she had bought bed clothes for the marital bed from Mullan mart on 13 August and stated that the carpet in the bedroom had been bought in the middle of the week beginning 13 August and that PJ had laid it on 17 or 18 August.

[83] On 14 September she made a statement about clothing shown to her in order to relate it to the clothing her husband had worn on the night of 12 August. She made a further statement on 25 September in which she made representations to the police about the return of vehicles to her from the

forensic science laboratory. On 27 October she stated that she had bought her husband and herself a Next watch and that she did not think that he had taken his watch with him. As will appear from the forensic evidence a charred Next watch was found in the remnants of a fire near the home. The prosecution case was that whatever time it was bought and whoever bought it, one did not normally throw a watch on a fire. If one was throwing out a lot of stuff, one would not include a watch.

[84] Before she was arrested and interviewed by the police she spoke on a number of occasions to Detective Sergeant Trevor Stevenson. On 20 August he had a conversation with her at her home and asked if he could be shown the bedroom from which she had seen her husband leave and the drawer from which he took the £1000. She took him to the children's bedroom and he looked out of the window. She took him to the main bedroom where the chest of drawers was from which she had stated that Mr McGinley had removed the £1000 in cash. He noticed that there was what appeared to be a brand new bed and a new uncovered duvet folded on top of it. The bed linen also appeared to be new. He was able to tell that the bedroom had been redecorated. To his eye the carpet was obviously new and had not been tacked in. He asked her for a contact number for Mr Monaghan and she gave him the '156' number. On 22 August he had a conversation with her at the side of the house and the topic of redecoration came up. She said that she did that herself on the Thursday of the week that Mr McGinley went missing, that PJ had laid the carpet and that she had got the new bed a few weeks before.

[85] On 27 August he was present at a search at the house. She told him that her solicitor had advised her to say nothing further, but she described to him at his request what Mr McGinley had been wearing at the time he disappeared. The subject of his wedding ring came up and she said that he had not worn it for a couple of months. She said that he had a Next watch with a silver strap and Detective Sergeant Stevenson asked about the redecoration of the bedroom. She said that it was done towards the end of the week that her husband disappeared. She had done the bulk of the work and PJ laid the carpet. She did the painting and she bought the furniture. The old carpet was put in the back of Mr Monaghan's white van and taken to the dump. The old bed went to the shop for resale some weeks before, she said, and when asked about the wardrobe doors, she said that her husband was getting new doors made by someone she did not know. She did not know where the old doors went. The scene of the fire was pointed out to her and she said that she lit the last fire a couple of weeks previously. This would have been before Mr McGinley left. She said that she burnt rubbish from the business, cardboard boxes, plastics and paper. Nothing from the bedroom was burnt on that fire, she said.

[86] After she was arrested she consistently denied throughout her interviews any involvement in her husband's murder. The jury actually

heard her voice played on tape during the times that she was interviewed. The trial judge commented to the jury that he thought she showed a remarkable degree of composure, not to say self-assurance, and that it was for the jury to say whether on occasions she appeared to be engaged in debating points with the interviewers.

The interviews of Mrs McGinley after her arrest

[87] Mrs McGinley's first interview after arrest took place at 3.00pm on 21 March 2001. She was accompanied by her solicitor. The interviewing detectives were Detective Sergeant Trevor Stevenson and Detective Constable Barr. She was interviewed under caution. Her solicitor asked when the investigation had changed from a Missing Person's investigation into a murder investigation. She said: "It couldn't have changed that terribly long ago, Trevor, did it." She was asked the names of the people that she had affairs with. She replied: "An affair". She referred to John Maguire but said that she and her husband had actually broken up previous to that and said: "So I'm asking you now is that your definition still of an affair?" She was asked whether she had any affairs while she was with John Maguire and replied: "... nothing at all behind his back." She accepted that she had a sexual relationship with John Sheerin on one occasion. She denied having a sexual relationship with Mick Monaghan and asked "what relevance has that got to do with this?" She said that she left home on 30 December [1999] because of an extremely violent row not on her behalf but on her husband's behalf. He had a liaison with Mary Maguire. She thought it had ended a couple of weeks before she went back to him. The sexual relationship with John Sheerin was a one off occasion in her home. It was a long time ago. She then said: "Are you wanting still the answer for John Sheerin, first of all?" She said that it must be at least two years ago. "I'm not trying to be vague, Trevor."

[88] When she got back with Gerry he received threats. He received threats from the Real IRA. In the round up to Saturday 12 August he was in very good form. "I'll be honest here" she said, "he was of an extremely Jekyll and Hyde personality." She was asked about their holiday in Gran Canaria. She was asked what was the life insurance worth on Gerry's life, said she did not know, was told that it was £310,000 and said she thought it was less. She asked what the figure was on her own life. She said, referring to her husband: "Whenever the man disappeared do you think he had intentions of staying away? Do you think he mightn't have had intentions of maybe coming back a couple of days later?"

[89] She said that it was Gerry's idea to go out that [Saturday] night. He had mentioned it earlier in the day. She was asked why she was looking for a babysitter at McGirr's the night before for that particular Saturday night. She said that she wouldn't have been looking for Patricia McGirr; she said that she

pretended to go down to McGirr's on the Friday evening. On the Saturday evening she made her husband a hot whisky. He put the clothes that he had bought on Saturday on that night. She had to lift his feet up and take the labels off which were stuck to the soles of his shoes. There was a big lump of sticker down the side of his trousers. She was told of the arrest of others. She said she knew that [Monaghan] and PJ were looking for a van on the Sunday. They were looking for keys off her and she did not know where the keys were.

[90] When she left the hotel [in the early hours of Sunday morning] Monaghan and PJ were still there. She would have had no contact with them until they appeared up at the house the next day. Gerry went round the back of the house when they arrived home at 2.30 am.

[91] She was reminded that in an earlier statement to the police she had said that she went on to bed. She said that she did not know if he came to bed or not. She agreed that he would have been a heavy man. She said: "Trevor, when I go to sleep at night I'm out for the count." Shortly afterwards she said: "... this is getting silly here, Trevor."

[92] It was put to her that in a previous statement she said, when she saw him putting clothes in a bag: "What are you doing?" He said about it all being a set up with the Guards and that he was not going to jail, that he was set up before and that he was not going to be set up again, that she told him that if he ran off he was only going to make things worse.

[93] She explained that this was a reference to blaming the Guards on the very day that he was lifted about the drugs, accusing them of planting the drugs in the first instance. He had even accused her of planting them. She didn't know that he had been informed that it was unlikely that the prosecution would go ahead. She agreed that he did not take his passport or his mobile phone. She was not alarmed about her husband getting into a car with a man she didn't know at seven o'clock in the morning. She was not overly alarmed. When Monaghan and PJ arrived that day they were outside at the back. They did not come into the house.

[94] It was suggested to her that she should have contacted the police at once. She replied: "Well, at that rate of going I would've been on the phone to you an awful lot throughout the course of my marriage."

[95] She was asked when she and Monaghan became lovers. Her solicitor said that she did not have to answer. She said: "ludicrous like". She went on: "I can ask you why you are asking me something like this." She said that she was denying that she was in love with him. She said that she was having no relationship with him. She said: "Can we get onto something relevant, please ...?"

[96] She accepted that she had met Tony McNern in early 2000 but did not know him; he had dealings with Mick Monaghan. She said that she knew Mary O'Donoghue who worked in P J Treacy's yard. She got on fine with her. Margaret O'Donoghue's statement was read out to her in which she alleged that in July 2000 she saw Michael Monaghan and Mrs McGinley having sexual intercourse in a car and on another occasion saw them kissing in his van. Mrs McGinley said she could assure Trevor that did not happen. Her two girls would have been with her.

[97] It was suggested to her that her relationship with Monaghan had led to the break-up of his marriage. She said that was nonsense. The statement of Michael McIlroy was read to her. She denied that Monaghan ever wrote her love letters. She said that she never received any letter or note from him. She said that she never wrote a note to him. She told a long story about Monaghan making her daughter say: "I love Michael" and that he wrote "I love Michael". She denied sending him a message on his mobile phone: "Mick, I love you xxx J."

[98] She was questioned about mobile phones and her home telephone number. She said that a mobile phone was given to her father, that she did not register it, that Gerry probably did. It was put to her that a man could not register a mobile phone in a woman's name, that this phone was registered in a woman's name. She could not explain why Monaghan or PJ would refer to it as her mobile. Then she gave a vivid account as to how PJ could have got the number.

[99] She was asked about the names of persons who worked for BT in whose names mobile phones were registered. It was suggested that these mobile phones were connected with her. She was questioned about the use of these phones. She said that she could not remember when the mobile phone was given to her father. She said: "I can't remember when, Trevor, sure what relevance is a bloody mobile phone to do with anything?" When answering the Detective Constable, she called him "Bo". Later she said: "Jesus, I didn't think it was a crime to use a bloody mobile phone, goodness sake ..." The interview ended at 4.16pm.

[100] We do not propose to go through all the interviews in detail but we are satisfied that Mrs McGinley displayed remarkable nerve, imagination and skill in dealing with the questions which were put. At the next interview it was put to her that her father had said that he was given the mobile phone which she had mentioned as a gift to him after Christmas 2000. She said that she would have given it to him before Christmas.

[101] The evidence against her was put to her. She had every opportunity to answer allegations. We are satisfied that most, if not all, of her answers to

relevant questions were lies told deliberately to cover up the truth. It is apparent from a perusal of the transcripts of interviews that she was shrewd, devious and quick-witted. This is, of course, more obvious to us than it was to the jury because she gave evidence before us. But we are satisfied that they, like us, did not believe her, glib though she was in her answers to the police. She did not give evidence before the jury.

[102] In relation to a mobile phone registered in the name of Carmel McManus whose married name was Wilson, it was pointed out to her that the phone was registered two days after her husband was arrested for possession of drugs to a woman at an address three doors away from where she stayed and the woman worked at BT.

The transcript reads:

“Mrs McGinley: Which one is this, which name?

Police officer: Carmel McManus.

Mrs McGinley: Carmel McManus. I thought you told me it was Carmel Wilson worked in BT.

Police officer: Carmel Wilson is nee Carmel McManus.

Mrs McGinley: But sure for God’s sake, how, I mean, I don’t even know Carmel Wilson. I know the name Carmel Wilson. There is about three hundred people in that building. I don’t even know Carmel Wilson, let alone know she was Carmel McManus.”

Yet it was proved conclusively that she used the phone, that she must have registered it and the irresistible inference is that amongst those involved in the murder only she could have known that Carmel Wilson was called Carmel McManus before she was married and lived near her. Mrs McGinley had worked for BT from 1994. Her reaction was exceptionally clever but utterly false.

[103] Speaking of Monaghan and his alleged denial of seeing her husband after 5pm or 6pm, she said; “I can’t understand why he would say that. I mean that’s the most stupid thing to come out with for the simple reason

knowing full well he was in the Fort Lodge on the Saturday night and it packed ...” She is there speaking of the man who, she claimed before this court, dominated her.

[104] At a later stage she said of an alleged sexual relationship with Monaghan: “Whether I was, whether I wasn’t, it’s irrelevant.”

[105] She maintained throughout that Gerry had got up on the morning of 13 August before 7.00am and headed off in a blue Toyota with a Dublin or Donegal registration number, D or DL. If her version of events to this court is at least partially true, she may have watched a van driving off at that time with her husband’s body in the back of the van. According to her story to this court that van left after lunchtime but there is no way of telling when it left, save that one would expect the body to be removed as soon as practicable. Mr Monaghan and PJ and Mr Monaghan’s van were at the house about lunchtime and had been there in the early hours of the morning when the body was, she now says, moved to the van. It was an hour’s drive to the place where the body was dumped.

[106] She made a number of points about discrepancies in statements of witnesses read to her. She agreed with a number of facts which she could not dispute. She disputed versions of events by a number of witnesses in police statements, including Josephine McElroy whom, she said, she did not know except to see.

[107] On the second day of interviews she made a number of allegations about matters not relevant to this case. Notwithstanding that we asked the applicant’s lawyers for edited versions of her interviews we were not supplied with them and we indicated that we would assume, in the absence of edition, that the transcripts of the interviews supplied to us on behalf of the applicant were played to the jury. Apparently the transcripts were sent on behalf of the applicant to the Crown but no effort was made to check whether editing was carried out or was necessary. The court made clear in correspondence that as there had been no editing, we assumed that there had been none.

[108] She stated that she did the bulk of the work of redecorating the bedroom – the painting, for example. She bought the furniture. The bed was already there. She got the pine lockers. The old carpet was put in the back of Monaghan’s van and taken to the dump by PJ. The old bed went to the shop for resale “weeks ago”. Nothing was burnt in the fire from the room. The room was redecorated to increase the value of the house for sale.

[109] At an interview that afternoon she said early on: “Get to the point”. She was asked about the forensic findings in the fire at her house not long after her husband `disappeared’, including a burnt Next watch. She said she

had no idea how it ended up in the fire nor whether there had been a fire in the week after her husband disappeared. At the next interview she again declined to comment on whether she was having a sexual relationship with Monaghan. She was asked about a note found in her house on the morning of her arrest which stated: "Mick, I really do love you very much, love always. Julie." She said that she was making no comment as to whether she wrote it.

[110] She accepted in an interview on the third day that she had obtained an application form to emigrate to Australia, describing herself as separated from her husband in January 2001. His body was not found until June 2001.

[111] At a later interview she told the police that she took sick leave from BT on 13 August 2000 because she had a migraine headache. She claimed that she had given money to Monaghan to buy curtains off Mrs McElroy - the curtains which hung in the bedroom after Gerry disappeared. She said that Monaghan's clothes which were found in her house after her arrest were there because there was no washing machine in his flat and she did the washing for him and PJ. She denied that she had been slapped by Patricia Monaghan.

[112] At an interview on Friday morning she reminded the detectives that they had told her that she first met Tony McNern in February 2000. He was in her house for the first time on the day she was arrested, she said. The smell of stale drink on him was horrendous, she alleged.

She said that she would not think that she had rung Monaghan from Gran Canaria. She was not sure whether Tony McNern would have known Gerry. She was questioned about the drugs incident at Blacklion and had an elaborate story about her innocence. She was questioned about the same incident on Friday afternoon. Her admissions to this court indicate her skill in lying to the police.

[113] At her last interview (on the Friday) she was advised by her solicitor not to answer any question about motive for the murder of her husband. She asked the detectives: "Did you ever by any chance consider suicide, cos he's already done it before. Did you ever bear that option in mind even?"

The interviews of Mr Monaghan

[114] We do not propose to say anything more about these interviews other than to comment that his claim to be unable to remember even the gist of telephone conversations is, to put it politely, highly unlikely and must have been disbelieved by the jury, as they were entitled to do. We comment that a comparison of the interviews of Mrs McGinley and of Mr Monaghan indicate to us that she was much the stronger in character and personality and, that he saw the danger of admitting that he had a sexual relationship with Mrs McGinley before she went to Gran Canaria and, in the face of incontrovertible

evidence that he had a sexual relationship with her at some stage, only admitted it after receiving advice from his solicitor. He admitted very limited contact with the redecoration, doubtless in case his fingerprints or DNA were discovered.

The redecoration and the fires

[115] One of the issues which the jury were invited to consider was whether one would set about a complete redecoration of the bedroom down to replacing the carpet while one's husband was away and was expected to come home. In interview Mrs McGinley said that the redecoration was undertaken because the house was up for sale. Mr McCann, the only person who had placed an offer had already viewed the house. He was the one whom the estate agent hoped to get to increase the offer on it. On the day that her husband disappeared Mrs McGinley went with her children to Mullan Mart where she bought bed clothes. Later in that week she bought a carpet which was transported to her home and installed by PJ, she said to the police. She put up curtains that had been given to or sold to Michael Monaghan by Mrs McElroy. She sought to forestall the evidence of Mrs McElroy by saying that she had given Mr Monaghan money for the curtains which he had got from Mrs McElroy. She said in interview that the refurbishment of the bedroom had been planned for some time and that the doors of the wardrobe had been removed in anticipation of being replaced by pine doors.

