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

Delivered: 30/05/2019

IN THE CROWN COURT FOR THE DIVISION OF BELFAST

SITTING AT LAGANSIDE

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THE QUEEN

v

SAMUEL DAVID McMAW, BRIAN ROY McLEAN  
AND  
ROBERT DARREN McMAW

DEFENDANTS

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McALINDEN J

[1] Mr George Gilmore Senior, of Sullatober Square, Carrickfergus (“the deceased”), was shot in the back of the head as he was driving his vehicle along Blackthorn Park in Carrickfergus, shortly before quarter past two on the afternoon of Monday, 13 March, 2017. He was taken from the scene by ambulance and was admitted to the Royal Victoria Hospital, Belfast. Investigations revealed a catastrophic brain injury and Mr Gilmore was pronounced dead shortly before midday on 14 March, 2017.

[2] At the time of the shooting, the deceased had been driving a white Vauxhall Insignia YLZ 2220 (“the Vauxhall Insignia”) and there were two other men in the vehicle with him; Mr Stephen Boyd, the front seat passenger and Mr Kelvin Graham, a rear seat passenger. There was another car in the vicinity, a red BMW 3 series, registration number XLZ 9306 (“the BMW”), which was being driven by Mr George Gilmore Junior, the son of the deceased, with Mr Mateusz Ostrowski travelling as a front seat passenger. Arising out of this killing, Mr David McMaw faces the following charges: the murder of the deceased, the attempted murder of Mr Stephen Boyd, the attempted murder of Mr Kelvin Graham and possession of a firearm with intent. Mr Brian McLean also faces charges of the murder of the deceased, the attempted murder of Mr Stephen Boyd, the attempted murder of Mr Kelvin Graham and possession of a firearm with intent. Mr Darren McMaw also faces charges of the murder of the deceased, the attempted murder of Mr Stephen

Boyd, the attempted murder of Mr Kelvin Graham and a separate charge of possession of a firearm and ammunition with intent.

[3] On the afternoon in question as the Vauxhall Insignia was being driven along Blackthorn Park in a northerly direction, a number of shots were fired at the vehicle from the rear. One of these shots (later established to have been fired from a 9mm pistol) entered the cabin of the Insignia, probably through the rear window and travelled through the cabin and struck the back of the Deceased's head behind the right ear. The bullet fragmented and the two portions then caused fatal injury to two lobes of the brain. A number of other bullets struck the vehicle but thankfully, neither of the two other occupants were injured. The vehicle continued along Blackthorn Park up to the T junction with Pinewood Avenue. It then emerged from Blackthorn Park, crossed Pinewood Avenue, mounted the footpath, crashed through a blockwork wall at the front of 61 Pinewood Avenue and came to rest in the small front garden of those premises. It is clear that although fatally injured, the driver's foot remained on the accelerator until after the vehicle stalled in the garden of number 61. It is also clear that a bullet fired from the same weapon, penetrated the front door of number 61 and was retrieved from the wall beside the staircase which led from the ground floor to the first floor of that house. Again, simply as a matter of good fortune, no one in that house was either killed or injured.

[4] The Crown case is that on Monday 13 March, 2017, the deceased along with his son George Gilmore Junior and a number of others ("the Gilmore party") attended Belfast Magistrates' Court at Laganside Courts Complex in support of a friend/associate Mr Ian Sinclair who was appearing in court in relation to an attempted murder charge. At approximately 12.30pm, the Gilmore party left Laganside Courts Complex and went to their vehicles parked in the Hilton Car Park. The deceased was again driving the white Vauxhall Insignia with Steven Boyd and Kelvin Graham as front and rear passengers respectively. Mr Gilmore Junior was driving the BMW with Mateusz Ostrowski and Joel Dunlop as front and rear seat passengers respectively.

[5] That morning, Mr Darren McMaw, one of the Defendants in this case, had been travelling around the Carrickfergus and Belfast area in his employer's Volkswagen Crafter van ("the van"), registration number DS14 LXE. The van, a red and white box van, had a tracker fitted to it which, in the wake of the murder of George Gilmore, was interrogated by investigators. As a consequence, it is the Crown case that it is possible to pin point the location and direction of travel of that vehicle at any given time on the day of the murder. It is accepted that Mr Darren McMaw was the individual driving that van at all material times on 13 March, 2017. At the time of this incident, Mr Darren McMaw, date of birth 8 March, 1985, was living at his parents' home at 1 Starbog Road, Larne. His former partner Alison McKnight lived at 135 Castlemara Drive, Carrickfergus.

[6] The Crown case is that at 12.15pm on 13 March, 2017, Mr Darren McMaw's vehicle was stationary near to the home of another defendant, Mr Brian McLean

(‘Scotch Brian’) at 47 The Birches, Carrickfergus. Pausing there, Mr McLean was born on 26 December, 1981 and has a Scottish accent. The Crown case is that this vehicle remained at this location until just after 1.20pm when the ignition was turned on and the vehicle made its way out of the Sunnylands Estate and then travelled north along North Road before turning right on to Marshallstown Road. At that time, the deceased, lived at an address at Sullatober Square in Carrickfergus. Photographic evidence clearly demonstrated that there is a clear line of sight from the Marshallstown Road to the home of the deceased. It is the Crown case that when questioned about why he was at this location on the day in question, Mr Darren McMaw admitted during interview that he had gone to this area to “take a look”. The Crown case is that he was looking to see whether the deceased’s vehicle was parked at his house at the relevant time.

[7] It is part of the Crown case that this “scouting exercise” was important in that the defendants, including Mr Darren McMaw, were anxiously awaiting the return of the Gilmore party from Laganside Magistrates’ Court. It is the Crown case that, having checked from the Marshallstown Road that the deceased’s car was not outside the house, Mr Darren McMaw made a pass in his van along Oakfield Drive close to Sullatober Square before making his way back toward the Woodlands Estate, stopping close to the home of his brother’s, the defendant David McMaw’s partner, at Cherry Walk at 1.34pm

[8] The defendant Mr Samuel David McMaw was born on 13 September, 1988. At the time of this incident he was living with his parents at 1 Starbog Road, Carrickfergus. His partner at the time, Ms Zoe McKenzie, lived at 1 Cherry Walk, Carrickfergus with their two children. On the morning of 13 March, 2017, it is accepted on behalf of Mr David McMaw that he was at this address with Ms McKenzie. At 11.00am he left the premises to go to the local shop, returning 10 minutes later. He also accepts that Ms Zoe McKenzie subsequently informed police that he had remained at the house until about 1.00pm.

[9] At 1.37p.m, Darren McMaw’s vehicle left the Woodlands Estate and made its way toward the home of Ms Alison McKnight, his girlfriend and the mother of his child, at Castlemara Drive, off North Road, arriving there at 1.41pm.

[10] It is the Crown case that in the meanwhile, the Gilmore party’s two vehicles travelled to Carrickfergus, passing Seapark PSNI facility (and being recorded on a CCTV recording system at that location) at 1.31pm. They proceeded to Carrickfergus and parked at Lancasterian Street. They exited their vehicles and made their way on foot to Delacey’s Bakery on North Street where they purchased food. CCTV depicts the Gilmores going in to the Bakery on North Street at 1.47pm where they remain until shortly after 2.00pm.

[11] Whilst walking from Lancasterian Street to the bakery, the Gilmore party encountered a man by the name of Mr Michael Lowry. Mr Lowry, was driving a dark green Vauxhall Corsa registration number UCZ 8989 at the junction of Antrim

Street and North Street as the Gilmore party crossed the road. It was noted by some of the Gilmore party that Mr Michael Lowry smirked as he saw the group and made a hand gesture.

[12] In the context of the murder of the deceased, the importance of this encounter becomes apparent when it is tied in with the admitted facts that shortly after this encounter, Mr Michael Lowry used his mobile phone to call a number ascribed to a man called Jamie Adams of 77 Castlemara Drive, Carrickfergus. Analysis of the phone records relating to Mr Lowry's phone demonstrated that this call lasted 99 seconds. It is the Crown case that this was sufficient time for information to be passed on by Mr Lowry to Mr Adams about the whereabouts of the Gilmore party. Within seconds of that call ending, analysis of the phone records relating to Mr Adams' phone demonstrates that Mr Adams called a number ascribed to a man by the name of Clifford Irons of 149 Castlemara Drive, Carrickfergus. The Crown case is that it can properly be inferred that the call to Mr Clifford Irons was prompted by what Mr Adams was told by Mr Lowry, in light of the temporal nexus between the calls. The call between Mr Adams and Mr Irons lasted 107 seconds, again sufficient time to convey critical information as to the movements of the Gilmore party. Less than a minute after the call between Mr Adams and Mr Irons finished, Clifford Irons placed a call to the defendant, Mr David McMaw. It is this individual who the Crown say along with Brian McLean, mounted a gun attack on the deceased's vehicle which resulted in his death. Analysis of Mr Irons' phone records reveal that the call between the Mr Irons and Mr David McMaw lasted 50 seconds.

[13] It is the Crown case that it is no coincidence that as this last call between Mr Irons and Mr David McMaw came to a close, the tracking records relating to the van driven on the day in question by the defendant, Darren McMaw, indicate that the ignition was turned from the off position to the on position. At that time, it should be remembered that the van according to the tracking records was parked on Castlemara Drive near to the home of Mr Darren McMaw's girlfriend, Ms Alison McKnight. It is the Crown case that it can be inferred from this, from the subsequent movements of the van and from analysis of the phone records relating to David and Darren McMaw's mobile phones that Mr David McMaw and Mr Darren McMaw were in each other's company at this stage.

[14] It is the Crown case that the tracking records reveal that Mr Darren McMaw's van then made its way out of Castlemara, along North Road, making its way directly to what was to become the murder scene at Cherry Walk/Blackthorn Park/Pinewood Avenue in the Woodburn Estate. Whilst being driven towards the murder scene, analysis of Mr David McMaw's phone records reveal that Mr David McMaw made a telephone call to a man called Mr Kenneth Graffin of 25 Cherry Walk, Carrickfergus. This call lasted for 45 seconds. The location of the mobile telephone cell site utilised for this call is consistent with Mr David McMaw being present in Darren McMaw's vehicle as it made its way from Castlemara to the murder scene.

[15] It is the Crown case that the tracked movements of Mr Darren McMaw's vehicle on the afternoon in question are entirely consistent with him being in the company of his brother at the time when these critical calls and movements take place. It can be no coincidence say the Crown that Mr Darren McMaw happened upon the murder scene in the minutes leading up to the murder, particularly when one goes on to consider the movements of his vehicle immediately thereafter. It is the Crown case that the movements of Mr Darren McMaw's van are entirely consistent with him having dropped off his brother, Mr David McMaw, at the murder scene.

[16] The Crown case is that at 1.56pm, Mr Darren McMaw, having dropped off his brother, made his way out of the Woodburn Estate and drove toward the west end of Carrickfergus town centre before heading up North Road. By 2.01pm, the Gilmore party had begun to make their way out of the bakery. Meanwhile, Darren McMaw was driving his van up along North Road. The tracking records then demonstrate that the van performed a U-turn a short distance along North Road, before making its way toward the location where Mr Michael Lowry had encountered the Gilmore party a short time beforehand. It is the Crown case that Mr Darren McMaw initially decided to travel along the North Road in case he caught sight of the Gilmore party on their way home from the centre of town but they had not reached that location at that time. Having not seen the Gilmore party on North Road, Mr Darren McMaw decided to turn around and make his way toward the centre of town where he hoped he would be able to locate them and follow them, relaying information about their whereabouts to others.

[17] The Crown case is that Mr Darren McMaw arrived at the town centre just after the Gilmore party had left in their vehicles. By the time he made his way to Lancasterian Street where the Gilmore party's two cars had been parked, the Gilmore party were already back in their cars and heading out of the town, along Joymount. It is the Crown case that the tracker indicated course followed by Mr Darren McMaw's vehicle demonstrated that he was intent on following the route that the Gilmore party were likely to take out of the town. CCTV evidence from the town centre reveals that his vehicle was about half a minute behind their vehicles at this time. This was not close enough to tail them but close enough to catch glimpses of their vehicles, to see that they were on the move and to update his brother, Mr David McMaw, in relation to these developments. It is the Crown case that Mr Darren McMaw's vehicle was sufficiently close behind the Gilmore party's vehicles to be able to see the Gilmore party travel along Marine Highway, toward Carrickfergus Castle, as he made his way toward the Joymount junction where the Gilmores had been stationary only moments before.

[18] The Crown's case is that this explains why, at 2.06pm, Mr Darren McMaw called his brother, Mr David McMaw, who was now at the murder scene. Analysis of Mr Darren McMaw's phone records reveal that this call lasted 36 seconds, again

sufficient time for Mr Darren McMaw to inform his brother that the Gilmore party were on the move and that he was tracking them, albeit he had fallen behind.

[19] At the junction of Irish Gate, the Gilmore party turned right, heading north, before turning left onto Irish Quarter South, where both their vehicles were captured by a CCTV camera at 2.06pm. A short time later, Mr Darren McMaw's van can be seen passing the junction between Irish Gate and Irish Quarter South, heading north. It is the Crown case that Mr Darren McMaw, having failed to spot that the Gilmore party had turned left on to Irish Quarter South, continued north onto Albert Road in the direction of North Road.

[20] At around this time, it is the Crown case that analysis of Mr Darren McMaw's phone records reveal that he placed a call to Mr Kenneth Graffin (the man spoken to by his brother a short time earlier) and that call lasted 51 seconds. With the Gilmore party and Mr Darren McMaw now heading in different directions, the Gilmore party heading north on Woodburn Road and Mr Darren McMaw heading north toward North Road, Mr Darren McMaw no longer had sight of the Gilmore party.

[21] It is the Crown case that at 2.09pm, the Gilmore party stopped to allow a passenger in George Gilmore Junior's vehicle to disembark. CCTV footage confirms that Mr Joel Dunlop was dropped off at his father's garage on the Woodburn Road. Both vehicles stopped at this location and then made their way into the Woodburn Estate. At 2.10pm, their vehicles, led by Mr George Gilmore Junior's BMW, could be seen on CCTV turning into Hawthorn Grove. From there the vehicles progressed through the Woodburn Estate onto Pinewood Avenue at its junction with Cherry Walk where they were to encounter Mr David McMaw and Mr Brian McLean.

[22] When the two Gilmore party vehicles drove into Pinewood Avenue, Mr George Gilmore Junior saw two men at the junction of Cherry Walk. He recognised these two men as Samuel David McMaw otherwise known as "Dee Dee" or "Dingle" and Mr Brian Roy McLean otherwise known as "Scotch Brian". It is the Crown case that Mr David McMaw began to shout "Come on to fuck" and gesticulated with his arms, waving the cars towards him. Mr McLean made arm movements as if he was about to throw or had thrown something towards the cars and then turned and ran through an alleyway leading to Blackthorn Park, followed swiftly by Mr David McMaw.