[116] So far as the fires were concerned Michael Murphy gave evidence that during the week beginning 13 August he saw a fire at McGinleys' home while his family were having tea in the afternoon. Vernon Murphy, his son, gave evidence that on 15 August he saw smoke rising from a fire that came from the McGinleys' home. It was 15 August because he took his sister to the airport that day. He was then a student. At the time of trial he was a teacher. 15 August was two days after Mr McGinley's disappearance. A great deal of material was found on the fire or at the fire sites as Ms Dewberry, forensic expert, testified. There was enough to fill a number of dustbins. It was an area where fires may frequently have taken place. Items that were actually recovered and examined included hinges that fitted the wardrobe drawers in the McGinleys' bedroom and the cupboard doors above, metal strips that would engage the magnet fasteners for the doors, slivers of wood that indicated that furniture had been burnt, remnants of clothing though it was not possible to identify the types of clothes that had been burnt, shoe strengtheners, pieces of equipment such as the handle from a bucket, the metal part of a paint roller, part of a mop, the remains of a Next watch.

The conversations with Mr Owens and with Mr and Mrs McElroy

[117] Part of Mr Owens' conversation with Mr Monaghan has been set out under the heading 'Relationship between Julie McGinley and Michael Monaghan' and does not require to be repeated.

[118] When Mr Owens began his closing down sale in January 2000, Mr Monaghan told him that McNern was well known in Enniskillen and could get sales for Mr Owens. So McNern arrived at the shop and introduced himself and Mr Owens took him on. Things started to go wrong for Mr Owens and Mr Monaghan told him that he had better be careful about what he said to the police as McNern had paramilitary connections. Mr Owens said that he was afraid to go after McNern.

[119] He also said that in April 2000 or thereabouts Mr Monaghan spoke to Mr Owens about Mr McGinley. About that time Mr McGinley had received threats referred to earlier. A priest gave evidence and the statement of another priest was read about receiving telephone calls on 7 April 2000 in which threats were issued to Mr McGinley and a codeword was used. This was conveyed by the police to Mr McGinley. According to Mr Owens Mr Monaghan said that Mr McGinley would be found "pushing up the heather in a Leitrim mountain." Mr Monaghan told him that he had used McNern to threaten Mr McGinley, presumably about his treatment of his wife. These threats were unconnected with the threats referred to by the priests. The trial judge warned the jury about Mr Owens' evidence. If Mr Monaghan told him what was alleged it was evidence of animosity and hostility towards Mr McGinley by Mr Monaghan.

[120] Josephine McElroy gave evidence that she had known Mr Monaghan for about four years. She and her husband were in the habit of calling in his shop on the Sligo Road and got to know his wife and visited their home in Sligo and stayed overnight. She said that she regarded him as a good friend. He called at their home sometimes every day. Around August 2000 she was aware of problems in the Monaghan marriage. She would on occasion ask him whether he was going down to see his wife and he would say: "No, fuck her, she would only be yapping" or words to that effect. She told the jury that Mr Monaghan talked to her about Mr McGinley, calling him a 'psychopath' and a 'schizo'; that he was hitting Julie and he, Mr Monaghan did not like that. He said that Mr McGinley hit her one day in the shop and Mr Monaghan said to Mrs McElroy: "That is the last time he will hit her." He said that McNern was going to get him sorted. He said that McNern was a "stupid cunt", and got £500 and did not do the job. He said that another man was going to get it sorted.

[121] She told the jury that Mr Monaghan told her about Mr McGinley's disappearance on 14 August, that is to say, the Monday. He said that: "he's gone". She said: "Who?". He replied: "McGinley". He was laughing and just saying "He is gone". She said: "Gone where?" He replied "I don't know. A

man came and took him away in a car at 6 o'clock in the morning." She said: "Well, who were they or did nobody hear anything or did Julie not see anything. Had they guns?" He replied: "I don't know, fuck him." She said: "He'll be back." He replied: "He'll not." He told her that they were up at McGinleys' on the Sunday and that they had to let on that they were up to buy a van.

[122] She saw Mr Monaghan virtually every day after that and Mr McGinley's disappearance became a regular topic of conversation. From time to time Mr Monaghan would say that Mr McGinley would not be coming back, that he got what was coming to him and on one occasion she saw him driving a van belonging to Mr McGinley and said: "You have some cheek driving that, Mick, and him missing." He said: "Fuck him" and laughed. She said that she had a conversation with him about the seizure of his van by the police. Mr Monaghan said: "Well, they won't get anything out of the van, any of the vans away, because he was in and out of them" referring to Mr McGinley.

[123] She told the jury about a visit to Derryraghan on 9 September 2000 when her husband and a friend of his cut the grass. She had a conversation with Mrs McGinley. She went into the main bedroom and recognised the curtains that were hanging in the room as curtains that she had either given or sold to Mr Monaghan some time previously. Then she and Mrs McGinley moved on to the kitchen. Their conversation is recorded in the section dealing with the relationship between Mrs McGinley and Mr Monaghan.

[124] The following day she and her husband were in the Furniture Direct shop on the Tempo Road. At one stage she and Mrs McGinley were alone and the latter asked her if she had ever been in jail. She said that she had and Mrs McGinley asked her whether the others pick on a person and what it was like. She replied that it was okay. Mrs McGinley said: "Well them cunts is going to put me in." Mrs McElroy said that they could not put her in jail for nothing; they needed evidence. Mrs McGinley said: "Well, like what?" Later Mrs McGinley went back to the subject of the vans and said that they would not get anything out of the vans because he was "fucking in and out of them anyway."

[125] In the office Mrs McGinley raised the question of the curtains and said words to the effect "I got those curtains from you a good while ago." Mrs McElroy said that she replied that she had given the curtains to Mr Monaghan. Mrs McGinley said that she knew that but if it got out about the curtains Mrs McElroy would be 'done' for accessory. Mrs McElroy said that it was stated in a manner that was meant to convey that she did not want Mrs McElroy to tell anybody that she had given the curtains to Mr Monaghan but to say that she had given them to Mrs McGinley. Although we were not invited to do so on behalf of the applicants, we have read the transcript of the

cross-examination of Mrs McElroy. The jury heard it and the trial judge reviewed it. We do not consider that the tenor of her evidence was damaged by the cross-examination, despite Mr Gallagher's impassioned address to the jury about her criminal record and lifestyle.

[126] Mr Michael McElroy, her husband, said that he had got to know Mr Monaghan very well over a number of years. On the day that he cut the grass at Derryraghan, he had gone to Furniture Direct to pick up keys, and he saw Mrs Monaghan who was at the front of the shop. She called out to her husband: "I want to see you, you bastard." Mr Monaghan went over to her and she hit him a slap on the face. The next day Mr Monaghan told him that his wife had also slapped Mrs McGinley in the shop. He also corroborated his wife's account that Mr Monaghan had said Mr McGinley would not be coming back. Mr Monaghan had also said to him that the police were not pushing the investigation, that the McGinleys were behind it and that they would need to keep their mouths closed and be quiet or there would be another one going missing.

The proposed sale of the house

[127] Mr Vincent Donegan, as estate agent, gave evidence that he had placed the property at Derryraghan on the market at the request of Mr and Mrs McGinley on 2 May 2000. The asking price was £75,000. Two prospective purchasers viewed the house. Mr McCann viewed it on 9 June. He offered £63,000 which Mr McGinley trenchantly refused and said that it would be no use to him. Mr McCann increased the offer but there was no sale. Just before Mr McGinley disappeared Mr Donegan received a telephone call from Mrs McGinley and his impression was that she was anxious for a sale but before any decision about a further offer could be taken, the sale was suspended because of Mr McGinley's disappearance. He gathered that the marriage was breaking up. On 11 September she instructed him to take the house off the market but said that she was interested in renting it. Mr McCann gave evidence that he increased his offer to £67,000 but was unable to progress a sale.

The level of indebtedness and the insurance cover on Mr McGinley's life

[128] Mr Edwin Jefferson, head of the Accountancy Advice Branch of the PSNI gave evidence that he examined the financial records of the McGinleys on behalf of the police. Their level of indebtedness was £76,500. Their assets were £76,000. Examination of insurance cover revealed that there was cover for £310,000 on Mr McGinley's life. Mr Walsh said that in October 1999 the insurance cover on Mr McGinley's life was increased from £200,000 to £250,000. Mr Derek Flemming was a financial adviser called on behalf of Mrs McGinley. It was his practice to go back every 12 months to his clients and the top-up in October 1999 was at his suggestion as a result of a review

by him. Payment out was on proof of death. It is highly likely that Mr Flemming made it clear that he would call back on a regular basis to review life insurance. He did so in 1989 and we note that the premiums on Mr McGinley's life were paid out of Mrs Ginley's personal account. Despite our efforts we were unable to inspect the policy on his life in order to tell whether suicide would have invalidated it. But there was no evidence that the premium was increased as a result of his attempted suicide. So the inference is that it would have been invalidated by suicide or if there was non-disclosure of his attempted suicide.

The forensic evidence

[129] There were three principal themes; firstly, the DNA evidence in relation to the semen stain on the mattress recovered from Derryraghan; secondly, the DNA evidence in relation to the cellophane wrapping of a roll of brown paper such as might be used to wrap a parcel found in Mr Monaghan's van; thirdly, the remnants of the fire.

[130] The DNA profile of the semen matched Mr Monaghan. A swab was taken from the wrapping paper found in Mr Monaghan's van. The forensic scientist, Donna Knowles, was prepared to accept that specks of brown material from which a swab was taken were areas of blood. Her evidence was not transcribed. She was "happy" to accept that these were areas of blood. Mr Damien Lyle produced what was described as a low grade DNA from the swab which he was unable to say was blood. It matched the profile of Mr McGinley. The trial judge cautioned the jury about the scientific evidence as not establishing that the swab analysed by Mr Lyle came from blood and that even if it was, that it could have come there innocently.

[131] Donna Knowles concluded that trousers similar to those worn by Mr McGinley on the night of 12 August were burnt on the fire. A zip pull with the letters YKK on the front of the pull was found on the fire. Not merely that but the digit and letters 4YG appeared on the back of the zip pull. This zip pull was characteristic of the trademark jeans from Dunnes Stores that Mr McGinley bought on the afternoon of 12 August. The case for the prosecution was that three items were bought by him at Dunnes' Stores, the blue cotton shirt, the trademark jeans and black lace-up shoes. Donna Knowles, the forensic scientist, stated that the zip-pull could only be related to the trademark jeans, the remnants of which were found in the fire. Although the YKK legend could be found on other zip pulls, the 4YG was only found on this type of trademark jeans. The shoe strengtheners found in the ashes of the fire matched those of the shoes which Mr McGinley bought. There were also studs.

[132] The hinges that were found filled the sections of wood removed from the door frames of the wardrobes in the bedroom and the small hinges fitted

the smaller door frames. Mrs McGinley in interview said that her husband removed the smaller doors at the top of the wardrobe because the plan was that they were going to install pine doors. On any view these were removed before the new cupboard doors were ready. Mr Cosgrove, an engineer called on behalf of Mrs McGinley, stated that the hinges fitted other doors. The distorted remains of cup-shaped handles found on the fire fitted the wardrobe doors but Mr Cosgrove said that they could have come from other doors in the house. The remains of cleaning and decorating equipment were also found in the fire remnants. A charred Next watch was found in the fire. The prosecution invited the jury to look at this forensic evidence in a global way. The trial judge drew the attention of the jury to the defence's answers to each of these findings.

The grounds of appeal

Mrs McGinley

[133] There were a substantial number of grounds of appeal but a significant number were not referred to in argument before us. We did not ignore those and will deal with them briefly. But we have not disregarded them merely because they were not argued before us. They were not expressly abandoned.

Grounds 1 to 6 were set out before the transcript of evidence became available and were what one may describe as 'standard' grounds of appeal in those circumstances.

Ground 1

The conviction was against and contrary to the evidence and weight of evidence considered at the trial.

We are satisfied that the jury was entitled to convict Mrs McGinley of the murder of her husband and that the conviction is safe subject to Ground 9A.

Ground 2

The trial judge charged the jury with a summary of the trial which summary manifestly lacked balance in that it placed emphasis upon features of the trial supporting positions adopted by the Crown in the prosecution during the trial and failed to place emphasis or equal emphasis upon the features of the evidence led during the trial by the Defence.

In our view the trial judge summed up adversely to the applicant. But, in so doing and subject to the particular criticisms made at Grounds 7 and following, he was fully entitled to do so as the weight of the evidence lay so heavily against the applicant. If he had summed-up in her favour he would

have distorted the evidence. As it was, it appeared to us to be a model charge.

Ground 3

The trial judge's charge was excessively long

The trial lasted for three months. The evidence was not straightforward. We consider that the charge was a model of clarity and must have been of considerable benefit to the jury. He repeatedly broke off at appropriate times so that the jury could have refreshment and an opportunity to approach the other sections of the summing-up unclouded by confusion of the issues. He clearly explained at the outset the way in which he intended to approach the different issues and he adhered to this task. No possible criticism can be advanced in respect of the length of the charge and there is nothing in the additional grounds of appeal which assists in respect of Ground 3.

Ground 4

At certain sections of the trial judge's charge his tone reflected incredulity when it recounted the defence case and the trial judge thereby conveyed by his tone to the jury the impression that the defence case was not worthy of belief.

We are happy to put on record that this ground of appeal was not pursued before us.

Ground 5

The jury failed to properly and adequately consider all of the evidence as reflected in the short period of the jury's consideration at the conclusion of the trial.

Again we reject this attack on the integrity of the jury which was not repeated before us. It seems to us that the clarity of the summing-up made the task of the jury a great deal easier than it would have been. That the trial judge singled out the issues and separated the evidence on the various issues which inevitably overlapped during the course of the evidence enabled the jury to comprehend the evidence in a way which they otherwise might not have done.

Ground 6

Ground 6 is a 'catch-all' ground of appeal and does not require to be set out.

Ground 7

The learned trial judge misdirected the jury in a matter of crucial importance when he said that, if they were satisfied that the deceased was murdered in the bedroom in the early hours of the morning in question, they would have

"little difficulty" in convicting the appellant (sic) McGinley of murder" for the simple reason that anyone who participated in the act of murder while she was in the house could only have done so with her complicity and consent".

In our view this is a very simple point although, understandably, Mr Barry MacDonald QC who appeared for Mrs McGinley on the appeal but not at the trial, argued it powerfully and forcefully.

He referred to the trial judge's charge in which at the outset the trial judge made it clear to the jury, as he had done during the trial that "the directions that I give you as to the law you must accept and apply. However, when I refer to the evidence, the position is quite different". Volume 6 of the Books of Appeal in the case of Mrs McGinley omits the crucial passages of the trial judge's first words to the jury and contain only that part of the summing-up which commenced on the second day. The commencement of the summing-up is to be found in volume 6 of the Books of Appeal in the case of Monaghan, which occurred at the outset on the previous day and are to the point.

The trial judge said:-

"I have explained to you before how we carry out quite separate functions Let me start with the functions of the judge and jury As I've had occasion to say to you a number of times, our functions in this case have been, and will remain quite quite different Now the directions that I give you as to the law; you must accept and apply. However, when I refer to the evidence the position is quite different. All questions of evidence and fact are for you, and you alone, to decide For example, what did actually happen in the early hours of the morning of the 13th August or (if you come to this question) what was the state of mind of the defendants when they came to play their parts in the events about which you have heard - if you conclude that they played any part. Now these decisions you must take by having regard to the whole of the evidence in this case"

Mr Barry MacDonald QC attached great significance to the remarks of the judge on the second morning of his summing-up. He cited the following passage from the second morning:-

"Let me try to put that in a slightly different way that may make it easier to understand. If the prosecution

has satisfied you that Mr McGinley was murdered in the bedroom in the early hours of the morning you may have little difficulty in convicting Mrs McGinley of murder because she said that she was in the house and indeed in the bedroom within a very short time of returning home about 2.30 am. If she was in the house when the murder took place then you may have little difficulty in concluding she was involved in the murder, for the simple reason that anyone who participated in the act or murder whilst she was in the house could only have done so with her complicity and consent”.