[23] The Crown case is that as a result of this provocative behaviour, the BMW driven by George Gilmore Junior drove slightly further along Pinewood Avenue before turning left onto Blackthorn Park while the Vauxhall Insignia driven by his father, the deceased, turned left into Cherry Walk, progressed to the end of that section of Cherry Walk, cut right over a grassed area to the side of 14 Cherry Walk and then turned right onto Blackthorn Park so that the vehicle was travelling down Blackthorn Park towards Pinewood Avenue again.

[24] The Crown case is that Mr George Gilmore Junior, as his vehicle was travelling along Blackthorn Park away from Pinewood Avenue, saw Mr McLean run out of an alleyway from his left, through to another alleyway on the other side of Blackthorn Park, to his right. Mr George Gilmore Junior had to stop his vehicle to avoid hitting Mr Brian McLean. The vehicle stopped in line with the alleyway to Mr Gilmore Junior's left and he could clearly see Mr David McMaw standing half way along the alleyway, pulling something down over his face. He then drove on going, he thought, in the direction of Mr McLean's house. This involved him driving to the end of that section of Blackthorn Park, turning right and then turning second right again onto another section of Blackthorn Park which leads directly onto Pinewood Avenue.

[25] As Mr Gilmore Junior drove around to the end of Blackthorn Park, the Crown case is that he heard several gunshots. He looked down Pinewood Avenue and saw his father's car coming out of the other Blackthorn Park junction and rolling slowly across Pinewood Avenue, before it mounted the footpath, crashed through a garden wall and came to rest in the front garden of 61 Pinewood Avenue.

[26] The Crown also relies on the evidence of Mr Stephen Boyd. The Crown case is that Mr Boyd was the front seat passenger in the deceased's Vauxhall Insignia motor vehicle. The Crown case is that he also knew Mr David McMaw and Mr McLean from living in Carrickfergus. As the deceased's vehicle progressed along Pinewood Avenue towards the junction with Cherry Walk, he saw Mr David McMaw and Mr Brian McLean at Cherry Walk and he recognised them both. He saw them run into the alleyway leading to Blackthorn Park. The deceased drove his vehicle along Cherry Walk and then drove over a green area and progressed down Blackthorn Park towards Pinewood Avenue. As the vehicle progressed down Blackthorn Park, he saw Mr Brian McLean step out of an alleyway to his right. He then saw Mr David McMaw crouched down attempting to pull a balaclava down over his face. He saw a gun in Mr McMaw's other hand and shouted: "Gun, gun, gun."

[27] It is the Crown case that the deceased attempted to speed up and escape from his attackers and as the vehicle progressed along Blackthorn Park, Mr Boyd heard shots and the car collided with the house on Pinewood Avenue. It is the Crown case that Mr David McMaw came out of the alleyway armed with a 9mm handgun and discharged a number of shots at the Vauxhall Insignia, hitting it with several bullets. One of these bullets punched through the rear window of the vehicle, travelled through the cabin of the vehicle and struck the driver on the back of the head, causing a brain injury which proved to be fatal. Another bullet punched through the front door of 61 Pinewood Avenue and ricocheted off the newel post of the bannister of the staircase before lodging in a wall beside the staircase. By 2.13pm, a 999 call had been placed, reporting the fact that the deceased had been shot. It is the Crown case that the gunman, Mr David McMaw, and his accomplice, Mr Brian McLean, had taken off on foot.

[28] In the meanwhile, Mr Darren McMaw was driving his tracked van along North Road. When he reached the top of the road, he turned right on to Marshallstown Road from where, again, he had a clear line of sight to the deceased's home at Sullatober Square. Whilst there, analysis of his telephone records reveal that he made a two second call to his brother Mr David McMaw at 2.12pm. It is the Crown case that the purpose of this call was to alert Mr David McMaw to the fact the Gilmore party had clearly not gone straight home. However, by that time and unbeknownst to Mr Darren McMaw, it is the Crown case, that his brother Mr David McMaw, not only already knew that but was unable to answer the call or conduct any meaningful conversation because at that time he was directly engaged in the murder of the deceased and/or making good his escape.

[29] It is the Crown case that Mr Darren McMaw then performed a U-turn and began making his way directly to the murder scene. On his way there at 2.14pm, analysis of his phone records reveals that he attempted to contact his brother Mr David McMaw. This call only lasted one second. Having travelled back down along North Road, he travelled along Northland, skirting around the perimeter of the murder scene. Again, he tried to call his brother at 2.16pm. This time the call lasted only 5 seconds. Making his way along Woodburn Avenue, he then made his way further into the estate, along Sandes Court, passing the end of Pinewood Avenue. In the meanwhile, analysis of phone records reveals that Mr David McMaw, at 2.16pm, made a 12 second call to a phone attributed to a man called Colin Simms of 84 Blackthorn Park, Carrickfergus. Further analysis reveals that at this time Mr David McMaw's telephone utilised a cell site consistent with him being present in the general area of the murder scene.

[30] It is the Crown case that vehicle tracking records establish that Mr Darren McMaw continued to trawl the area in his van, presumably on the look-out for his brother, Mr David McMaw. Analysis of Mr Darren McMaw's phone records reveals that as he did so, he too made a two second call to Colin Simms at 2.10pm. Mr Darren McMaw's van is tracked circling the area from 2.14pm, when he entered Northland, until 2.26pm, when his vehicle came to rest on Cherry Walk, yards from where the Gilmore party had earlier encountered Mr David McMaw and Mr Brian McLean.

[31] In addition to vehicle tracking data analysis and CCTV image analysis relating to the vehicles used by the Gilmore party and the vehicle driven by Darren McMaw on the day in question, the Crown case relies upon CCTV evidence relating to the movements of Mr David McMaw and Mr Brian McLean on that day. The Crown case is that CCTV evidence places the Defendant, Mr David McMaw, in the general area from the latter part of the morning. At 11.24am, Mr David McMaw can be seen entering "Today Express" at Hawthorn Grove, Carrickfergus - a short walk from Cherry Walk. On the footage, he is seen to be wearing a light blue or grey hooded top, with trousers that could be described as either black tracksuit bottoms or workman's trousers, and black and white Nike trainers.



[32] It is the Crown case that CCTV footage also shows the Defendant, Mr Brian McLean present in the "Winemark" Off Licence on the Woodburn Road, Carrickfergus at 12.10pm. on the day in question. He appears to be wearing a navy-blue tracksuit top and dark bottoms with stripes.

[33] As has been described above, the Crown case also relies upon the results of the analysis of mobile records relating to the Defendants and their friends and associates. This analysis not only looks at the time, duration and pattern of calls made and the content of certain text messages, it also involves looking at where the mobile phones were located at the time these calls were made or received. The Crown case is that in the period prior to the day of the murder, Mr David McMaw and Mr Brian McLean were in frequent contact with one another. However, on the day of the murder there was no contact between the two men. This, the Crown asserts, supports the contention that the two men were in each other's company on the day of the murder.