Later he said: “My views are there for you to consider. They should be accepted or rejected according to your own independent judgment as to their intrinsic merit.”

[134] Mrs McGinley did not give evidence. Her numerous statements to police officers and detectives were that her husband had left the family home around 7 am on 13 August 2000 and was never seen alive again. She told Detective Sergeant Trevor Stevenson at interview under caution: "Trevor, when I go to sleep at night I'm out for the count." The case made on behalf of the prosecution was that her husband was murdered in that bed and the trial judge made it crystal clear to the jury that in order to convict her of murder they had to be satisfied that her husband had been murdered in or on that bed.

[135] But the argument that the trial judge gave a direction in law that the jury must find her guilty of murder if they were satisfied that her husband was killed in that bed does not bear scrutiny. He was saying to the jury that if her husband was killed in that bed they might have little difficulty in convicting her of murder because she said [to the detectives at interview under caution] that she was in the house and indeed in the bedroom about 2.30 am. The case for the prosecution was that he was murdered later in or on the bed in that bedroom. In our view the judge was entitled to comment as he did. It must have been obvious to the jury that this was an irresistible inference. But he had made it clear to the jury that it was their function to decide whether she consented to the killing.

[136] The argument on behalf of Mrs McGinley was that it was "entirely possible" that Mr McGinley could have been killed while Mrs McGinley was in the house without her having any complicity in that matter. It was conceded that it might well be that her complicity would have been required after the event. She admitted at interview, for example, and there was independent evidence that on the afternoon of 13 September 2000 she went to Mullen Mart and bought the new bedding for the bed, which, if he was killed

in or on the bed, was likely to have been stained with his blood. She admitted, and there was independent evidence, that a new carpet was laid in the week after her husband "went missing", that she replaced the wallpaper which she had purchased after he "went missing". Curtains were also replaced. The evidence about these was very strange and is set out in the section on Evidence. The jury were entitled to believe the evidence of Mrs Josephine McElroy. We need not repeat it. But it was for the jury to decide whether there was a real possibility that she was not a consenting party. They decided as they were entitled to do on the overwhelming evidence that she was a consenting party.

[137] The person who had the most powerful motive for killing Mr McGinley or arranging for him to be killed, was Mrs McGinley. On her own version of her relationship with him before this court he was violent towards her. She had a lover and had had lovers. She stood to benefit from the sale of the house which was in joint names, albeit that it was originally purchased by her, and from insurance on his life to the extent of £310,000. She claimed that she did not know the extent of the cover but she must have known that it was a very sizeable sum as she appears to have paid the premium and in their financial situation one would expect her to have been very aware of the premium to be paid.

[138] Mr Monaghan had hopes, but they were secondary to hers. PJ might have hoped to make money out of killing for her, but only with her approval. Threats by the Real IRA were floated but she was in the house when the killing took place, and took a full part in the aftermath of the killing. It was not suggested as a possibility that she was implicated with the Real IRA. She was a Protestant. Her husband was a Catholic. In so far as she referred at interview to Republicans, whether IRA or Real IRA, she showed no sympathy for them.

[139] In another section of this judgment we have refused to admit her "fresh" evidence. The question which we have to decide is whether any reasonably jury might hold as a possibility that what may have been an 'opportunistic' killing went wrong and Mrs McGinley had no part in it. We are satisfied that as a result of the medical evidence and the story told by Mrs McGinley to the police it would have been pure speculation on the part of the trial judge to have raised with the jury any such possibility. We deal with this in more detail later in this judgment.

[140] Ground 8

"The learned trial judge erred in encouraging the jury to conclude that the deceased was lying prone at the time the first blow was struck when the evidence was equivocal and his reliance on the absence of defensive injuries ignored the fact that the condition of the body when examined could not permit such a conclusion."

Reference was made in oral argument to the skeleton argument. What was said in writing was that "the scenario depicted by the appellant (sic) was consistent with the medical evidence but the manner in which the evidence was summed up the learned trial judge was liable to have caused the jury to exclude this scenario as a reasonable possibility.

Thus the skeleton argument did not advance any other scenario than that advanced by the applicant in her "fresh" evidence before this court. In oral argument reference was made by counsel to the statement of Dr Cassidy made for the purposes of the preliminary enquiry but she gave evidence and we have read the transcript of her evidence. Counsel for the applicant accepted that there was no bony trauma found which would be expected if a heavy weapon was being used to inflict the injuries to his head. It appears to be common case that a heavy weapon was used. Dr Murphy was not challenged on this point. The medical opinion of Dr Cassidy and the evidence of Dr Murphy indicated that the deceased did not move after the first blow to the face (or forehead) was struck. They did not use the language of legal certainty. However in our view the trial judge was entitled to sum up the effect of their evidence in the way that he did. The jury were entitled to take the view that the deceased was lying on his bed asleep at 3.30 am in the morning, having consumed a substantial amount of alcohol and was defenceless when he was struck by at least three heavy blows from a baseball bat or weapon of that kind. The argument made at ground 8 is an attempt to encourage the court to accept the possibility that the applicant's most recent version of the events of the night might be true. We have dealt with this at a later section of this judgment and there is nothing to be gained by repeating it here.

[141] Ground 9

Whether or not the new evidence is received, the learned trial judge ought to have emphasized the inherent improbability that the appellant (sic) would have been party to any plan or conduct involving the murder of her husband in the circumstances suggested by the Crown.

In the applicant's skeleton argument it is stated that the circumstances included a violent struggle involving at least two men (including the deceased) in the matrimonial bedroom at a time when the appellant's (sic) two young children were in the next room. The appellant (sic) had tried to avoid arranging a babysitter and had declined Mrs McGirr's offer to take the children for the night. The deceased had to be removed from the house. The bedroom had to be redecorated and the furniture replaced. All of these factors militate against the suggestion that the deceased's killing was planned or premeditated.

[142] Ground 10

The learned trial judge erred in undermining the importance of the evidence that it was the deceased who had arranged a babysitter for the night in question and that the appellant (sic) had exhibited a reluctance to make the child-minding arrangements, when this evidence was central to the issue whether she had planned or conspired to murder her husband and was therefore of considerable relevant to the question whether she would have been a party to any such offence.

The gist of this ground is repeated in the skeleton argument. In oral argument the court was urged to take Grounds 9 and 10 together. Reference was made to the passage in the judge's charge to the jury as follows:-

"I was about to turn to the events of 12 and 13 August. You may feel the consideration of what happened on the night of 12, 13 August must begin with the decision of McGinley to go out that night. In interview with Mrs McGinley she claimed that she wasn't particularly anxious to go out. It was Gerald's idea and she told the interviewers he bought clothes on the afternoon of 12 August and he pressed her to arrange for a babysitter. You heard from Miss McGirr who told you that she was working on Friday night 11 August and that evening her mother received a call from Julie McGinley asking Miss McGirr to baby sit the following night. The next morning while she was in bed Julie McGinley arrived asking Miss McGirr to baby sit. She got up and spoke to her and told her that she could not baby sit because she was going to a birthday party and Mrs McGirr intervened and said that she would take the children into her house and look after them. Mrs McGinley declined. It has been suggested to you that this betokened a lack of enthusiasm on Mrs McGinley's part. Attention has been drawn to the fact that it was Gerry who telephoned Miss Edwards to see if she would baby sit, and that call was received about 10 minutes to 10 on Saturday evening, 12 August. Furthermore, it is claimed it was Gerry McGinley who telephoned Michael Monaghan to ask if he would join Julie and him for a drink. Mr MacDonald says all of this is indicative of Gerry McGinley being a moving force behind the arrangements for 12 August. Of course, Mr Gallagher makes the point that if Mr Monaghan was planning to kill Gerald McGinley the last thing he would have done would be to respond

affirmatively to an invitation issued by the man who he was planning to kill. He would not want to be seen in the company of that man on the very night that he was planning to kill him.

The trial judge added:

"While it is a matter for you, you may think that whether it was Julie McGinley or Gerald McGinley who was the moving force behind the outing on the night of 12 August not a great deal turns on this issue!"

Counsel was reminded by the court that the trial judge went on to say:-

"The defence say that it is important because if Julie and Mr Monaghan did not plan to be out that evening it would be unusual to carry out the murder of Gerald McGinley as an opportunistic enterprise. Surely the suggestion seems to be that if these two were involved in the murder that they would have been more adept at arranging the killing. You may feel that it is necessary to decide whether Gerald was the moving force for the outing. We don't know what he would say about that and we only have the word at interview and not in the witness box of the defendants as to what the arrangements were that evening. They have chosen not to give evidence about that or any other matter, but even if Gerald McGinley instigated the outing you will have to go on and consider whether that makes the hatching of the plan between Julie McGinley and Michael Monaghan to kill Gerald McGinley inherently unlikely. I will be coming to consider the telephone traffic for this evening presently but it will be open to you to include I suggest that once the arrangements were in place that there was a considerable volume of telephone traffic between Julie McGinley and Michael Monaghan. One way of looking at the matter is this, that if Julie McGinley and Michael Monaghan had determined that Gerald McGinley should be killed, the opportunity to carry out that crime might not in the normal course of events be readily available. Even if the evening out was Gerald McGinley's idea you will have to address the question does that make it inherently unlikely that the plotters would seize the opportunity that was thus presented to them."

The suggestion contained in Ground 9 is that there was a "violent struggle" whereas the evidence of Dr Cassidy and Dr Murphy pointed to an attack on a man lying on his bed asleep and defenceless who was rendered unconscious by the first blow that was struck. It was argued that whether there was or was not a violent struggle, there was clearly considerable violence used in the bedroom involving at least two individuals in which the deceased was killed.

[143] Unless two weapons were used only one person inflicted the fatal blows to the face and skull. Only Mrs McGinley knows what the reaction of Mr McGinley would have been if an arrangement had been made for the children to be taken out of the house for the night. There was no evidence that this had ever happened before and it might well have aroused his suspicions or he might have insisted after a night out to go to the house where the children were and bring them home. In that event they might well have been awakened. As it was there was a stage at which only one person in the house knew whether the children were asleep and whether Mr McGinley was asleep. He was much more likely to be asleep if he had been drinking heavily in Enniskillen before returning home. If the McGinleys had not gone out that night any plan to kill Mr McGinley might have had to be postponed. Moreover there was evidence that Mrs McGinley was the first person to seek a babysitter for Saturday night when she telephoned Mrs McGinn on the Friday evening and visited Mrs McGinn's house on Saturday morning to find out whether Ms McGirr would act as a babysitter.

[144] It was pointed out by the court that presumably the body of Mr McGinley would have been taken out of the bedroom [and out of the house] before the children got up lest they went into the bedroom to say 'good morning' to their father. Doubtless Mrs McGinley told them what she later told the police about their father's departure from the house around 7 am. It is common case that she took them to Mullan Mart. That the bedroom was redecorated and re-furbished was common case. She maintained that this was done in order to make the house more saleable and there is no reason why she should not have given this explanation to the children. One might say that the murder was daring but it did happen. The plan may have been hatched some time before the opportunity presented itself. Considerable self-control and presence of mind was needed by Mrs McGinley and she certainly displayed it, as she did at her interviews with the police over three days. Mrs McGinley described Mr McGinley as leaving in a car around 7.00 am. It may be that he did leave at that time, but if so, it was in the back of a van heading for a remote area of Leitrim, of which PJ was a native. No criticism of the trial judge is warranted by Grounds 9 and 10. If the children had been left with Mrs McGirr, greater suspicion would have fallen earlier on Mrs McGinley.

[145] Ground 11

The learned trial judge erred in admitting the evidence of Garda McDonagh to the effect that the appellant (sic) McGinley wanted him "out of the way".

In their skeleton argument counsel for the applicant argued that this was prima facie inadmissible on the ground that it was hearsay evidence. In oral argument it was contended that it was seriously prejudicial and it appeared to provide evidence not only of motive but intent. But counsel conceded that the evidence was given without objection. There were objections to other parts of Garda McDonagh's evidence which the trial judge upheld and in these circumstances we consider that there is no substance in this ground of appeal. He also ruled in evidence statements by the deceased to Garda McDonagh on the grounds that they were tendered for the purpose of showing his state of mind, not for the purpose of proving the truth of what was said. As there was no objection to the evidence this ground of appeal must fail.

[146] Ground 12

This was an additional ground of appeal and reads:-

12. The Appellant (sic) refers to the amended grounds of appeal of the Appellant's co-accused Michael Monaghan at Ground 3 of his amended grounds of appeal and the skeleton argument of Michael Monaghan which refers to that ground and adopts that ground in so far as it is relevant to the appeal of this Appellant.

It takes a little time to realize that this is a challenge to the summing-up of the trial judge on the basis that he should have left to the jury in the applicant's case the alternative verdict of assisting offenders.

It was said that Mrs McGinley had stronger ground than Mr Monaghan for advancing this argument. But in R v Coutts it was made clear that the trial judge should leave this defence to the jury only if there was evidence on which a reasonable jury could convict of this offence. One cannot assist oneself.

[147] The jury were directed by the trial judge that they could not convict Mrs McGinley unless they were sure that Mr McGinley was murdered in the matrimonial bedroom. The jury must have been satisfied that he was murdered in the matrimonial bedroom at a time when she claimed to be lying asleep in the bed. It would have been improper on his part to invite the jury to speculate without evidence that her husband was murdered in the matrimonial bedroom but that she was not a party to the murder, merely a party to the disposal of the body and the destruction of the evidence that the murder occurred in the bedroom.

[148] How could the trial judge have anticipated the story that Mrs McGinley told this court almost six years after the murder? On any view it was a bizarre story. If one asks the question raised implicitly by Lord Bingham in Coutts: is there evidence which a rational jury could accept to support such a verdict (but neither prosecution nor defence want it), the answer is No.

Whether or not the trial judge considered that the alternative verdict of Assisting Offenders was open to person charged with the offence of murder on appropriate occasions, it was not open on this occasion.

[149] If we were wrong in so holding, we would have held that there were exceptional circumstances justifying a decision not to leave such an alternative verdict. There was no discussion between counsel and the judge about it. To introduce it into his charge to the jury without notice would have been unfair to the applicant. Mr Barry MacDonald, as he did not act for the applicant at the trial, was able to say to that he could not speak for counsel at the trial. We are satisfied that counsel for Mrs McGinley would have objected to any suggestion that such a verdict was open to the jury. The case was fought on the basis that the killing of Mr McGinley did not occur in the house, let alone the matrimonial bedroom. No reference to such an alternative verdict was mentioned to the judge or jury by her counsel.

Unless the trial judge put it forward without evidence as a theory to the jury, an appeal based on the introduction by him of such an alternative would have been successful on the ground that it offered a compromise when there was no evidence justifying a compromise.

[150] Ground 9A

This was a late application to admit fresh evidence. Before embarking on an examination of this ground, it is worthwhile to recall the basic principles which govern the reception of "fresh" evidence.

The statutory framework is to be found in the Criminal Appeal (Northern Ireland) Act 1980 (the 1980 Act):

"25.-(1) For the purposes of this Part of this Act, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice -

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the Court necessary for the determination of the case;

- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether or not he was called at the trial; and
- (c) receive any evidence which was not adduced at the trial.

(2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to –

- (a) whether the evidence appears to the Court to be capable of belief;
- (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
- (c) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and
- (d) whether there is a reasonable explanation for the failure to adduce the evidence at the trial.”

[151] In considering whether or not it should receive such evidence, the court must have regard in particular to the matters listed in Section 25(2)(a) to (d). The court has before it a written statement of the evidence which the witness will give. In practice, as occurred in this case, the court will hear *de bene esse* the evidence of the witness without preliminary argument. This is so, if the court has not reached the conclusion on reading it that it is not capable of belief or would not afford any ground for thinking that the conviction may be unsafe. Even if it has provisionally reached such a conclusion, it may *de bene esse* hear the evidence.