[34] The Crown also seeks to rely on the telephone contact between the Defendants and such contact involving other individuals to whom telephones have been ascribed at critical times on the day of the murder. It is the Crown case that these contacts are consistent with information being passed about the whereabouts and likely route of the Gilmore party and the whereabouts of the assailants after the shooting. It is the Crown case that that these telephones which were ascribed to these defendants, as well as the other individuals identified above, were not used again in the wake of the murder. It is the Crown case that these telephones were "burned" in the aftermath of the shooting in order to avoid detection and to avoid these telephones being interrogated in order to yield forensically valuable information.

[35] The Crown also seeks to rely on the content of the defendants' answers during police questioning about this incident and the decision by each of the defendants not to give evidence during the trial. In respect of the defendant Mr David McMaw, during his numerous interviews, although he denied any involvement in the shooting of the deceased, he refused to answer specific questions about his lifestyle, his use of any particular mobile phone, his knowledge of the locus, and his previous involvement with the Gilmores. In particular, he made no comment when questions and assertions were put to him about his clothing and movements on the day of the murder. Further, he made no comment when questions and assertions were put to him either about his association with Mr Brian McLean or in relation to the specifics of the eye witness statements that are put to him.

[36] In respect of the defendant Mr Brian McLean, he was similarly unforthcoming during his police interviews. He denied involvement in the murder of the deceased but he made no response to specific questions about his knowledge of the Gilmores, his associates, his role in the murder, his involvement in the UDA, his lifestyle, his movements and clothing on the day of the murder and his relationship with Mr David McMaw. During his second interview, Mr McLean's solicitor handed in a prepared hand-written statement (Exhibit 46) in which Mr McLean strenuously

denied any involvement in the killing of the deceased. Mr McLean stated that he lived at 47 The Birches, Carrickfergus. He had family living in Cherry Walk and Blackthorn Park and he would be in these streets nearly every day at different times of the day. In response to being told that George Gilmore Junior had made a statement implicating Mr McLean in the murder of his father, Mr McLean stated that George Gilmore Junior is a liar who hates him and his sidekicks Stephen Boyd, Kelvin Graham and Mateusz Ostrowski would probably say anything to support him. He also stated that it was his understanding that Mr George Gilmore Junior had previously made statements to police making allegations against people and the police and PPS had formed the view that Mr George Gilmore Junior was not a witness of truth.

[37] In relation to Mr Darren McMaw, the court notes that the formal admissions in this case made pursuant to section 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 include the fact that on 31 March, 2017, police attended 135 Castlemara Drive where they arrested Mr Darren McMaw in relation to the murder of the deceased. He was cautioned and made no reply. Thereafter, the approach adopted by this defendant during police interview was initially different from that adopted by the two co-accused. In his first set of interviews shortly after the killing, he denied any involvement in the murder. He denied UDA membership. He stated that he was aware of an on-going feud between the deceased and Mr George Gilmore Junior on one side and a faction of the UDA on the other side over money and drugs but he had no involvement in it. He stated that he was aware of the Gilmore family and of where they lived. He referred to a number of incidents in which he alleged that he and others he knew had been targeted and attacked by the Gilmores. He specifically referred to an incident which occurred at his partner Alison McKnight's house in Castlemara Drive, Carrickfergus, in June, 2016 when a window was smashed and petrol was poured over his three year old son's head but he was unable to offer any explanation as to why he and his family would have been targeted by the Gilmores.

[38] In relation to his movements on the days leading up to the murder and the day of the murder, he stated that he was in his ex-partner's house in Castlemara Drive on the Saturday night which would have been the night of the attack on the doorman in the Royal Oak Bar. He admitted that he sometimes drank in that bar and that he knew the doorman who had been attacked. He knew that a number of individuals had been charged with involvement in the attack but he did not know who they were. On the Sunday, he stated that he went to his mother's house on the Starbog Road, Kilwaughter, Larne for dinner and then he went to his ex-partner's house to look after his son while she went to work around 5.00pm. He then went to bed at 10.00pm. The following morning, the day of the shooting, he got up for work at around 7am and then picked up a work colleague and then went to a job in Belfast in a work vehicle. He claimed that the job was completed at approximately 1.00pm/1:30pm. so he left his work colleague back home at Darby Road in Carrickfergus and called at Alison McKnight's address to collect his son and take him to the family farm. Mr Darren McMaw stated that his sister and her partner, a

man called William Graham were at the house with their two children so he decided to leave his son there to play with the other children. After leaving Alison's house he drove down the North Road towards Carrickfergus as he wanted to get some lunch and during this journey, he received a phone call from a friend, Mr Lee Andrews, who informed him that there had been a shooting in Pinewood.

[39] Mr Darren McMaw claimed that as a result of this phone call, he made his way towards Pinewood Avenue as he was concerned about his family including his sister who was living in that area. It was, however, pointed out to him that he had just left his sister n Castlemara Drive with her partner and children. After circling around for a while and not being able to get very close to the scene because of the police, he stated that he parked the van near his brother David's house and he then walked over to his brother's house and spoke to a workman there who informed him that his brother was not at home. Mr Darren McMaw stated that he then proceeded to the scene of the shooting where he spoke to a number of people and was made aware that it was the deceased who had been shot. He stated that he was close enough to see the Vauxhall Insignia vehicle. He spoke to Mr Kenny Graffin at the scene. He also stated that he probably did try to phone his brother at this time although he could not remember doing so.

[40] He stated he remained at the scene all evening and he stayed with his sister and her partner that night. Mr Darren McMaw repeatedly referred to the fact that his work van had a tracker fitted which would provide police with the accurate timings of his movements during the day when he was in the vehicle. Mr Darren McMaw stated that on the Tuesday morning, he got up and left his sister's house, intending to take the work van to work but it was not there and he was informed by residents that it had been removed from the scene by the police. He then contacted his employer about the van. He was then required to hand back his work mobile phone and he admitted to deleting his account details from his work phone before handing it back to his employer after the incident. Further, when pressed about telephone contacts around the time of the murder, he informed police that Mr Kenny Graffin and a number of others had also contacted him to advise him about the shooting.

[41] Mr Darren McMaw was asked about how well he knew Mr Brian McLean and when he was last in contact with him. He initially claimed not to know a Brian McLean but did accept that someone called "Scotchie" "knocked about" with his brother. He wasn't able to say when he last saw Mr McLean and denied having his number saved on his phone. He agreed that Mr McLean was not someone that he would have a need to be in contact with at any time. He stated that he did not know where Mr McLean lived and did not know when he last spoke to him. It would have been weeks, possibly months since he last saw him.

[42] Mr Darren McMaw was then asked about contact with his younger brother David. He stated that he had last seen his brother about a week before the shooting and that seeing him once per week would have been normal. He also denied being

in phone contact with his brother during that week. Mr Darren McMaw denied being in contact by phone or text with anyone when he was up at his mother's house on Sunday 12<sup>th</sup> or when he went to Alison McKnight's house that evening. He stated that he did not contact anyone the following morning other than his work colleague to inform him that he was on his way to pick him up. He stated he did not remember phoning anyone on his way back from Belfast or after leaving his work colleague off home before going to Alison McKnight's house. He stated that the only numbers he would have been calling on his employer's mobile would have been work, his mother or Alison McKnight.

[43] The defendant Mr Darren McMaw was also interviewed after the forensic analysis and evaluation of the vehicle tracking records, CCTV imagery, and mobile phone records had been carried out. The second set of interviews occurred in late September, 2017. It is formally admitted that at 8.25am on 27 September, 2017, police attended 135 Castlemara Drive, Carrickfergus, where they arrested Mr Darren McMaw in connection with the murder of the deceased. He initially made no reply after caution and then stated that "It was nothing to do with me whatsoever."