[152] The court will always scrutinize the explanation advanced for failing to adduce the evidence at the trial. As Lord Bingham put it in R v Pendleton [2002] 1 Cr App R 34 “... since it is the clear duty of a criminal defendant to advance any defence and call any evidence on which he wishes to rely at the trial. It is not permissible to keep any available defence or any available evidence in reserve for deployment in the Court of Appeal.” In this case the applicant chose not to give evidence at the trial and has now given evidence

on the appeal in the hope that she may get a re-trial and give evidence at the trial, blaming her co-accused for the killing of her husband.

[153] The court has, of course, an overriding discretion to receive fresh evidence if it thinks it necessary or expedient in the interests of justice to do so. The statute requires it to exercise that discretion.

[154] But Parliament has required the Court of Appeal to decide whether it appears to them that the evidence is capable of belief. This is part of the duty imposed on them to reach a decision as to whether they think that a conviction is unsafe. If the court does not consider that the conviction is unsafe, they cannot say that as the jury who heard the case might conceivably have taken a different view from them, they are going to quash the conviction. We have already decided that there was no error of law or material irregularity in the applicant's case. As Lord Dilhorne said in Stafford v DPP AC 878: "If the court has no reasonable doubt about the verdict, it follows that the court does not think that the jury could have one; and conversely, if the court says that a jury might in the light of the new evidence have a reasonable doubt, that means that the court has a reasonable doubt." And again: "While, as I have said, the Court of Appeal ... may find it a convenient approach to consider what a jury might have done if they had heard the fresh evidence, the ultimate responsibility rest with [the Court of Appeal]."

[155] The statement of Julie McGinley which she signed on 24 August 2005 and adopted as her evidence on oath in the witness-box in this court on is a mixture of lies, half-truths and truths. She supplemented this statement by further evidence before this court and was cross-examined. We have annexed this statement to our judgment as Annexe A.

[156] The crucial part of the statement is that she took no part in the killing of her husband and did not consent to it. We are satisfied that his killers intended to kill him and that they would not have killed him without her prior consent. She stated that in the early hours of 13 August 2000 that she was able to see Michael Monaghan and PJ get out of Mr Monaghan's van. This would have been about 3.30 am. In order to kill Mr McGinley they needed a weapon. Either they brought a baseball bat or similar weapon with them or she had already given them the information that there was such a weapon in Mr McGinley's bedroom where he kept a baseball bat or Mr Monaghan had been in the marital bedroom previously and had seen the weapon. Mr McGinley's baseball bat was never found. Either it was burnt in the fire at the house or was disposed of elsewhere.

[157] The medical evidence satisfies us that Mr McGinley was lying on the bed asleep or in a defenceless position. Mrs McGinley was the only person who could have told the killers that he was asleep on his bed. If there was to

be an attack it was essential to keep the noise level of the attack to a minimum so as not to awaken the children. The combined medical and scientific evidence of Dr Cassidy and Dr Murphy satisfies us that Mr McGinley was struck on the forehead first and rendered unconscious and that the blow was struck downwards with considerable force. Mr McGinley and Mr Monaghan were, roughly speaking, the same height. Thereafter there were several other violent blows struck in order to ensure that he was killed. They were all directed at his head and skull. We accept that it is possible that Mrs McGinley's role in the killing was to go into the children's room and that if she did so in order to ensure that the children did not awaken. In our view her account of what she heard from there is an invention. The children would have been awakened, if what she alleged took place in the marital bedroom. No reasonable jury would have believed her. For the sake of clarity the evidence which she gave in this court was not treated as admissible against Mr Monaghan.

[158] If the assailants had killed Mr McGinley without her consent, she would have been bound to tell the police at the first available opportunity. If she had sent for the police by using the landline at her house or a mobile phone or by going to a neighbour, as we are satisfied that she could, she was bound to have thought that she would be cleared of complicity in the murder of Mr McGinley. She was bound to have concluded that the assailants were not going to allege that they had conspired with her to kill him. If they did, the fact that she had reported the killing to the police would have helped to exonerate her.

[159] We have decided that her "fresh evidence" in so far as it seeks to exonerate her is not capable of belief. We also reject her explanation for not giving this evidence at the trial as stated later in this judgment.

[160] Although we are not admitting the "fresh evidence" of Mrs McGinley and so do not take any of it into account, we comment that her new story provides a powerful motive for planning to have him killed. Whatever be the truth of her relationship with her husband as contained in her statement of 24 August 2005 and in her evidence to this court it displays a number of motives for killing him after the failure of the Blacklion incident.

[161] There is no means of knowing the extent to which her story of her relationship with her husband is true, but having heard her in the witness-box we are satisfied that she would lie and lie again to serve her own purposes. We have taken into account the medical records of Mr McGinley and the diagnosis that he was a psychopath. We have listened with care to the evidence of her general practitioner, Dr Long, who advised her to separate from him. We are satisfied that she was not frank with Dr Long. One illustration is the deception she played in the role of a wife distressed at the fact that her husband was missing. At that time she knew that he was dead,

hoped that his body would not be found until it was safe to collect the life insurance. We have read the reports of Mr Quinn and Dr Pollock and listened to their evidence but we have been unable to accept their conclusions.

[162] She undoubtedly had sexual relationships with several men during her marriage which she sought to conceal from her husband. We are unable to assess the effect on him other than to state that his medical records show that he suffered from depression. At the same time we bear in mind that he was diagnosed as a psychopath. We have also read the entirety of her interviews. Neither the applicant nor the Crown edited them or ensured that they were edited, if they were. The Blacklion incident is clear proof that Mr Monaghan was already infatuated with her and that she relied on him, as is the fact that she telephoned him from Gran Canaria.

We are satisfied that she was a willing party to a plan in early June 2000 to plant drugs, including heroin and cocaine, in her husband's car so that he would be sent to prison for a long time and enable her to divorce him and obtain custody of the children. She borrowed £3000 from her father at that time, it appears from the documents. We are satisfied that, if so, this can be explained as it was needed to pay off the drug suppliers and Mr McNern. Her story that she tried to back out of the plan to send her husband to prison for a significant period of time and to dissuade him from travelling in his BMW car in which she had planted the drugs is not capable of belief. If she had wanted to back out, she had only to "find" the package in the car, draw it to his attention and get him to bring it to the police or take it herself to the police.

[163] Her plan to imprison him over the Blacklion incident failed and this led in turn to the plan to murder her husband. It is not possible to say when the plan to kill was hatched but it is clear that the opportunity to kill (on the early morning of 13 August) presented itself and was seized on by her and her co-conspirator(s). Apart from a loveless marriage, as she described it in the witness-box, and violence on her husband's part towards her on occasions and the allegations of sexual aberrations by him, she had formed an intimate relationship with Michael Monaghan, yet another motive for killing her husband. How deeply involved she was with Mr Monaghan is difficult to say in view of her recent statement and evidence to us. She told this court that the relationship was a source of comfort to her, rather than a love affair. She needed to say this in order to have an explanation for alleging that he was the killer. She was bound to be aware of the medical evidence as to how her husband met his death. We also take the view that she was sexually promiscuous in any event. Her evidence indicated that he was prepared to help her to have her husband killed and that, contrary to her evidence to this court, her relationship with Mr Monaghan lasted from before June 2000 until they were arrested.

[164] We do not find her story that her husband tried to get her to sleep with Michael Monaghan capable of belief. Her allegation that Mr McGinley indicated that he would have sexual relations with their daughters is against all the evidence and is indicative of the lengths to which she was prepared to go, in order to blacken his name. Ironically, had the allegations been true, they would only have served to strengthen her motives to have him killed.

[165] As we have indicated earlier we are satisfied that her version of the telephone call at 3.20 am on 13 August 2000 is not capable of belief. It is an admission that Michael Monaghan telephoned her and shortly afterwards arrived with PJ. It was necessary to bring PJ as they were going to have to carry Mr McGinley's body out of the house and into Michael Monaghan's van. On the evidence Mr McGinley weighed between 15 and 16 stones. Either sheeting was brought in the van or was available at the house to wrap the body and deposit it in the van. This is indicative of planning ahead.

In view of our rejection of the version of events given by her about what happened in the main bedroom, we are satisfied that the remainder was concocted in order to explain away her failure to call the police. Her attempt to blacken the names of her husband's parents was, we consider, because they had given damaging evidence against her at the trial. She admitted all the events that she knew that she could not deny. The events which she now seeks to rely on in order to exonerate her are not capable of belief.

[166] It follows that the accounts of events which she gave to Mr Quinn, Dr Pollock and Dr Joseph, in so far as they are relevant, are not capable of belief.

[167] She said in evidence that one of the reasons why she did not report the killing of her husband straightaway was because she was afraid for her life. If this were the case, she would have known that her husband had been murdered. As we have already stated, the only reason why those who killed her husband did so was because she wanted them to do so. So she cannot have been afraid for her life nor "for her family's lives, particularly her two brothers and father." If she had been innocent, the killers would have served life sentences. Her life would not have been in danger, if she was innocent, provided that she told the police out of their hearing and without the knowledge of the killers.

[168] She gave another reason that she "was afraid for her children's future and their wellbeing and welfare and the very thought of being taken away from my two daughters was a pain I couldn't face." But she would only be taken away from her two daughters if she was guilty of murder. She claimed that this was a threat repeated countless times over. But she had participated in concealing the crime on 13 August 2000. So there was no need to be told that the threat was repeated "in the days and the weeks and months that lay ahead."

[169] She explained away her accounts to the police of what happened on the same basis. But long before she gave an account to the police she played a leading role in concealing what had happened. It was only common sense to stick to the story which she told the police and, as we have seen, she displayed at interviews with the police a coolness and calmness not shown by Mr Monaghan. For hour after hour she lied to the police. But for outstanding work by detectives and forensic scientists she would have got away with the murder.

[170] She was not afraid of contradicting Mr Monaghan. By denying involvement in the murder as she did, she was acting in her own interests, not out of fear of Mr Monaghan or her late husband's family. She told one story which she had planned to tell from the beginning and it was only when that went wrong and she was convicted of murder that she thought up a second story, which was much nearer the truth but in our view is incapable of belief. Moreover we are satisfied that no jury would believe it, in so far as the story exonerated her.

[171] She sought to explain away her failure to explain "the true position" to her legal team by reference to her contacts with Mr Monaghan, when travelling to Enniskillen Court and by seeking to blacken his name. But examination of what she said leads us to be satisfied that she was lying in the witness-box about her reasons for not telling her legal advisers what she has now told this court. Of course, if she was convicted of murder, her husband's parents were likely to seek custody of the children. The story told on her behalf at the trial was one which gave her a slim chance of acquittal. The story which she told this court stood less chance of being believed, as she must have known at the time of trial.

[172] She alleged that a cousin of her late husband mouthed over to her at every single opportunity: "I'm going to kill you" and made a throat-cutting gesture while he was sitting beside a detective-sergeant. She was asked by a member of the court whether she had complained to anyone on the first occasion that this was done. She said: "No, I said nothing at all. It went on for a number of weeks." We are satisfied that she would have complained at the first opportunity. She became more vivid in her description of the man's behaviour, her solicitor's reaction, her own re-action and ended by saying that her solicitor spoke to Detective Sergeant Ferris who had been sitting beside him on every occasion and said that he was going to report it to the trial judge. We are satisfied that she grossly exaggerated although we accept that she spoke to her solicitor and he spoke to a police officer. The trial judge would not have permitted such behaviour over the period to which she referred. She was not a "shrinking violet."

[173] Detective Sergeant Ferris gave evidence to this court. He was the Family Liaison Officer with the McGinley family. He had listened to what Mrs McGinley had told this court and stated that he normally sat beside the parents of the deceased. The McGinley family showed a lot of respect and restraint during the whole court proceedings. Mrs McGinley's solicitor did not speak to him on any occasions during the trial. In cross-examination by counsel on behalf of Mrs McGinley it was not suggested that the solicitor did speak to him. We are satisfied that this passage in her evidence was a distortion, triggered off by the suggestion by counsel that the police would provide protection for her and her family. A letter from the solicitor then acting for her was taken into account by us and accepted by us. It does not affect our comments.

[174] A further piece of evidence was given by Mrs McGinley that she was told by a priest about a couple of months after the trial that Mr Monaghan had indicated that he was going to change instructions and wanted her to do likewise, that he was going to involve PJ and that she was told: "You'll know exactly what he's talking about and he wants you to do likewise." PJ had originally been charged with the murder along with Mrs McGinley and Mr Monaghan but on a "No Bill" application had been discharged from the case on the basis that he had no case to answer.

[175] Mrs McGinley claimed that the priest visited her on quite a number of occasions and the message was the same. She told this court that she then spoke to her legal team who indicated that if she was going to give different instructions she would have to get a different legal team which she did. She further claimed that Mr Monaghan requested a joint visit with her in prison. A number of weeks later, she said, he sent the priest back over to say that he was no longer interested in a joint visit and was not changing his instructions and that she was not to go any further with hers but at that stage she had consulted a new legal team and told them her new story.

[176] We have no means of knowing whether the idea of changing story started at Mr Monaghan's suggestion. What is clear is that the story she told her new legal team implicated Mr Monaghan and exonerated PJ. She may have felt that Mr Monaghan would implicate her in his new story, if he sought to tell it. It may be that she felt that it would strengthen her change of story, if she alleged that he was going to tell a new story. Although they were lovers up until her arrest, her new story assuredly was designed to exonerate herself and implicate Mr Monaghan in the murder. This is just another example of how incapable of belief her second story is. As we have said it contains lies, half-truths and truths. But the crucial parts which seek to exonerate her are incredible. We have not set out all the inconsistencies between her new story and other accounts given to the police. There are details which are not insignificant. But in view of the fact that we are satisfied that the central part of her story is incapable of belief, we see no need to do so.

[177] In cross-examination she claimed that she went to the door of the marital bedroom after she had overheard the row, saw her husband lying on the floor. But she did not go into the bedroom to see if he was still alive or seek medical attention in case his life might be preserved.

[178] She went to Mullan Mart, she said, to buy new bedclothes for the bed. She met her husband's brother unexpectedly. We comment that otherwise she might have claimed, as she did about the new bed, that she had bought the bedclothes a few weeks before. She did not go to a shop. We comment that there would have been a record of the purchase at a shop and that it is illustrative of clear thinking. She also did not tell Mr Harry McGinley that her husband had gone away that morning, as she later told the police. The bedroom still had to be cleaned up, even though the body of her husband would have been disposed of by dumping it in a remote part of a forest in County Leitrim, wrapped in black plastic and discovered ten months later.

[179] She was unable to give a plausible explanation of the registration of the mobile phones in false names which featured so significantly in the trial. The telephone calls must have satisfied the jury that she was involved in setting up her husband in the drugs incident at Blacklion and in the planning of her husband's killing in the early hours of 13 August 2000.

[180] In answer to the court she referred to ringing up Mr Monaghan from Gran Canaria to tell him what had gone wrong on the holiday. Whether or not it was true that her holiday in Gran Canaria was unhappy, before it or when she was there or shortly afterwards she was involved in the plan to have Mr McGinley caught smuggling drugs into the Republic of Ireland and sent to prison. It is likely that contact with drugs suppliers would have taken some time. That plan misfired.

[181] She claimed that she was handed the mobile phone which she used in setting up her husband for drug smuggling by Mr Monaghan. That is to say, she was seeking to suggest that it was his plan. But it was she who registered the phone in a false name. She told a stupid lie under cross-examination that her husband had registered one of the mobile phones under a false name, when only she could have known that name and as it was a woman's name, only a woman could have registered it.

[182] She continued to maintain the lie that she had asked Mr Monaghan to abandon the drugs plot and advanced the suggestion that she had been told by Mr McNern that she would be prosecuted for wasting police time if she was to back out. He might have been, not she. The jury must have been satisfied that after the drugs plot had misfired she hatched the plan to have her husband killed. The opportunity to carry this out arose on 12/13 August 2000.

[183] Does it appear to the court that the evidence may afford any ground for allowing the appeal?

If one could believe that she was not a consenting party to the murder, then her story would afford a ground for allowing the appeal and a jury could substitute a conviction for assisting offenders. As we are satisfied that the evidence is incapable of belief, this question does not arise.

[184] Would the evidence have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal?

The answer is that significant parts would have been admissible, if credible, but in our view it would have been rejected by the jury as not capable of belief, as we have rejected it.

[185] Is there a reasonable explanation for the failure to adduce the evidence in those proceedings?

Mrs McGinley must have believed that her best and only realistic chance of an acquittal was to adhere to the story which she had told the police. Insofar as it is sought to explain why she did not give evidence at trial to the same effect as she has given to this court, she must have hoped that her statement on 24 August 2005 and the evidence which she gave in court would be accepted as capable of belief. We have, of course, listened to Mr Quinn and Dr Pollock who were called on her behalf, with open minds because we declined to consider whether her evidence was capable of belief until we had heard the evidence called on her behalf and the evidence which was presented by Dr Joseph and Detective Sergeant Ferris on behalf of the Crown. We had also to take into account her GP's evidence and the medical records of Mr McGinley.

[186] We found the evidence of Mr Quinn and Dr Pollock unconvincing. On the other hand we found the evidence of Dr Joseph for the Crown powerful and persuasive.

[187] Mr Quinn is a consultant clinical psychologist. His conclusion and opinion in his first report of 30 June 2005 was as follows:

- i. Julie McGinley experienced some difficulties in her relationship with her parents, specifically that her father was authoritarian in nature and her mother acquiescent and passive in the face of this. An experience of sexual abuse with a neighbour will have heightened these difficulties.
- ii. These early experiences are likely to have led to a reduced sense of self-efficacy, low self-esteem and possible tendencies towards self-blame.

iii. Such experiences and consequences could lead to the development of unhealthy dependency on others in relationships and tolerance for abusive behaviour.

iv. These difficulties in combination with other significant life traumas (involvement in Enniskillen bomb and a riding accident) are likely to have led to the development of personality disorder.

v. This situation is likely to have led to unhealthy or even dangerous consequences not only for herself but others dependent on her such as children.

vi. This appears to have been most starkly demonstrated in her marriage to Mr Gerry McGinley. This marriage was highly dysfunctional and abusive and Mrs McGinley did not appear to have the resources necessary to deal with it in an appropriate manner. Indeed she repeatedly returned to this destructive situation. This likely reflects her dependent/masochistic personality disorder features.

vii. It was against this background that Mr Gerry McGinley was murdered.

[188] In a subsequent letter written to Mrs McGinley's solicitors dated 22 August 2005 Mr Quinn stated:

"1. With respect to the issue of whether Mrs McGinley's personality difficulties/disorder ("condition") would have made her abnormally vulnerable or susceptible to pressure from her co-accused, I would reiterate the following information outlined in my original report. In my opinion Julie McGinley has exhibited signs or symptoms of dependent personality disorder. Such a disorder is characterised as a pattern of excessive need to be taken care of that leads to submissive behaviour and fear of separation. This includes features such as requiring excessive reassurance to make everyday decisions, needs for others to assume responsibility, fear of being alone, quickly seeking another close relationship if one ends, overlooking objective problems in order to maintain relationships and fear of disagreeing with others for fear of alienating them. Given this, whilst Mrs McGinley would have intellectually been aware of her actions and their possible consequences, her personality difficulties/disorder would have strongly influenced her behaviour regardless of this. Given the aforementioned features of personality disorder it is

likely that she would have been vulnerable and susceptible to the influence of others she was dependent on, Indeed features such as this are known to become exaggerated at times of stress in a person's life.

2. With respect to the issue of whether her 'condition' itself could explain why she did not give her current version of events to police or at her trial, I would offer the following comments. Firstly Mrs McGinley claimed that she came under heavy pressure from her co-accused following the murder of her husband to deny all knowledge of this. This, she claims, influenced her version of events given to the police. I have already acknowledged that her personality difficulties/disorder could have significantly influenced this situation. In addition to this Mrs McGinley claims that her legal team mounted a defence based on her total innocence of and lack of knowledge or involvement in the murder of Mr G. McGinley. Julie McGinley claims that aspects of her history and relationship with Mr McGinley were not introduced because they might imply motive and therefore weaken her case. Whatever the accuracy of these statements Mrs McGinley cites these as the main reasons why her 'current version of events' did not emerge at her trial."

[189] In evidence he referred to dependent personality characteristics. He stated that this was information provided for him by her. He tried to obtain corroboration and he used the Millan personality inventory. He explained how this worked and the court asked for and was provided with the inventory. There was evidence to suggest that she was providing an overly negative picture. There were findings of Dependent Personality Disorder features and masochistic personality tendencies. He had heard her evidence about what happened on the night her husband died. He said that this was going to be a very very stressful situation for any ordinary normal person and personality disorder is exaggerated and particularly manifested at times of stress. So he would have expected that these difficulties could have come into play particularly at that time and explained why she did not give her current version of events to police or at the trial.

[190] He stated that a lot of the background reference material that Dr Joseph and Dr Pollock had access to was not available to him at the time of writing his reports. He did not have access to her general practitioner's records. He was referred to a psychiatric assessment of her carried out in the

prison on 14 June 2001 during the course of which she described herself to the psychiatrist as having good self-esteem, confidence, coping well with stress and enjoying work. The psychiatrist concluded that she was currently distressed by recent events but there was no evidence of mental illness. At that stage her husband's body had been found and she was awaiting trial. The history which she gave Mr Quinn totally contradicted that. She had, of course, not changed her version of the events of 13 August 2000 at the time when she saw the psychiatrist in prison. Mr Quinn had not had access to the psychiatric reports in the prison although he worked with her in the prison.

[191] Reference was then made by the court to Mr McGinley's medical records which showed him as suffering from depression on 11 October 1997, 25 March 1998, 19 October 1998, 13 December 1998, 22 February 1999, 20 April 1999, 21 June 1999 and a note that on 21 January he wanted to make a "clean break". There was a note on 22 October 1997 in which he was referred to the community mental health team following a "hanging" and there was a social worker's report dated 7 November 1997 signed by Mr Aidan McByan, Senior Social Worker in which he talked about the suicide report. The relevant passage in the report read:-

"In short, therefore, I am not reassured that there will not be future crisis and I believe that Gerry may be potentially at risk of self-harm. Superficially Julie appears to be a confident and capable person but she is very much the dominant partner in the marriage. Thereby, I feel that she is prone to stress and unresolved emotions and may not be coping. There is a note on 28 January 1998: 'making a slow recovery, wife looking after him.'"

The court then handed down the medical records of Mr McGinley to the parties as there were no copies so that copies could be made of the relevant extracts for each side. He said that the Millan self-report inventory was open to falsification.

[192] Dr Pollock re-administered that same inventory some time later and there were no attempts or appeared to be no attempts at any form of falsification. It was still possible to falsify and for it not to show up. On the Millan test scores of 85 or more suggested that personality disorder was definitely present and in Mrs McGinley's case her dependent personality disorder score was 97 and in Dr Pollock's test was 104. He suggested that Mrs McGinley had a tendency to move from one difficult and later destructive relationship [with Mr McGinley] to another [with Mr Monaghan].

In cross-examination he said that he had not had access to her educational records. He did not look at her prison in-mate medical records. He had not access to them at the time of preparing his report. On balance and

having considered everything about her, he would not describe her as a manipulative person.

He had not read her interview notes with the police. He agreed that she had manipulated her GP at one point, certainly from the time that her husband disappeared. He had not been provided with the court papers in the case.

Dr Pollock, a consultant forensic clinical psychologist, reported to the Public Prosecution Service on Mrs McGinley, but was called on her behalf. His report, which he adopted in evidence, was dated 20 October 2005.

He stated the following opinions:-

"1. Mrs. McGinley adamantly denies that she was directly involved in the actual killing of her husband. She was present within the household as alleged when the killing was committed by other parties. She denies any involvement in a conspiracy or plot with other parties to kill her husband. The relevance of the diagnosis of personality disorder to explain any alleged contribution to the killing of the victim cannot be considered, given her claims of innocence. The presence of personality disorder does not have any clinical relevance or explanatory value to account for any direct involvement in the killing of the victim, unless Mrs McGinley is proposing that she was placed under duress, pressure and threat from other parties to take part in the killing and acted to secure her dependency needs within the relationship with Mr Monaghan through participation. I did discuss with Mrs McGinley whether she may have been motivated to become involved in the killing of her husband to secure escape from abuse, to remove Mr McGinley to permit pursuit of her relationship with Mr Monaghan or whether victim rage and hatred emerging from years of abuse had prompted conspiracy to kill her husband. Mrs McGinley denying any of these psychological motivations to be relevant.

2. If it is accepted by the Court that Mrs McGinley did suffer from a personality disorder, the presence of this disorder would explain her tolerance of abuse and violent conduct by her husband within her marriage. If it is accepted that Mr Monaghan placed interpersonal pressure on Mrs McGinley

following the killing, the presence of this personality disorder would also likely account for her complicity, deception and collusion with Mr Monaghan after the killing of the victim. Mrs McGinley admits that she showed intentional deception towards others, lied repeatedly and colluded with Mr Monaghan in terms of the account offered to the police and court. Mrs McGinley argues that her dependency transferred from her marital relationship with Mr McGinley during an abusive marriage to her relationship with Mr Monaghan, wishing to sustain this relationship at all costs because of her dependency needs, subjugation and submissiveness and her fear of the consequences of antagonising or confronting Mr Monaghan. There is evidence that Mrs McGinley conspired with other parties, including Mr Monaghan, to have Mr McGinley charged with possession of drugs as a strategy to remove him from her life for a period of time, Mrs McGinley claiming that she acted on the initiative of Mr Monaghan and Mr McNern and did not actively or personally instigate this plot. She argues that she passively participated with this plot rather than instigated its execution. A diagnosis of dependent personality disorder with features of submissiveness, passivity, subjugation, tolerance of abuse and poor self-worth within relationships is relevant in Mrs McGinley's case when formulating her behaviours within the marital relationship and with Mr Monaghan, only if it is accepted that Mr Monaghan placed pressure upon Mrs McGinley to conform and abide through threat and dominating action."

[193] In examination-in-chief Dr Pollock said that on the basis of her self-reporting he would say that certainly there were very strong dependent features. He did not have her educational records. He was shown them in cross-examination and agreed that they portrayed a picture of a young woman who was socially competent and socially confident and was well adjusted psychologically. Leaving aside her own comments, the independent evidence indicated that she had managed to cope with her mother's death, the Remembrance Day bomb in Enniskillen and her own injuries and the death of her horse. All her sexual relationships prior to her marriage with Mr McGinley were initiated by her and brought to a close by her. One was dependent on her statements about her relationships. There was no corroborating evidence. She had had five sexual relationships by the age of 21 or 22, according to her own account. He only knew of two sexual

relationships which she had while she was married to Mr McGinley. (She admitted to three covert relationships). He could not explain why she had turned her back on Mr Monaghan. He saw no signs of dependent personality disorder in the 600 pages of interviews of the police. A great deal depended upon what one believed from Mrs McGinley. He could not comment on the social worker's report that she was the dominant partner in the marriage.

[194] He agreed that if one was above average intelligence – as was common case – and was making a defence that one was dominated by somebody, it would be fairly obvious what answers one should give to the Millen questionnaire. The difficulty which he had from the start was that he was mostly reliant on Mrs McGinley. It is our view that Mr Quinn and Dr Pollock were not given or did not have time to seek crucial evidence which would show whether she had a dependent personality disorder or, if she did, what effect it had on her behaviour on 13 August 2000 and thereafter. For instance, the prison medical records were never shown to us, notwithstanding that there were psychiatric reports.

[195] But we fortunately had the benefit of Dr Joseph's report. He is a consultant forensic psychiatrist. His report is dated 27 October 2005. The incident which led to her general practitioner advising her to separate from her husband was, it turned out, as a result of her telling Dr Joseph that she had an affair with another man. She denied having any other affair (other than with Mr Monaghan) to Dr Joseph but admitted to the police that she had an affair with the owner of the Fort Royal Hotel. No one asked her whether her husband's attempt to kill himself was as a result of finding out or being told by her that she was having or had an affair. What we do know is that he suffered from depression. Her version of her various affairs differed from doctor to doctor and from her account to the police. For example, she told Dr Joseph but no one else that her husband demanded that she had sex with the owner of the hotel and she acceded to his demands. She told the police that her husband did not know of it.

The inmate prison medical records to which Dr Joseph obtained access disclosed nothing which would support a diagnosis of dependent personality disorder.

[196] Dr Joseph's conclusions are set out at page 8 of his report:-

"1. Despite experiencing traumatic events during her teenage years, the defendant did not develop any symptoms of mental disorder, and on the basis of her educational records she appears to have been a resilient, strong-willed, determined person who was considered emotionally well adjusted to take up a position in the Royal Ulster Constabulary. She was

able to make her own decision to leave school a year early in order to travel to Australia. There is no evidence to support a diagnosis of dependent personality disorder from the documents that I have read.

2. The only evidence to support the finding of a dependent personality pattern is contained in the answers that the appellant has given when completing the Millen. At this stage it is necessary to look at the precise answers the appellant gave to the questions contained in the inventory. It needs to be borne in mind that not only does the inventory requires her to answer truthfully, but some of her answers may have reflected the appellant being overly negative about herself which might affect the validity of the results.

3. If the defendant was in fact suffering from features of a dependent, masochistic or avoidant personality, then they are likely to have been mild and confined to her husband. I find it difficult to accept that following the disappearance of her husband she could have immediately transferred her dependency to Mr Monaghan to such an extent that she would have been aware and yet felt powerless to report the matter to the police. The appellant said to me that the reason she did not tell the truth about her husband's death was because she feared for her life and the lives of her family from paramilitary groups. This explanation has nothing to do with whether or not the appellant was suffering from a dependent or any other form of personality disorder."

[197] We were convinced by Dr Joseph's evidence, over and above reading her interviews with the police, that she does not suffer from a dependent personality disorder and that she deliberately falsified her answer to the Millen questionnaire. He pointed to numerous inconsistencies between her answers to Mr Quinn on the one hand and to Dr Pollock on the other on the Millen questionnaire. We were able to inspect the discrepancies for ourselves.

Dr Joseph gave evidence based on his observations of Mrs McGinley in the witness-box. We had the same opportunity. If her change of story had been capable of belief, there would have been no reasonable explanation for the failure to adduce the evidence in those proceedings.

Our conclusions in respect of the application of Mrs McGinley

[198] We reject her application for the reception of fresh evidence for the reasons which we have given. We are satisfied that the evidence submitted as “fresh evidence” should be rejected as incapable of belief.

We reject her contention that there were reasonable grounds for not advancing this evidence at her trial. We are satisfied that she invented that part of it which consists of lies and half-truths later but, assuming that she thought of advancing it before trial, we are satisfied that she freely and voluntarily opted to present the defence which she did, because she believed from the outset that this presented her with the best chance of escaping conviction.

[199] We are satisfied that it is in the interests of justice that she should not be allowed to remain silent at trial, and having been convicted, to give evidence at a re-trial to the effect which she has set out in her written statement and has given in evidence before us.

If we had taken the view that her evidence was capable of belief we would have refused to admit it as “fresh evidence”. In R v Ahlumnia [1992] 4 All ER 889 the Court of Appeal said at p899j:

“Ordinarily, of course, any available defences should be advanced at trial. Accordingly, if medical evidence is available to support a plea of diminished responsibility, it should be adduced at the trial. It cannot be too strongly emphasised that this court would require much persuasion to allow such a defence to be raised for the first time here if the option had been exercised at the trial not to pursue it. Otherwise, as must be clear, defendants might be encouraged to run one defence at trial in the belief that if it fails, this court would allow a different defence to be raised and give the defendant, in effect, two opportunities to run different defences. Nothing could be further from the truth.”: Lord Taylor CJ at 899j.