[44] Contrary to what he had told the police during the first set of interviews, Mr McMaw had to accept that he has been in his mother's house on the Sunday night before the shooting and had driven to his ex-partner's house early on the Monday morning. He then picked up his work colleague before going to a garage and then returning to his ex-partner's house before going to work in Belfast.

[45] During these interviews, Mr Darren McMaw claimed to have little or no memory of the events on the day of the murder on account of the stress he had been under since that time. He claimed not to recall travelling to the area of the murder scene in advance of the murder. He was asked why, having left off his work colleague at Darby Road, did he drive to and park his van in the Woodburn estate at The Birches shortly after 12.15pm and why did his van remain there for over an hour? He could not explain this and did not remember being there. When specifically asked why, shortly before the murder, he had driven his vehicle along the Marshallstown Road and Oakfield Drive from where he would have had a view of the Gilmore home in Sullatober Square, he initially said that he did not know who lived there and then he said he drove past that location loads of times. It was then put to him that when he drove past it on this occasion, his vehicle was travelling at 9mph and he then said that he "must have been taking a look" but claimed not to know what he would have been looking at. He accepted that he "must have been looking at something" although he did not recall being at that location.

[46] He was then asked about driving to the vicinity of his brother David's house in Cherry Walk, with the van remaining stationary there for three minutes between 1.34pm and 1.37pm but again he was unable to recall being there and did not think that he saw his brother at that time. He stated that neither his brother David nor Mr Brian McLean were in his van at any stage that day. In his final five interviews, the Defendant Mr Darren McMaw answered 'no comment' to the majority of questions

asked of him including when questions or assertions about the route taken by his van through the centre of Carrickfergus a short time before the murder were put to him.

[47] None of the defendants gave evidence during the trial and it will be necessary for the court to consider whether any consequences flow from this decision by each defendant in this case.

[48] Turning then to consider in detail the first strand of evidence relied upon by the Crown in this case, namely, the eye witness testimony of the son of the deceased, Mr George Gilmore Jnr and two friends or associates who were with the deceased, on the day he was shot.

[49] Mr George Gilmore Junior gave evidence during the trial on 3 and 4 December, 2018. He described how he knew both Mr David McMaw and Mr Brian McLean, including knowing where they lived at the relevant time and knowing their nick names, "Dee Dee" and "Scotch Brian". He described how he, his father and a number of others having returned from Laganside Courts Complex in Belfast went to Delacy's Café in Carrickfergus. He described the encounter with Mr Michael Lowry, another man known to him, and then went on to describe leaving Mr Joel Dunlop off at his father's place of business, in the vicinity of the Clipperstown garage. He described how the two vehicles with his in front cut up through the Woodburn estate in order to return to his father's house at Sullatober Square, Carrickfergus. He stated that this was a route that they frequently took.

[50] He described driving the lead BMW vehicle up Pinewood Avenue towards the junction with Cherry Walk which was on his left, when he noticed Mr Brian McLean and Mr David McMaw standing at the front fence of the second house down on the left. This, he stated, was Mr Kenneth Graffin's house. He described the attire of the two men. Mr David McMaw was wearing a grey top with blue stripes at the front. He had a black hat rolled up on his head and black gloves on. He was leaning on Kenny Graffin's fence. Brian McLean was wearing a navy tracksuit. He was in the middle of the road.

[51] He stated that the two individuals started shouting at the cars and making hand movements. "They had their hands in the air like goading us to come into the street and shouting: "Yo, come on to fuck."" When asked if there had been any issues between Mr David McMaw and the deceased or himself, Mr Gilmore Junior indicated that Mr David McMaw had attacked his father's van on numerous occasions in the past. Mr Gilmore's evidence was that the actions of the two men were meant to goad the Gilmores to come into the street to try to start a confrontation.

[52] Mr Gilmore Junior in his evidence stated that as a result of seeing Mr David McMaw and Mr Brian McLean run into an alleyway that led from Cherry Walk to Blackthorn Park, he sped up and turned left into the first entrance of

Blackthorn Park, which was the next street up on the left beyond the turn into Cherry Park. As he drove along Blackthorn Park, Mr Brian McLean ran out of the alleyway to his left, across the path of his vehicle and he had to break suddenly to avoid driving into Mr Brian McLean who stopped briefly at the front of the vehicle and then ran off into an alleyway to Mr Gilmore Junior's right.

[53] Mr Gilmore Junior stated that when he braked suddenly to avoid hitting Mr Brian McLean, he looked up the alleyway to his left (the one Brian McLean had run out of) and saw Mr David McMaw in the alleyway near a lamp post. He had a mask on his head but it was not pulled down and he appeared to be waiting there. Mr Gilmore Junior then drove off down Blackthorn Park and continued on this road as it described a "U" shaped turn to his right. Having turned right and then right again, he had almost driven the full way along the opposite section of Blackthorn Park when he heard a number of shots. When he reached the junction of Blackthorn Park with Pinewood Avenue, he stopped and he saw to his right his father's car emerge onto Pinewood Avenue, from the other Blackthorn Park exit and roll across Pinewood Avenue and crash through the garden wall of 61 Pinewood Avenue and come to rest in the front garden of that house. He turned right onto Pinewood Avenue in the direction of his father's car and stopped his vehicle on the street.

[54] Mr Gilmore Junior stated in his evidence that Mr Ostrowski got out of the vehicle first and made his way to the deceased's vehicle. Mr Gilmore Junior then got out of his vehicle and went over to his father's car where he saw that his father had been shot and he noticed blood and what he thought was a piece of his father's brain on the head rest of the driver's seat. Mr Gilmore Junior telephoned the police. He stated that he did not look up Blackthorn Park and did not see either Mr David McMaw or Mr Brian McLean again.

[55] Under cross-examination by Ms McDermott QC, Mr George Gilmore Junior denied that his father was a leading loyalist or a commander in the UDA or the leader of a faction that had split away from the South East Antrim UDA. Instead, Mr Gilmore Junior described his late father and himself as being a group of family and friends that were being intimidated by the South East Antrim UDA and that his late father had not been involved in the UDA for 10 to 15 years. He denied that there was any form of feud, stating that it was one sided, with the South East Antrim UDA targeting his family and friends.

[56] On foot of an earlier successful application to adduce bad character evidence, Mr Gilmore Junior was then shown a video which he accepted he had taken on a mobile phone and posted on social media relating to events outside his father's home on 4 July, 2016. Mr Gilmore Junior was living at that address at the relevant time. Under cross-examination, Mr Gilmore Junior accepted that the video showed a large group of men, some wearing masks in the vicinity of his house. The video also showed a large number of police vehicles and a number of police officers on foot, some in riot gear and carrying riot shields. Mr Gilmore Junior accepted that the voices heard on the video were those of his father and himself. Mr Gilmore Junior is

heard to describe the crowd as “Yellow bastards...a bunch of clowns....yellow cunts...a bunch of South East Antrim dirty rats...gutless cunts.” A voice identified as his father then says: “..they killed Judge and tried to blame it on us.” Mr Gilmore Junior accepted that this was a reference to Mr Mark Gourley and that his father had been questioned by the police about the disappearance and possible murder of this man.

[57] It was suggested to Mr Gilmore Junior that this event occurred at the start of the feud between two factions of the UDA; but Mr Gilmore Junior was adamant that there was only one faction targeting his family and friends, over two girls fighting in a bar. It was further suggested to Mr Gilmore Junior that the faction to which he belonged had been responsible for a number of serious assaults following the events of July, 2016 and that the most serious assault was committed on the night of 11/12 March, 2017 when a doorman working at the Royal Oak Bar in Carrickfergus was attacked with a gas cannister. Mr Gilmore Junior was helpfully able to correct Ms McDermott QC by informing her it was a fire extinguisher.

[58] Mr Gilmore Junior accepted that he knew the three people who were charged with attempted murder following that assault but he denied that he, his late father and their friends had gone to Laganside Court in order to show support for these individuals. “It wasn’t to support them. Ian Sinclair is my friend...if he had...been going for bail, we were bringing him home.” However, it was pointed out to Mr Gilmore Junior that he had made arrangements with a number of friends on the Sunday night to accompany him and his father to Laganside Court on the Monday morning in two cars travelling in convoy. Mr Gilmore also accepted that he met up with the late Colin Horner at the court who was also a friend of the Gilmore family and who was subsequently murdered. He repeated again that it wasn’t a feud, it was one sided.

[59] At a later stage of his cross-examination by Ms McDermott QC on 4 December, 2018, following a successful application to adduce bad character evidence, Mr Gilmore Junior was shown a further three video clips relating to two incidents which appear to have occurred on 26 September, 2016. Mr Gilmore Junior accepted that both incidents depicted in the three videos involved the deceased’s white Vauxhall Insignia car. He also accepted that the first two videos, one black and white and one colour, show the same incident from different angles. He confirmed that the deceased was the driver of the white Vauxhall during that incident and he was the front seat passenger. After some hesitation, he confirmed that Mr Mateusz Ostrowski, Mr Stephen Boyd and Mr Ian Sinclair were in the rear of the vehicle.

[60] The court has subsequently viewed these two video clips on a number of occasions. In the black and white video of first incident, with a screen date and time of 26 September, 2016 at 15.54, the deceased’s Vauxhall Insignia comes to a sudden stop, having turned right at a junction. Mr Gilmore Junior is then seen getting out of the front passenger seat and throwing something. Three males get out of the rear of the vehicle and run forward in front of the white Insignia out of camera shot to the

right of the screen. Mr Gilmore Junior goes to the rear of the car and then goes back to the front passenger door and gets back into the vehicle. The vehicle then moves forward out of the camera shot to the right of the screen. A dark vehicle then comes into camera shot from the right, moves to the junction and then turns right at the junction and stops. The driver then appears to have a verbal altercation with two of the rear seat passengers of the white Vauxhall Insignia who run back into camera shot from the right. These individuals lift items off the road and move out of camera shot to the right again.

[61] In the colour video of the same episode with a screen date and time of 26 September, 2016 at 15.54pm, the dark car is initially seen stopped in the road before it starts to reverse. The front of the white Vauxhall is also seen stopped in the road. The rear passengers from the Vauxhall are seen running up the road from left to right on the screen, appearing to run after the reversing dark car. They go out of camera shot. The white Vauxhall then moves forward and veers across the carriageway to block the road. The dark car then comes into camera shot from the right and is manoeuvred around the rear of the Vauxhall. The passengers of the Vauxhall then enter the screen from the right and one gets back into the rear passenger seat of the Vauxhall while the other two pursue the dark car to the left of the screen. Having retrieved two items off the road, these two individuals are seen engaging in some form of verbal altercation before getting back into the rear of the white Vauxhall Insignia.

[62] Mr Gilmore Junior was also shown a third video clip relating to a second incident. He confirmed that this video showed his father's white Vauxhall Insignia motor vehicle and that, on this occasion, the passengers seen emerging from it were Mr Gilmore Junior and Mateusz Ostrowski. The court has subsequently viewed this video clip on a number of occasions. It is a colour video, with a screen date and time of 26 September, 2016 at 14.57. The deceased's Vauxhall Insignia is seen driving along a street moving away from the camera and towards a sweeping right-hand bend. Just before the bend, there is a speed bump and as the white Vauxhall approaches the speed bump, two cyclists, one wearing dark clothing and one wearing light clothing, are seen coming round what is for them a left-hand bend, cycling towards the Vauxhall Insignia. The Vauxhall Insignia then traverses the speed bump and then veers to its right into the opposite lane and stops as the dark clothed cyclist is approaching. This cyclist then has to take evasive action to avoid the Vauxhall Insignia and then proceeds to cycle at speed firstly up to road towards the camera and then out of camera shot to the left.

[63] Two passengers then get out of the white Vauxhall from the front and rear passenger doors and run after the fleeing cyclist out of camera shot. The white Vauxhall then executes a three-point turn so that it faces back up the road towards the camera. The passengers then return to the vehicle and get back into it and the video ends. I will comment on the significance of these items of video evidence at a later stage in this judgment.



[64] Returning to Ms McDermott's cross-examination of Mr Gilmore Junior on 3 December, 2018, Mr Gilmore Junior was challenged about the route taken through the Woodburn estate. Rather than this route being wholly unplanned and just a matter of coincidence, it was suggested to Mr Gilmore Junior that the purpose of taking the route followed by the two vehicles on the afternoon in question was to show the residents of Woodburn estate who was in charge; to mark out Gilmore territory and to engage in a show of strength. This was vehemently denied by Mr Gilmore Junior who insisted that his family had been the subject of intimidation and he also informed the court of how Mr David McMaw had been involved in a few altercations with his father, "throwing stuff at his car and slabbering at my dad" and "mouthing and stuff and then running away". He also stated that David McMaw had thrown a brick at his father's van as it was being driven through the Castlemara estate in Carrickfergus but none of this was reported to the police and it would appear that no damage was caused to either vehicle.

[65] Mr Gilmore Junior was questioned about the statement he made to the police about seeing Mr David McMaw at the corner of Cherry Walk shortly before the shooting when he was gesturing with his hands in a "come on ahead" motion as if he was trying to lure him in to Cherry Walk to attack one of the Gilmores' vehicles. In particular, he was questioned about putting in his statement that "He has done this plenty of times before" and why he used the phrase in his statement "I always bite."

[66] Mr Gilmore Junior rejected the suggestion that this meant that he always retaliated. He rejected this saying that the phrase was taken out of context and what he meant by the phrase was that Mr McMaw made him angry by "throwing something at my dad's property." When asked how he and his father had reacted when this had happened in the past, he stated that he had done nothing and his father "would stop the car and put the window down and try and shout at him and stuff like that, but he would always run off."

[67] Mr Gilmore Junior was questioned on why the Gilmores still continued to drive through the Woodburn estate when, according to Mr Gilmore Junior, the deceased's vehicle was attacked by Mr McMaw every time he saw it. His answer was that that the attacks were not confined to Woodburn in that the vehicle had been attacked by Mr David McMaw in the Castlemara estate and it was attacked in Sunnylands Drive. In fact, attacks were taking place anywhere and "We're not going to stop driving the town we live in because our property's being attacked on every street." It must be remembered that this evidence was given before Mr Gilmore Junior was shown the video clips on 4 December, 2018.