In R v Sale (2000) Times 14 June 2002, Rose LJ stated at paragraph 22 of the judgment of the Court of Appeal:

“It can only be in a very rare case that this court will receive fresh evidence to advance a defence which was not only not advanced at trial but is completely different from the defence relied on at

trial. It is equally rare for this court to receive evidence from an appellant who chose not to give evidence before the jury. The reason is obvious, the public interest is best served by, generally, requiring prosecution and defence alike to present their case fully at trial and not by amendment years later. Accordingly, by reference to the terms of Section 23(1) of the Act [*Section 25(1) of the Criminal Appeal (NI) Act 1980*], it will be very rare indeed for this court to think it necessary or expedient, in the interests of justice, to allow evidence to be called by a defendant, to put forward a new defence."

We have exercised our over-riding discretion under Section 25 against her for the reasons we have given. But we would have had to consider whether she was entitled to have the alternative charge of Assisting Offenders left to the jury, if her evidence had been capable of belief.

[200] Section 2(1) of the Criminal Appeal (Northern Ireland) Act 1980 states:

"A person convicted on indictment may appeal to the Court of Appeal against his conviction –

- (a) with the leave of the Court; or
- (b) if the judge of the court of trial grants a certificate that the case is fit for appeal."

We are satisfied that her conviction is safe. It follows that we are satisfied that the jury could not have had a reasonable doubt about their verdict if they had heard the fresh evidence.

The grounds of appeal

Michael Monaghan

[201] In our view the only ground of appeal that is arguable is the third ground of appeal that the trial judge ought to have left to the jury in his case the alternative verdict of assisting offenders under section 4(2) of the Criminal Law Act (NI) 1967.

We refer to the principles laid down in R v Coutts by the House of Lords at [2006] 1 WLR 2154. Lord Bingham stated at para 1 of his opinion:

"The narrow question raised by the appeal is whether, on the facts of this case, the trial judge should have

left an alternative verdict of manslaughter to the jury. The broader question, of more general public importance, concerns the duty and discretion of trial judges to leave alternative verdicts of lesser - included offences to the jury where there is evidence which a rational jury could accept to support such a verdict but neither prosecution nor defence seek it."

At para 12 he stated:

"The interests of justice are not served if a defendant who has committed a lesser offence is either convicted of a greater offence or acquitted altogether The objective must be that defendants are neither over-convicted nor under-convicted, nor acquitted when they have committed a lesser offence of type charged. The human instrument relied on is of course the jury. But to achieve it in some cases the jury must be alerted to the options open to it It is the ultimate responsibility of the trial judge."

At para 14 he cited a passage from the speech of Lord Clyde in Von Starck v The Queen on behalf of the Privy Council [2000] 1 WLR 1270 at 1275:

"The function and responsibility of the judge is greater and more onerous than the function and the responsibility of the counsel appearing for the prosecution and for the defence in a criminal trial. In particular counsel for a defendant may choose to present his case to the jury in the way which he considers best serves the interests of his client. The judge is required to put to the jury for their consideration in a fair and balanced manner the respective contentions which have been presented. But his responsibility does not end there. It is his responsibility not only to see that the trial is conducted with all due regard to the principle of fairness, but to place before the jury all the possible conclusions which may be open to them on the evidence which has been presented in the trial whether or not they have all been canvassed by either of the parties in their submissions. It is the duty of the judge to secure that the overall interests of justice are served in the resolution of the matter and that the jury is enabled to reach a sound conclusion on the facts in light of a complete understanding of the law applicable to them. If the evidence is wholly

incredible, or so tenuous or uncertain that no reasonable jury could reasonably accept it, then of course the judge is entitled to put it aside. The threshold of credibility in this context is, as was recognised in *Xavier v The State* (unreported), 17 December 1998; Appeal No. 59 of 1997 a low one, and, as was also recognised in that case, it would only cause unnecessary confusion to leave to the jury a possibility which can be seen beyond reasonable doubt to be without substance. But if there is evidence on which a jury could reasonably come to a particular conclusion then there can be few circumstances,- if any, in which the judge has no duty to put the possibility before the jury. For tactical reasons counsel for a defendant may not wish to enlarge upon, or even to mention, a possible conclusion which the jury would be entitled on the evidence to reach, in the fear that what he might see as a compromise conclusion would detract from a more stark choice between a conviction on a serious charge and an acquittal. But if there is evidence to support such a compromise verdict it is the duty of the judge to explain it to the jury and leave the choice to them. In *Xavier v The State* the defence at trial was one of alibi. But it was observed by Lord Lloyd of Berwick in that case that, 'If accident was open on the evidence, then the judge ought to have left the jury with the alternative of manslaughter'. In the present case the earlier statements together with their qualifications amply justified a conclusion of manslaughter and that alternative should have been left to the jury."

He pointed out that in *Gilbert v The Queen* (2000) 201 CLR 414. Callinan J had said that a jury room might not be a place of undeviating intellectual and logical rigour and concluded that it was "contrary to human experience that in situations in which a choice of decisions may be made, what is chosen will be unaffected by the variety of the choices offered, particularly when a particular choice was not the only or inevitable choice."

He also referred to *Keeble v United States* 412 US 205, 212-213 in which Brennan J said:

"..... But a defendant is entitled to a lesser offence instruction precisely because he should not be exposed to the substantial risk that the jury's practice

will diverge from theory. Where one of the elements of the offence charged remains in doubt, but the defendant is plainly guilty of some offence, the jury is likely to resolve its doubts in favour of conviction

[202] At para 23 Lord Bingham concluded that the public interest in the administration of justice was, in his opinion, best served if in any trial on indictment the trial judge left to the jury, irrespective of the wishes of trial counsel, any obvious alternative offence which there was evidence to support. At para 24 he stated that it was of course fundamental that the duty to leave lesser verdicts to the jury should not be exercised so as to infringe a defendant's right to a fair trial ... "There may be unfairness if the jury first learn of the alternative from the judge's summing up."

[203] Lord Hutton cited with approval what Lord Clyde had said in Von Starck. He stated at para 43:-

"... although it appears distasteful that a defendant can ask the judge not to leave a lesser alternative count to the jury, and then, when convicted on the greater count, complain to an appellate court that the alternative count was not left, the interests of justice require, as Lord Clyde stated, that the jury should be able to reach a sound conclusion on the facts in the light of a complete understanding of the law applicable to them."

At para 44 he rejected the view that the leaving of relevant issues to the jury can depend on the way in which the prosecution chooses to present its case. But he did accept at para 45 that there would be cases where it would be unfair to the defendant to leave an alternative verdict to the jury.

At para 61 he said:

"I consider that the House should ... hold that, save in exceptional circumstances, an appellate court should quash a conviction, whether for murder or for a lesser offence, as constituting a serious miscarriage of justice where the judge has erred in failing to leave a lesser alternative verdict obviously raised by the evidence."

He supported the test proposed by Lord Bingham at para 23 set out earlier in this judgment.

[204] Lord Rodger referred to R v Dhillon [1997] 2 Cr App R 104 where the trial judge had consulted counsel and, in the light of their submissions, had not given a direction on provocation when he should have done. Ward LJ in the Court of Appeal concluded:

"The result, making some mockery of our hallowed adversarial procedure which strives to do justice to both sides, is that the appellant is able to have his cake at trial and also to eat it on appeal."

He also referred to Von Starck. He endorsed Lord Clyde's formulation of the law. At para 82 he said that where the duty of the judge is to give a direction on the alternative verdict, counsel have to adjust their speeches to the jury to take account of that prospective direction.

At para 84 he said:

"Since the duty to put the possibility of a viable alternative verdict before the jury exists to promote the interest of justice it will not apply in circumstances where giving the direction would not serve those interests and might indeed undermine the fairness of the trial. For instance, there might be cases where it could properly be said that one or other of the parties was prejudiced because, if they had realised that the alternative verdict was going to be left to the jury, they would have examined or cross-examined the witnesses differently or would have led other evidence. If the prejudice was significant and could not be avoided or mitigated at that stage, the overall interests of justice might mean that the duty to direct on the alternative verdict would not apply."

He went on to say at para 85 that as a result of such a misdirection which would amount to a material misdirection in law an appellate court would have to quash the conviction, if they thought that, by reason of the misdirection, the conviction was unsafe.

[205] Lord Mance at para 100 stated the view which he shared with Lord Bingham, that where an obvious alternative verdict presents itself in respect of some more than trifling offence which can without injustice be left to the jury, the judge should in fairness ensure that this is done.

[206] In the present case the original indictment had two counts, one of murder and the other of doing acts tending and intended to pervert the course of public justice, contrary to common law. The particulars of the

second offence were that Julie McGinley, Michael Anthony Monaghan and PJ between the 12th day of August 2000 and the 22nd day of August 2000 with intent to pervert the course of public justice, did a series of acts which had a tendency to pervert the course of public justice, namely that they concealed and destroyed evidence of the commission of a crime, namely the murder of Gerald McGinley, in that they had the body of the said Gerald McGinley removed from Derryraghan Road, Coa, Ballinamallard and concealed thereafter, that they redecorated and refurnished a room at 32(a) Derryraghan Road, Coa, Ballinmallard and that they destroyed, by burning clothing and shoes and personal possessions of the said Gerald McGinley.

If one had been giving particulars of the offence of assisting offenders under the Criminal Law Act they would have been in identical terms. The Bill of Indictment was numbered 9/2002. Shortly before the trial commenced and with the acquiescence of counsel for the defence a fresh Bill of Indictment number 9A/2000 was presented, omitting the second count. It was plain that the Crown was intent on proceeding with the charge of murder and was not seeking a lesser verdict. It was plain that the defence acquiesced.

[207] Mr Gallagher QC who represented Monaghan had been senior defence counsel for Campbell in R v Shaw and Campbell [2001] NICA 25 and was alert to the significance of omitting the second count. It was put to him by the court and he did not dissent that counsel for the applicants agreed to the fresh indictment without the second count. It was pointed out that discussions with the judge before closing speeches had not been fully transcribed because they had been destroyed or damaged in the process of transcription. But on the second day of discussions and submissions Mr Gallagher was recorded as saying: "I would specifically ask that the jury directly be told what I submitted earlier that there are three possible verdicts, that is, both guilty, both innocent or Mrs McGinley guilty and Monaghan innocent. These are the only three verdicts which are possible on the evidence in this case."

[208] There was no record that the trial judge had expressly raised the alternative verdict of "assisting offenders". Neither of the defence counsel addressed the jury on that alternative verdict. If the judge in the course of his summing-up had referred to such an alternative verdict it would have been unfair to Monaghan.

[209] Mr Gallagher argued before this court that the real question was, given the facts of the case: Was that alternative a real possibility? That verdict was open and, as a matter of law, should have been left to the jury, he submitted.

Mr Gallagher told the court that when he personally became aware that the Crown were proceeding only on the count of murder, he took Mr

Monaghan's instructions and junior counsel took a note of same and there was a written note to Mr Monaghan that as counsel took the view that the evidence in respect of the murder was not strong, on balance he was better off without the second count. In any event the Crown was entitled to proceed on the new indictment, not least as counsel for both defendants consented to it.

[210] It was argued by Mr Gallagher that as the Resident Magistrate returned both applicants for trial on the second count there was a sufficient case to answer on that count according to the particulars set out. A Crown Court judge, other than the trial judge, had also ruled that there was a case to meet on both counts.

[211] We are not prepared to deal with this ground of appeal on the basis that it would have been unfair to Monaghan to raise it in the course of summing-up as the trial judge, if he had intended to leave this alternative verdict to the jury, should have raised it with counsel before summing-up. We have no doubt that he would have done so.

[212] We refer to the decision in R v Fairbanks [1986] 1 WLR 1202 in which Mustill LJ (as he then was) gave the judgment of the court. He cited earlier authority on the leaving of lesser counts to the jury. He continued:-

“These cases bear out the conclusion, which we should in any event have reached, that the judge is obliged to leave the lesser alternative only if this is necessary in the interests of justice. Such interests will never be served in a situation where the lesser verdict simply does not arise on the way in which the case has been presented to the court: for example if the defence has never sought to deny that the full offence charged has been committed, but challenges that it was committed by the defendant. Again there may be instances where there was at one stage a question which would, if pursued, have left open the possibility of a lesser verdict, but which, in the light of the way the trial has developed, has simply ceased to be a live issue. In these and other situations it would only be harmful to confuse the Jury by advising them of the possibility of a verdict which could make no sense.”

In R v Maxwell [1988] 1 WLR 1265 at 1270 D-E Mustill LJ, giving the judgment of the Court of Appeal said:

“The judge should always use his powers to ensure, so far as practicable, that the issues left to the jury fairly reflect the issues which arise on the evidence.”

Later at page 1270 G-H he said:

“To interfere with the verdict would require us to identify solid grounds for suspecting that the members of the jury had foresworn their oaths by deliberately returning a verdict of guilty when they were not sure of it, simply to avoid an unwanted outcome.”

[213] On further appeal to the House of Lords the decision in Fairbanks was approved as was the court’s ruling at 1270 D-E. See also what Lord Ackner said at page 408 of the latter case, quoted by Lord Bingham and the criticism of it at paragraph 19 of his opinion in Coutts. The Maxwell approach was considered unsatisfactory by Lord Hutton but at paragraph 62 of his opinion in Coutts he said:-

“The authorities make it clear that an alternative verdict should only be left if it is one to which “a jury could reasonably come” (per Lord Clyde in Von Starck at page 1275: see also Mustill LJ in Fairbanks, page 1205, “unless the alternative really arise on the issues as presented at the trial”).

Lord Mance also distanced himself from Lord Ackner’s remarks in Maxwell and said at para 100 in Coutts:

“... where ... an obvious alternative verdict presents itself in respect of some more than trifling offences and can without injustice be left for the jury to consider, the judge should in fairness ensure that this is done, even if the alternative only arises on the defence case in circumstances where as a matter of law there should apart from that alternative be a complete acquittal.”

[214] We turn to consider on the facts of this case whether there was a viable alternative offence of Assisting Offenders available to Mr Monaghan.

We start with some basic propositions. The jury must have been aware of the ingredients of the crime of murder. They were told them in the clearest possible terms. They must have known and acted on the basis that the onus

of proof lay with the Crown and that the standard of proof was proof beyond reasonable doubt.

They were directed by the trial judge that unless they were sure that the murder took place in the matrimonial bedroom of the McGinleys, they must acquit Mrs McGinley and Mr Monaghan. They must have been sure that the murder took place in the matrimonial bedroom.

The evidence that Mrs McGinley was in the house was incontrovertible. As we have already discussed in connection with Mrs McGinley's case, the conclusion that the murder took place in the bedroom must inevitably have led to the conclusion that she was a party to the murder. She could have killed him herself as he lay asleep, using the baseball bat. It is highly unlikely but it is just possible. However she was bound to have realized before the murder took place that it would take two strong men to lift a heavy body out of the bedroom and into a vehicle to be driven away and dumped. There was evidence that he was a heavy man.

[215] A plan must have been hatched before the killing to dispose of the body. This was not an impromptu murder. It required that Mr McGinley was lying on his bed asleep on the facts of this case.

[216] In order to have the body removed before the children woke in the morning or someone else found it, one man at least would have had to be told of the plan. He would have had to have a vehicle at his disposal and he would have needed to have a sturdy helper. Both Mr Monaghan and PJ were with the McGinleys until the McGinleys left the hotel to go home. It would have been pointless for Mrs McGinley to murder her husband in the middle of the night and then ring someone up and find that they were fast asleep or too drunk to help her. Someone had to be aware in advance of her plan and willing to help her. The helper needed to be sturdy and willing to help.

[217] The one person who was in telephone communication with her after she got home from the hotel was her lover. He had displayed animosity towards Mr McGinley. There was evidence to be found in the summary of evidence earlier in this judgment that he had been prepared to be involved in obtaining illegal drugs to be planted in the car driven by Mr McGinley to Blacklion. Had that plan succeeded, Mr McGinley would have spent many years in jail. To have taken part in such a plot, he had to be keen to get Mrs McGinley's husband out of the way. The plot failed. He told the police at interview that he returned to PJ's flat after being in the company of the McGinleys and about one hour after they set off for home.