[68] Following the viewing of the said video clips on 4 December, 2018, Mr Gilmore Junior was again cross-examined by Ms McDermott QC about his actions upon allegedly seeing Mr David McMaw and Mr Brian McLean in Cherry Walk shortly before the shooting. He informed the court that he sped up to 20 mph and turned left into Blackthorn Park. He reiterated that he had to stop suddenly to

avoid driving into Mr Brian Mclean and his vehicle came to rest in line with the alleyway. He was then asked what Mr David McMaw was doing in the alleyway at this stage and, for the first time, he stated that he was crouched near a fence, down by the lamp post at the approximate location depicted on the map Crown Exhibit 3 RMH3. "Like, down on his hunkers, kinda."

[69] Mr Gilmore Junior stated that at that time Mr David McMaw had a black hat on his head like a black balaclava which was rolled up. This was the same headwear as he had seen Mr McMaw wearing in Cherry Walk and he accepted that he had described it in his statement as a Thinsulate hat. He also accepted that he did not see his father's car again until after he heard the gunshots even though his vehicle was stationary on Blackthorn Park in line with the alleyway for 10 to 15 seconds. He was then taken to the statement he had given to the police on 14 March, 2017, and he was asked whether he had ever said before that Mr McMaw was crouched in the alleyway. Mr Gilmore Junior thought he had done so but he did not know to whom he has said this.

[70] Mr Gilmore Junior, when pressed, stated that Mr McMaw was crouched and was trying to pull his hat further down his head when he saw him in the alley. When the contents of his statement made on 14 March, 2017 and in particular "and could clearly see David McMaw standing in the alleyway...", he then said in evidence "Well that day he was ... it wasn't exactly crouched, but he was leaning over the fence where the lamp-post is." He stated that Mr McMaw was standing and trying to hide himself at the same time.

[71] It was then put to Mr Gilmore that on 14 March, 2017, when he made his statement to the police, he had told them that when he saw Mr McMaw he was standing in the alleyway: that the black Thinsulate hat was halfway down his face and he was in the process of pulling it down; and that he was not sure how far away Mr McMaw was. In his evidence, Mr Gilmore then indicated that the hat had still not been pulled completely down over his forehead. He said it wasn't past his eyes. It was on his head and he had pulled it slightly down. He stated he saw Mr McMaw engaging in a pulling movement with his hands on his head. The mental image he had of Mr McMaw was of someone trying to hide or conceal himself and of him being flustered and at the same time trying to pull a hat down on his head. When asked whether Mr McMaw was standing or crouching, Mr Gilmore said "He was in between." "He was trying to conceal himself at the same time." He again indicated that the Thinsulate hat which he alleges Mr McMaw was wearing was not half way down his face but was just below the hairline. This is just where a hat would be if was being worn in the normal way. Mr Gilmore Junior was then reminded that the account recorded in the statement was to the effect that he watched Mr McMaw for at least 5 to 10 seconds and he did not suspect anything really. "I just thought it was going to be another cat and mouse thing."

[72] Mr Gilmore Junior stated that he was angry at this stage because in Cherry Walk Mr McMaw had made a gesture as if to throw something at the car and

that both Mr McMaw and Mr McLean were shouting at them. He was reminded that he had said in his statement: "I was feeling very angry. I know where Brian lives and he was running in that direction. I drove on round Blackthorn." Mr Gilmore was then asked if he was so angry with Mr McLean and if he believed that he was the person who had run up the alleyway, and if he knew where Mr McLean lived, why did he not set off in pursuit of him right away instead of staying for 5, 10 or 15 seconds looking down an alleyway? Mr Gilmore then said "I had a gaze down the alleyway and then I put the car in gear and then followed on round. I didn't suspect anything at the time." He stated that he did not have any sort of conversation with Mr Ostrowski, his front seat passenger about this. He just drove on round Blackthorn Park. He denied that he was "flying". He did not follow Brian McLean into the alleyway because he was not going to pursue him into a back square and he then stated that if he had "bumped into him on round the bend, I would have put down the window and asked him what he was playing at." Let me state quite clearly at this stage that I do not accept that there would have been no conversation at all in the vehicle between Mr Gilmore Junior and Mr Ostrowski if events had unfolded as described by Mr Gilmore Junior. Further, his evidence that he would have wound down his window and asked Mr McLean what he was playing at is simply incredible.

[73] Mr Gilmore was then asked about the statements he had made to police who attended the scene of his father's shooting. He was asked whether he told Constable Magill that "two males had come out of an alleyway on Blackthorn Park to shoot at the vehicle". In reply, Mr Gilmore Junior stated that he was not sure. He did, however, accept and agree with the proposition that if he did give such an account to Constable Magill, then it must have been someone else who gave this account to him because he had not seen this. He was then asked whether he had told the police man that one left on foot to the alleyway to his right, the other back down the alleyway they had come from. Again, Mr Gilmore Junior was not sure whether he had said this. But he accepted that if he had said this, he had not seen these events, and so someone else must have told him about them; and he proffered the opinion that it was probably Kelvin Graham as he thought Mr Graham had been shouting it was Dee Dee who had shot out of the alleyway at that stage. Mr Gilmore also initially denied saying to a female police officer that she would find Mr McMaw hiding in 1 Cherry Walk and when pressed he said he couldn't remember saying this. He also denied leaving the scene in a vehicle with Mr Ostrowski and Mr Boyd.

[74] Mr Gilmore Junior was then cross-examined by Mr Kelly QC who appeared on behalf of Mr McLean. He was firstly shown the black and white video of the first incident referred to above and he was asked what it was that he was seen throwing. He admitted that he threw an empty milk carton in the direction of the car in front of his father's car. Mr Gilmore Junior was questioned whether the initial hesitation in identifying Mr Ostrowski and Mr Boyd as rear seat passengers of the vehicle in the first incident was an attempt to protect them. He denied this.

[75] Turning to the day of the shooting, Mr Gilmore Junior was reminded of the circumstances surrounding the encounter with Mr Lowry before the shooting. He accepted that the deceased had said words to the effect “What the fuck is he grinning at?” He was questioned on whether the encounter with Mr Lowry in his Corsa vehicle who allegedly smirked and made a hand gesture at the Gilmore group when they were on their way to the café, coupled with their disappointment that their friends had been remanded in custody and Mr Gilmore Junior’s admitted hatred for Mr McMaw, combined that day to motivate the party to go into the Woodburn estate to seek a confrontation with the opposing faction as opposed to being totally unplanned and just a coincidence. This was denied.

[76] Turning to the main incident itself, Mr Kelly QC suggested to Mr Gilmore Junior that his description of the person he alleged to be Mr McLean sprinting up the alleyway conflicted with Mr Ostrowski’s description of Mr McLean being overweight and an alcoholic. Mr Kelly QC referred to the fact that Mr Gilmore Junior had stated that the two men he identified as Mr McMaw and Mr McLean were 100 yards away from him when he saw them in Cherry Walk. Mr Kelly QC highlighted how Mr Gilmore Junior had claimed in his statement that Mr McLean had appeared to throw something at his vehicle yet when he was describing the incident in his examination in chief and cross examination by Ms McDermott QC, he had omitted this important detail. His answer was “Yeah, I must have forgot it.” The following exchange then took place:

“Mr Kelly QC: “But that was the reason why you then chased them; wasn’t it?”

Mr Gilmore Junior: “Yeah.”

Mr Kelly QC: “Therefore, that explained why, it would seem, both your car and your dad’s car chased them?”

Mr Gilmore Junior: “Yeah.”

Mr Kelly QC: “But you forgot to tell us?”

Mr Gilmore Junior, when pressed, confirmed that he had neither heard or had seen anything strike his car at that time and that his car was undamaged.