[218] He would have been in the flat with PJ at 3.00am on his own admission.

[219] If there was a plot to kill Mr McGinley in his own home, the only persons who had a motive to kill him there were Mrs McGinley and Mr Monaghan. One can rule out members of the Real IRA or other paramilitaries for the reasons given. The jury were told to acquit unless there was such a plot. They found that there was such a plot because they convicted both of them of murder.

[220] If, as would appear much more likely, Mrs McGinley did not strike the fatal blows, then someone else did so but Mrs McGinley was present and the police were not informed by her of Mr McGinley's "disappearance" for several days. Nor were Mr McGinley's parents nor his brother Harry. Mr Monaghan claimed to the police that he was told by Mrs McGinley on Tuesday 15 August 2000 although he had been at her house on 13 August. No one else knew that he had "disappeared" although, presumably she explained his "absence" to the children.

If, as is highly likely, someone else struck the fatal blows Mrs McGinley knew who had done so and who had helped to move the body. So there were two people available to remove the body and help with the cleaning up.

[221] To introduce two persons who owed her no allegiance enlarged the risk of detection and of blackmail. On the evidence she had no money to pay contract killers. It is inconceivable on the evidence that neither of the two who helped to move the body was Mr Monaghan with whom she consorted and lived until they were arrested months later as the independent incontrovertible evidence revealed.

[222] It was argued on Monaghan's behalf that the defence of assisting offenders should have been left to the jury as he was only seen at the McGinley's house at lunchtime on 13 August. This would have involved the proposition that she arranged for two others to be present at the murder and remove the body and then arranged for Mr Monaghan and PJ to come to the house to assist with the cleaning up. It would have been absurd, we consider, that the trial judge should have suggested to the jury that this was a reasonable possibility. We adopt what Lord Clyde and Mustill LJ said:

"... an alternative verdict should only be left if it is one to which a jury could reasonably come" per Lord Clyde and "unless the alternative really arise on the issues as presented at the trial" as per Mustill LJ.

[223] What Crown counsel say to the jury is not evidence, any more than what defence counsel say is evidence. The Crown case consists of the evidence which they present. The evidence which they presented led

inexorably to the involvement of Mr Monaghan in the murder, once the jury accepted that the murder took place in the McGinleys' matrimonial bedroom.

[224] Of course we are not in a position to identify precisely what evidence against Mr Monaghan was accepted by the jury. But he chose not to go into the witness box to explain the telephone calls which took place between himself and Mrs McGinley on the night of 12 August or the contents of them. He chose not to give evidence about the telephone calls in the early hours of 13 August. He was with Mr and Mrs McGinley until they left the hotel early in the morning of 13 August. We are satisfied that he was at the hotel at 2.40am. Then he went with PJ to PJ's flat around 3.00am. He apparently did not have his mobile phone with him at the hotel. He did have it at the flat. The irresistible inference is that he rang the home of Mrs McGinley at 3.20am, almost an hour after the McGinleys got home. Only he and Mrs McGinley knew what the conversation was between them. They chose not to explain to the jury what was said. Mrs McGinley told this court a story about the conversation but we did not believe her. The significant point is that he rang the McGinley home, not that she rang him.

[225] The jury were positively directed that they must find that the murder took place in the matrimonial bedroom before they could convict either Mrs McGinley or Mr Monaghan.

We adopt what Mustill LJ said in Maxwell:

“To interfere with the verdict would require us to identify solid grounds for suspecting that the members of the jury had foresworn their oaths by deliberately returning a verdict of guilty when they were not sure of it, simply to avoid an unwarranted outcome” per Mustill LJ in Maxwell.

We have borne in mind what Callinan J said in the Australian case of Gilbert v The Queen (2000) 201 CLR 414 approved by the House of Lords in Coutts.

[226] In the case of Shaw and Campbell there was evidence to go to the jury that Campbell only assisted Shaw after the murder: see the resumé of the evidence given by Carswell LCJ.

Accordingly this argument, most persuasively advanced by Mr Gallagher QC, who was counsel for Campbell, fails.

[227] The other grounds of Mr Monaghan's application for leave to appeal can be dealt with briefly.

1. There was insufficient evidence to enable a properly directed jury to properly conclude that the applicant had murdered the deceased.

In our view there was a powerful, if not overwhelming case against the applicant as can be seen from our summary of the evidence and which fully justified the jury in finding him guilty of murder.

2. The learned trial judge ought to have directed the jury at the close of the prosecution case that the applicant had no case to answer.

We repeat what we said in response to Ground 1.

3. The conduct of the trial, including lengthy periods when the jury were not in court, and the length of the learned trial judge's charge was such as to prejudice the applicant and create a severe imbalance of fairness in the manner in which the case was presented. In particular, the learned trial judge did not comment upon the evidence in so far as it affected the applicant in a fair and balanced manner. The perception was that he sought to undermine many of the major strands of the applicant's defence and misdirected the jury as to the import of the evidence.

We deal with the particulars as set out:

(a) This particular was factually incorrect as the transcript clearly shows.

(b) The trial judge was entitled to state that it was highly likely that the man in the tee-shirt seen by Heather Edwards was Mr McGinley. No one suggested, and there was no evidence to support the suggestions that Mr McGinley did not accompany his wife back to the house in the car. He must have got out of it before Heather Edwards got into it. He did not go into the house while Heather Edwards was in the house. He was not in sight when she came out of the house. Therefore he must have gone round to the back of the house. There was no evidence that Mrs McGinley and he had brought a third man to the house. To suggest that he followed a third man into the house is unrealistic.

(c) The applicant admitted that the mobile phone was his at interview with the police. Mr McGinley "disappeared" before the children got up that morning. To make a telephone call to the house at 3.24 am which was, as the jury must have found, made between Mrs McGinley and her lover is either a co-incidence or is connected with Mr McGinley's disappearance. It would be astonishing if the jury had failed to make the connection. Any plan to kill Mr McGinley must have involved an attack on him while he was asleep. To draw the inference that this call was to confirm that he was asleep was an inevitable step for any reasonable jury.

(d) The trial judge recalled the jury to make it plain that the Crown did not suggest that there was a link between the applicant's conversation with Owens and the threats against the deceased received by the two priests.

(e) A trial judge must be selective. This was a trivial omission.

(f) This is factually incorrect as the transcript shows.

(g) On a fair reading of the trial judge's charge he covered all the points made on behalf of the defence.

(h) This was abandoned.

(i) The discrepancies between the evidence of Harry McGinley and Gerald McGinley were trivial. No attempt was made to show by reference to the transcript that there was any significant discrepancy.

(j) We repeat what we said about the complaint of Mrs McGinley's counsel about the length of the charge. It must have been of great assistance to the jury.

4. This was not pursued.

5. The learned trial judge should have excluded the prosecution evidence relating to the alleged plot to have Mr McGinley assisted in June 2000 at Blacklion. There was no evidence that Mr Monaghan was involved in any such plot and it was impossible to conclude that he was so involved even taking the Crown evidence at its height.

In our view there was damning evidence that Mr Monaghan was involved in the plot. We refer to the summary of the evidence.

Our Conclusions

[228] We are satisfied that Mr Monaghan's conviction is safe: see Section 2(1) of the 1980 Act and the principles set out in Pendleton.

[229] Accordingly both applications for leave to appeal against conviction are refused.

ANNEX A

Statement of Julie McGinley

(signed on 24 August 2005)

"I am 34 years of age, my date of birth being 10 August 1971. On 15th October 1994 I married Gerry McGinley. We lived at Derryraghan, Ballinamallard and had two children, S aged 10 born on 31 July 1995 and C aged 8 born on 30 April 1997.

Gerry McGinley had always been of a volatile, domineering and often violent nature. He had a conviction for Rape, which he had explained as really a case of consensual sex. On several occasions he physically assaulted me but I felt compelled to stay and deal with the situation as best I could. On 18th October 1997, he attempted suicide. He became increasingly unbalanced emotionally and became very irrational and unreasonable on a daily basis. Often he would not return home until the early hours, sometimes drunk, and he had several sexual relationships with other women. He became obsessed with pornography and began to demand that I have sex with other men, at his instigation. When I refused he told me I had to do it. I didn't know what to do or how to deal with him. This pressure was daily and grew in its intensity. I continued to object but was eventually forced into having sex with two other men at his instigation. Whenever I objected, the level of abuse and violence increased. He physically assaulted me on a number of occasions.

Eventually, on 30th December 1999, I did manage to leave him and went with the children to live at my father's address for one week, and then in rented accommodation at 7 Glebe Park Enniskillen. During our separation, Gerry rang me countless times every day. This occurred throughout the night as well, with the majority of the calls being of a very threatening nature and some being suicidal. In January 2000, after we had separated, I had to ring 999 after Gerry and another man, who later turned out to be his brother

James McGinley, broke into my rear garden at Glebe Park. On several occasions he had threatened to burn the house down.

When I told Gerry I had been advised to get a non-molestation order he laughed and said he'd only have need to break it once. He said he had plenty of people to do his dirty work for him and also claimed to be in the IRA. His family have strong Republican connections.

The tactics he adopted to get me back ranged from pleading to be allowed to call at my rented home to threatening my life when I refused. I eventually agreed that he could call, which resulted in him staying all day until late at night every single day. He kept asking me to return to the homehouse at Derryraghan. I refused, saying things were better left as they were. He wouldn't accept this and said I had to trust him that there would be no more pressure to see others and that his behaviour towards me would improve. When I continued to refuse, he changed tactics. In mid-January 2000, he said he had a copy of a video tape he had taken of me with another man and the following day he arrived at my father's house threatening to put the tape on in front of my father if I didn't return. He also threatened to show it to all my friends and work colleagues from BT. I was physically and emotionally exhausted and could not stand further pressure and threats. In addition there was financial pressure as I was unable to pay the mortgage whilst paying private rent also.

I had no choice but to return to Derryraghan and could tell no-one of my reasons for having to do so. Gerry had emptied my home of all its contents, including my children's toys and belongings. On the day I had left, he burnt the Christmas toys that my daughters had received in front of them in a bonfire in our rear yard.

His overall behaviour toward me improved slightly for a while after my return at the end of January 2000. We discussed our difficulties and agreed that the haulage business he was running was causing considerable strain. He agreed to look for a different line of business. At end of February 2000, Gerry and I

met Michael Monaghan. He was in Enniskillen quite often at Parke Furniture on the Tempo Road. He had purchased a German Shepherd pup from us the previous summer in response to a newspaper advert but neither of us had had any contact with him since then.

Business was discussed, including the haulage of furniture from London to Enniskillen. Gerry went as far as buying a 45 foot trailer from TK Trailers, Portadown. On occasions both Gerry and I would call and speak to Michael Monaghan at Parke Furniture. On every occasion I called my daughters were present.

At times when my home situation became very difficult I spoke to Monaghan about it. He seemed sympathetic and understanding.

On 17th March 2000, Gerry produced a gun outside the kitchen window. Both children and I were panic-stricken. He left saying he was going to shoot John Maguire, a man I had seen on several occasions. Minutes later he returned to the house and told me to go and wash the car. This was typical of his behaviour, going from one extreme to another.

Problems at home continued to escalate. His drinking increased, as did his disruptive behaviour in the house. He played music at full volume in the middle of the night and switched on all the house lights, even in the children's bedroom. I attended Dr Long's surgery on a number of occasions. I was unable to work due to suffering stress, anxiety attacks and insomnia. She prescribed temazapan in mid April 2000.

Gerry continued to be very abusive, mainly verbally, but often physically as well. On one occasion, he smashed his Cavalier car into my BMW's rear passenger door.

Around May 2000, a relationship developed between Michael Monaghan and me. It was mainly telephone contact. On reflection it wasn't of much substance and was more a source of comfort. At the end of June or

early July 2000 this graduated into a - brief sexual relationship.

During a week long holiday to Gran Canaria between 28 May and 4 June 2000, Gerry put me under immense pressure to get involved with others. When I refused, he threatened to suffocate me with a pillow. On one particular night he dragged me onto the apartment balcony and threatened to throw me over. I was in contact with Michael Monaghan by telephone twice and discussed the situation. By the Friday of the holiday he had told me that he was sorting something out and to contact him immediately upon my return.

I acknowledge that when I returned home a plan was arranged by Michael and Tony McNern, involving myself putting drugs in Gerry McGinley's car, so that he would be arrested and imprisoned for long enough for me and the children to move away. I went along with it as I felt at the time I had no other option. I did try to back out of the idea but McNern made it clear it was too late to back out as arrangements had gone too far. I tried to dissuade Gerry from travelling in the BMW where the drugs had been placed but he refused. The drugs had been provided through Michael by Tony McNern who claimed he got them from a dealer. Initially I was told no money was required but later McNern was given money after threats were made to me by himself.

Later, on a night in July 2000, Gerry had attempted to get Michael Monaghan to return to our house after a night out in the Fort Lodge. Gerry tried to pressurise Michael into sleeping with me. He said we were married in name only and it was an open arrangement. When Michael refused Gerry started pushing and shoving him. Gerry asked "is there something wrong with my wife." Michael knew I didn't want anything to do with this. At this stage Michael was aware of the video, referred to above. In an attempt to dissuade Gerry from persisting with his aggressive behaviour, Michael told him that the furniture business they ran was a front for Michael's IRA activities. Gerry backed down and Michael left. I actually drove him back to PJ's [flat].

On 5th August 2000 Gerry again instigated a night out and asked Michael Monaghan and PJ to accompany us. On this occasion PJ overheard Gerry asking different men in the disco would they come back to our home and sleep with me. PJ came back over to Michael and me and told us. I had only met PJ for the first time in late July 2000.

On the evening of Friday 11th August 2000, Gerry told me we were going out on the Saturday night, and that I was to find a baby sitter. I called at Mary McGirr's house, during which time he actually sat in the car waiting on me to make sure that I did it. Mary McGirr said to call back in the morning. I called back at about 0830 on Saturday 12th August 2000 and I spoke to Patricia, her daughter, who said she was unable to do it. Her mother, Mary McGirr, offered to keep the girls in her home. I said I would let her know, despite the fact that I didn't want to go out I felt I had no choice but ask Patricia, in case Gerry rang or met her and found out that I hadn't. I made no further effort to find a babysitter and told Gerry I couldn't get one. He became very angry as the afternoon wore on and refused to settle for this. He made it clear that his intention was to see someone back at our home. We had only returned home a short time when he said he was returning to Furniture Direct, his business premises, and would be back in a few hours. He rang me a short time later from the shop on the pretence of needing a telephone number from the Auto Trader book. He asked again had I found a babysitter. His tone was threatening and said he would call back to check.

During this time, I made several calls to Michael Monaghan and told him Gerry was insisting we both went out and that his intentions weren't good. Gerry had made it very clear that he expected me to have sex with Michael Monaghan. Michael kept telling me to make excuses or to let him go alone. I said he was insisting that I went too. I made several calls to Monaghan and he made several back. During the conversations Michael Monaghan stated that Gerry had bombarded him with calls, trying to pressurise him to go out, as Monaghan had been telling Gerry he didn't want to go out. I asked Michael would he go to

the Fort Lodge if I had to go. He said he would. Gerry returned around 9 p.m., still in an aggressive mood. There was no fobbing him off about us not going out.

He rang Heather Edwards and asked would she baby-sit. She agreed, providing we were back for 12.30- 1 a.m. He agreed but when he came off the phone he was still ranting and raving. He made me ring my brother Andrew, who luckily couldn't baby sit. I asked again would he not leave it or go on his own. He was raging, and said if I didn't go with him and find someone to bring back he'd bring someone back himself. After what PJ overheard the previous week, I had no doubt that he would. I managed to make a call to Michael Monaghan and told him the situation. I asked him again would he go to the Fort Lodge. He said he would.

I said to Gerry we would have to go to the Fort Lodge as we had very little time but even at this stage his plans could have changed at any moment and he could have decided to go elsewhere. He had earlier mentioned Omagh. He told me directly that I had to bring someone home "to have a bit of fun", as he put it.

Gerry had me completely undermined. I had no say at all in what went on. To escape his temper and abuse, I had to do whatever he wanted. In bad temper he had also threatened me regarding the children and referred to the fact that they were two girls and said that since I was no use to him it was a good thing two more were coming along.

At this particular moment in time I felt the best way to try to handle this situation was to try to encourage Michael to return.

En route to the Fort Lodge hotel, Gerry rang Michael and asked him would he come out for a drink. He agreed. Once in the hotel his humour lightened although when he addressed me his tone was still abusive and it was a case of "well, is he definitely coming back?" This intensified as the night wore on and as his alcohol intake increased. Michael Monaghan and PJ arrived about 20 minutes after us.

I tried to get Gerry to leave at 12.30, referring to Heather Edwards expecting us then. He refused as I was unable to give him a straight answer whether or not Michael was returning. Michael did not want to and kept telling me to make excuses because this was like a re-run of the episode three weeks earlier in July. Gerry kept asking him if he would come back. Michael was non-committal and suggested leaving it for another night but Gerry refused to let up. In the end, Michael told Gerry he would follow us home in the taxi within a short space of time.

This caused Gerry to become even angrier with me and he was very abusive in the car going home. He blamed me for wasting his night and accused me of not wanting or trying to persuade Michael to return with us. I said very little in reply as I knew from past experience it was better not to answer him back. On arriving home, he stormed out of the car and went around the back of the house. The only reason I can think of as to why he did that was to avoid seeing Heather Edwards. As soon as he heard Heather and me getting into the car, he came round the side of the house and went inside. I left Heather home and returned to my own house.

As soon as I went inside, Gerry demanded that I ring the Fort Lodge and see if Michael had left. With Gerry standing at my side, I rang and left a message with whoever answered the phone. Minutes later Michael rang me back. He knew I couldn't talk and asked had Gerry settled. I said "no" and he said he would ring back shortly. I was also told by Michael to tell Gerry he was buying a carry-out. I relayed this back to Gerry who said for my sake he had better come up. He continued being abusive and forced me to drink a glass of whiskey telling me that I didn't want to do anything for him anymore. His tone was very aggressive, laying the blame on me as usual. I said very little in return as arguing was pointless and only made him angrier. This exchange took place in the living room.

At 3.25am the phone rang. Gerry told me to answer it. It was Michael again wanting to know did Gerry still want him up. When I said yes he said to tell him he

would be up shortly. This did very little to pacify Gerry. When I came off the phone he called Michael a “fucking timewaster” and said that he had no intentions of coming up. He also said that it was my fault for us having gone to the Fort Lodge. He even went as far as saying to me: “get back in the fucking car and bring the first cunt you can find back home with you”. When I tried to reason with him, he said that if Michael didn’t come up he would go out and bring someone home. After what PJ had overheard the previous week, I believed it.

He went in the direction of the bedroom and I remained in the living room. Minutes later Michael's van drove up to our lane and parked along the fence next to Michael Murphy’s property. Both Michael and PJ got out. Both men had a can of Harp in their hands and were drinking from them. They came into the hail. Michael asked where Gerry was and I said that he had headed for our bedroom. Michael told PJ to see where Gerry was. Seconds later, I heard Gerry shouting from the bedroom “What are you doing here you fucking cunt?” PJ then shouted out in terror. There were crashing noises and the sounds of a commotion. Michael headed for the room and I went into the girls’ bedroom. I was terrified by what was happening and was very concerned that the girls would be disturbed and distressed by the noise.

There was a lot of shouting. Gerry was roaring, apparently in pain and also in bad temper. He was shouting things like “you bastards, you dirty bastards”. I did not hear PJ shouting at this stage. However, I heard Michael repeatedly shouting “stay there, will you fucking stay there”. I could also hear a lot of noise which sounded like fighting and loud “slapping” or “whacking” noises. I lay on C’s bed with my hands over her ears. She awoke momentarily. I kept talking to her, with her head drawn into my chest, and she drifted back to sleep.

I stayed in the girls’ bedroom until I heard the main bedroom door open. Opening my door a little, I could see PJ standing in the hall dazed and in shock. He had blood on his hands. I asked him what had happened but he wouldn’t speak. He went straight into the

bathroom and it sounded like he was being sick. I could also hear the tap running and him washing his hands.

The main bedroom door was slightly open. When I went to push it open further it was slammed with considerable force in my face. I asked PJ again what happened and he kept shaking his head. He was also apparently in a lot of pain. The bedroom door opened and Michael came out. He looked very shaken up. He said he thought Gerry was dead.

I went to the bedroom door and looked round it. Gerry was lying on the ground with his back to the door and close to the built-in wardrobe. One arm was out-stretched above his head. There was a lot of blood with some on -the carpet, some smeared across the quilt cover and some on two walls. There were hand marks smeared in various places along the walls. The chest of drawers which had been located just inside the door was broken into bits, as was the bedside locker on the far side of the bed. The baseball bat that Gary kept beside the bed at night was lying on the floor.

Michael entered the kitchen and said what had happened in the bedroom. PJ was also present and did not contradict Michael's account of what had taken place. According to Michael, he had entered the bedroom literally seconds after hearing Gerry roaring at PJ and PJ shouting out in fear. Gerry was on top of PJ on the bed with his hands around his throat, throttling him. Michael initially attempted to drag Gerry off him by grabbing him under the armpits from behind. He couldn't manage this so he lifted the baseball bat and struck Gerry across the back with it. According to Michael, Gerry immediately turned and attempted to go headlong for him.

When relating the events in the kitchen, Michael was highly agitated. Once he began to talk about the fight, he became visibly angry and continually swore, referring to Gerry. The sorts of things he was saying were:

"Why would he not stop, why did he keep coming at me?"

"You seen him PJ, he just wouldn't stop."

"Such a mental fucking bastard, he must have been possessed by the devil himself"

"I kept telling him to stay there and he kept coming at me."

"I need to think, I need to fucking think."

He would ask PJ:

"how could any normal man take a thump like that and still get up and go for me?"

"He must have been the devil, was he the fucking devil? "

PJ was half crying and kept mumbling "I don't know Mick". I had initially felt nothing but shock and numbness. However, as Michael was talking and it started to dawn on me what had taken place, I became distraught and hysterical. I remember repeatedly asking "what is going to happen?" I was told that a whole lot of serious bother was going to happen.

Michael retrieved temazapan from the kitchen cupboard and made me take some. PJ attempted to pour himself another whiskey and was told if he thought that he was going to sit and get drunk that he would have the bottle smashed round him. Michael repeatedly kept stating how the McGinleys were never going to let this go and that someone's blood would spill for it.

I asked how things had got so out of hand that Gerry was actually killed as a result. In response to that I was asked several times — had I any idea what Gerry had been like in that room? I was told that Gerry had lifted a bedside unit and thrown it straight at Michael and then attempted to grab the bat. Michael said he had to keep hitting Gerry to keep him back and that Michael was fighting for dear life and for everyone else in the house. Michael was saying that if Gerry had wrestled the bat off him he would have killed everyone, children included.

Michael then asked PJ “what are we going to do with him” and about having to get him lifted. When I asked about getting the police, Michael looked at me in total incredulity and asked me several times if I was “right in the head”. He asked me had I any idea what that would lead to. I said no. He listed what was likely to happen and what would definitely happen.

My father and brothers and I would be shot; my family would be burnt in their beds some night; Michael’s family and PJ’s elderly mother would be burnt; all of us would definitely go to jail for years; my two daughters would be handed over to the McGinleys; and I would not see them for years. He stated categorically that under no account was he going to jail for anyone and definitely not because of a “fucking psycho”. He asked PJ was he going to jail over a “fucking psycho”, to which PJ replied no. He then said did I not think that both the children and I had suffered enough already and that I didn’t know what I was saying. Michael pointed at me and kept saying that Gerry was *my* problem, not his. His words were to the effect ‘I wasn’t the one married to him, *you* were. I wasn’t being used and abused by him, *you* were. It was only a matter of time before he done you in or done something to those two wee girls.” He pointed out that at no time had he any wish to come near my house but because of me he did. It was only that he was aware of what was in store for me and if he hadn’t he would never have come up to my house.

He said if he hadn’t brought PJ up “the perverted bastard would have tried to set him up too”. PJ backed him up in what he was saying. I could not argue because I knew it was true. He kept asking did I not think of my family and children, what it would put them through and the danger it would place them in.

I was in a state of total fear and confusion. I believed completely that Michael knew what he was talking about. He referred to living in Andersonstown for years and knowing how paramilitaries worked. From my experience of the marital separation, I also knew how the McGinleys had closed ranks and had no regard for me or the children and were prepared to

cripple me financially and terrorise me. They helped Gerry to empty my home of its entire contents and hide them in a trailer outside his sister's house in Sligo. They helped him to make copies of the tape in order to blackmail me into signing over the house to him. They helped Gerry in moving all our lorries south of the border. They were aware that Gerry and his brother James terrorised me at night and termed me a dangerous trouble-maker because I had rung the police. Gerry had also threatened to get his cousin Paul McGinley to 'do me in'.

I was convinced from my previous experiences that Michael was right. The very idea of being separated from my girls and the thought of them being sent to the McGinleys was a prospect I could not accept. I felt paralysed with fear at the thought of the McGinleys finding out what had happened and was convinced something similar would happen to my brothers and father if they did find out.

Both men stated that on no account were they accepting any responsibility for any part of what had happened and that if I wanted to go to the police I would have to say that I carried out the attack. Michael reiterated what the consequences would be for me, the children and my family. He stated that if it was his son, Ryan, he would sell everything he owned to exact revenge on anyone if they ever harmed a single hair on his head. He said the McGinleys would do the same thing. He said that they sorted things out in their own way and that they still belonged to the "old school". PJ backed Michael and agreed with everything he was saying.

No one knew what to do. The two men were adamant they weren't prepared to get into trouble and did not want the police involved. When it was put to me how I would be taken from the two girls and face a long jail sentence I wasn't prepared for that. It was the last thing I wanted. A decision was made that Gerry would be lifted and taken somewhere. Plastic was removed from my shed, I believe, or else it was in Michael's van. The two men went into the bedroom after moving the van to the gable wall. I was told to make some coffee in the kitchen but after some time I

went and stood inside the bedroom door. Gerry's clothing had been removed and placed into a bin-liner. Both men had lifted him onto the plastic and wrapped him in it. I was then told to stand in the children's bed room. He was carried through the kitchen and along the back of the house, before being put into the van via the side door. The van was then parked at rear yard.

Around 8am when the girls woke I kept them in the living room and put on a video tape for them to watch and gave them some breakfast. I also brought the young pup in to distract them. They knew nothing about what had happened. Both Michael and PJ cleared things in the bedroom, lifted out the contents and brought them to the shed. After some time PJ had to lie down on Shannon's bed as he was in a lot of pain.

The rest is more or less as suggested by the Police, with the redecoration of the bedroom, burning clothes and furniture in a fire in the rear yard. Gerry had not been wearing his ring, as it was sitting on the kitchen window-sill. I'm not sure about his watch. Both men completed the decorating and did the burning. As for the paint scraper, mop head, bucket handles, etc., they must have been there from a previous occasion because I don't believe the ones used were burnt at all.

On the Sunday afternoon, Michael and PJ took Gerry's body away. They didn't tell me where. At a later stage, Michael said the body was south of the border but never said where and always maintained it was best that I didn't know. At no time did I plan to kill my husband or conspire to have him killed. I had no reason to believe and did not expect that he would be subjected to any violence that night in my house or anywhere else. I had no advance knowledge of any intention on anyone's part to attack him or engage in a fight with him. I do not believe that anyone did intend to engage in any violence with him. I did not take part in or encourage or otherwise aid or abet any assault or act of violence on him and did not know what happened to him until after it had happened.

He emphasised on a daily basis that appearances and routines had to look normal. This included me having to make appearances at the furniture outlet and ask people had they seen Gerry. He continually impressed upon me how essential it was to stick tight with the story and that not one word was to change or else huge problems would follow.

From 20th August to 30th October I had lived with my father. However I had daily face to face contact with Michael. He called at my father's home in the evenings and continued to stay in PJ's flat. Michael made arrangements for me to get rented accommodation in Lifford, from 31st October, to the first week of December. I did this because I could not cope with living in Enniskillen any longer and felt I was going to have a break down.

Michael frequently took phone calls on his mobile going outside to speak and being extremely secretive, never disclosing who he had been speaking to. However, he would make comments such as, "a few people like to keep an eye on what's going on with this situation". He was referring to Gerry's disappearance but implying that paramilitaries were monitoring the overall situation. As this made no sense to me I attempted to find out what he meant. He would reply "don't ask me any questions like that" leaving me completely confused and unnerved. He spoke on several occasions about a man he described as the boss of the Real IRA. He claimed he would have had a drink with him and implied some level of involvement with him. He made the point frequently that I would not wish for myself to be brought to this man's attention because this man thought nothing of shooting anyone who became a nuisance.

It was presented to me that I faced danger from several directions. The McGinley family would seek revenge against my family, particularly my brothers, and that the McGinleys would go after Michael or his family. I was aware that the McGinleys had strong family connections with the PIRA. Michael also suggested that he himself would use his connections in Bundoran to bum the McGinley's house down or

shoot some of them. The terminology that he used was: "This will end up being a blood bath."

I was afraid of crossing Michael in case he would use these connections against me or my family and I was fully aware that he was acquainted with some very unsavoury characters. He told me about the criminal and paramilitary activities these people were involved in. He mentioned an incident about one of these people being shot in the head and dumped in a bog because that was what happened to people who ran with stories to the police.

In addition, Michael said on a daily basis that PJ and he were not going to be implicated at any level and that if I ever said anything that both he and PT would deny killing Gerry and that they only arrived at my home at Sunday lunchtime. This was particularly reinforced when the police liaison officer made arrangements to meet me. I was constantly reminded that it would always be a case of two stories against one, ie that Michael and PJ would always side together. Michael constantly reiterated that I would be placing my family in serious danger, destroy my family's future and face long imprisonment if I said anything.

On the morning of our arrest on 21 May 2001 Michael said to me "just stick to the story, no matter what is put to you" when he seen the police cars arriving

Throughout our Remand period we had to travel to Enniskillen court every Monday. As always the message was to sit tight, that it was far too late to say anything different and that nothing could be proven.

On one occasion, a hoax device was planted close to my father's home and he was evacuated. Army bomb disposal was sent out and there was a controlled explosion. Michael referred to this saying "*some people are just letting you know that they are still around*" but refused to explain or elaborate any further. This only served to intimidate me more and fully believe that my fears had foundation.

Throughout the Remand period I had prison officers saying to me "what's the story with your co-accused

he is always associating with Real IRA men." This was before segregation and served to confirm my fears that he was connected.

I know that I ought to have reported the matter to the police but in the immediate aftermath of the event I was panic stricken and overwhelmed. I felt compelled to go along with the plan pressed on me by Michael Monaghan. He made it clear that I had no choice in the matter and I simply didn't have the capacity to resist.

When I was arrested and interviewed by the police, I maintained the line suggested by Michael Monaghan because I was fearful of contradicting him and remained fearful of doing so throughout the trial. I was also fearful of the McGinleys. It was for these reasons that, at the trial, I did not testify on my own behalf or offer the account set out above. I did not tell my legal representatives what actually happened at any time before or during the trial. I did tell my legal representatives details about the abuse I suffered from Gerry McGinley. Their advice was not to give evidence of this as it would have provided evidence of a motive for the murder of Gerry McGinley.

I respectfully request the Court to receive this evidence because it is the truth of what happened. There is a reasonable explanation for not giving it at the trial and it is in the interests of justice that it should be tested under cross-examination and considered by the Court in determining whether my conviction is safe."