[77] Mr Kelly QC queried whether Mr Gilmore Junior actually encountered anyone as he drove at speed down Blackthorn Park, pointing out that he had given evidence in court that Mr McLean stopped briefly in front of his vehicle yet this important fact was omitted from the statement he gave the police. In this context, he also raised the matter of Mr Gilmore Junior’s statements to Constable Magill at the scene and Mr Gilmore Junior accepted that whatever he had told Constable Magill at

the scene, he had not seen two males run out of an alleyway before the shooting and had not seen anyone run down an alleyway after the shooting.

[78] Mr Duffy QC cross-examined Mr Gilmore Junior on behalf of Mr Darren McMaw. Mr Gilmore Junior accepted that if someone wanted to travel from the Castlemara estate to Lancastrian Street where Mr Lowry had allegedly seen the Gilmore party, the shortest, most convenient route would involve turning left out of the Castlemara estate and travelling along the North Road toward the town centre.

[79] In re-examination, Mr McCollum QC took Mr Gilmore Junior back to the video clips involving the altercation between the occupants of the white Vauxhall Insignia and the driver of the dark car. He was asked whether he could identify the driver of the dark car and he identified Mr Glen Burns. He was then asked whether any of the following individuals were involved in the UDA faction that Mr Gilmore Junior alleged was involved in targeting his family. He agreed that Mr Michael Lowry, Mr Jamie Adams, Mr Clifford Irons, Mr Colin Simms, Mr Kenneth Graffin and Mr Stephen Bingham were all involved.

[80] It is important to note that on 3 December, 2018, (following on from correspondence directed to the defendants' solicitors by the Public Prosecution Service dated 21 August, 2017, which had informed the defendants' solicitors that the police were in receipt of information that during the summer of 2017, Mr George Gilmore Junior had purposefully circulated misleading information about the criminal activities of the South East Antrim UDA), a PII hearing took place. The claim for PII was upheld and following this hearing, the following additional disclosure was made by the Crown to the defence in this trial;

"The following information falls to be disclosed in line with the prosecution's continuing duty of disclosure. Police are in receipt of information which indicates that during the summer of 2017 George Gilmore Junior purposefully circulated misleading information about the criminal activities of the South East Antrim UDA. George Gilmore Junior claimed he had first-hand information about the unlawful activities of persons connected to the SEA UDA including firearms. It is not believed that in fact he did have any first-hand information about those matters. The information did not refer to any of the current defendants."

[81] Mr Mateusz Ostrowski gave evidence on 4 and 5 December, 2018. He confirmed that the Gilmore party that went to Laganside Courts Complex on the morning of the shooting consisted of George Gilmore Junior, himself, Kelvin Graham and Joel Dunlop in one car, the BMW, and the deceased and Stephen Boyd in the white Vauxhall Insignia. The same arrangements pertained on the way back to Carrickfergus. When they returned to the two cars after the visit to the bakery, he and Joel Dunlop got into Mr Gilmore Junior's vehicle and he was the front seat passenger in the BMW, and Kelvin Graham and Stephen Boyd were in the white Vauxhall Insignia driven by the deceased.

[82] Mr Ostrowski described how they had stopped to let Mr Joel Dunlop off at his father's garage and then proceeded through the Woodburn estate. He then stated he observed both Mr David McMaw and Mr Brian McLean in Cherry Walk as the car he was in progressed up Pinewood Avenue. He described Mr Brian McLean as wearing a grey tracksuit, dark possibly. He thought Mr David McMaw was wearing a tracksuit as well but he was not sure whether it was dark or light in colour. He described Mr David McMaw as having no teeth and "waving us in, trying to wind us up." He stated that the men were the width of the courtroom away from him. The two men were leaning on a fence about three or four houses up from the entrance of Cherry Walk. The two men then ran towards an alleyway between number 20 and 22 Cherry Walk. The alleyway leads onto Blackthorn Park.

[83] Mr Ostrowski stated that when this happened, the vehicle he was in went on up Pinewood Avenue and turned left into Blackthorn Park where they "bumped into Scotch Brian." He was "running out of a different alleyway..." and "we actually almost crashed...hit Brian with the car." "I believe he run into the alleyway where Dee Dee was waiting." Mr Ostrowski was asked to clarify where precisely he alleged Mr McLean came from and where he went to and having had time to consider the relevant map Crown Exhibit 3 RMH/3 he confirmed that he was in the front passenger seat of the BMW and Mr McLean came running out of an alley to his right and ran across in front of the car to his left and ran into an alley to his left. This is in the opposite direction to that alleged by the driver of the vehicle Mr Gilmore Junior. Mr Ostrowski also stated: "we already knew there was something wrong was going on...so we took off and took our next right onto Blackthorn Park..." It should be remembered that Mr Gilmore Junior stated in his evidence that he did not suspect anything at this stage.

[84] Under cross-examination by Ms McDermott QC, Mr Ostrowski was asked why he might have been driving around in cars with the deceased or George Gilmore Junior and he stated that: "We would go shopping, and stuff like that." He denied that he would have been in a vehicle with either individual for any other purpose. He was then asked about the journey to Laganside Courts Complex on the day of the murder, and he admitted being a friend of Ian Sinclair, one of those appearing in court that day, charged with the attempted murder of a doorman of the Royal Oak Bar on the weekend before the shooting of the deceased. Mr Ostrowski was shown a copy of his statement dated 14<sup>th</sup> March, 2017 and he confirmed that he had told police at that time that he had planned to go to court with a number of other people to support friends who were going to be there and to give them a lift home, if they were granted bail.

[85] Mr Ostrowski was later asked "Have you ever travelled round with them, in one of their cars, and been aggressive to passers-by?" This question was met with a denial which was repeated when the questions was posed to him again. Mr Ostrowski was then shown the video clips of the two incidents involving the deceased's white Vauxhall Insignia and he accepted that he was seen in the video footage of both incidents but stated that he was protecting himself.

[86] Mr Ostrowski was asked about the incident outside the Gilmore house on 4 July, 2016 and whether this was in any way linked to the complaint of false imprisonment and assault he made to the police on 5 July, 2016. He accepted that in July, 2016 he made a complaint about being held against his will and assaulted in a community centre earlier in 2016, a few days after the deceased and his brother had been arrested and questioned about the disappearance and murder of Mark Gourley. He was then asked why he had chosen to report the false imprisonment and assault on 5 July, 2016, given that the alleged incident had happened earlier in the year, and his answer was to the effect that he had “finally had enough of them, these people picking on me.” It was put to Mr Ostrowski that the Gilmores had told him to make such a complaint to the police. He denied this. He was then asked about the circumstances of the withdrawal of the complaint in August, 2016 and whether the Gilmores had told him to withdraw the complaint. He denied that the Gilmores had told him to withdraw the complaint and stated that a police officer had advised him to withdraw it on that basis that his life was in danger and his best option was to withdraw the complaint. Mr Ostrowski graphically described how the police officer informed him that he (the police officer) did not want to get a phone call some day and have to come and recover Mr Ostrowski’s dead body.

[87] Mr Ostrowski was then shown (on foot of a successful bad character application) the documentation disclosed by the Crown in respect of this incident containing a withdrawal of complaint statement dated 26 August, 2016 in which it is recorded: “After talking it over with my friend, Stephen Boyd, I have decided that I want to withdraw the complaint. I have lost faith in the police and I don’t want any more hassle.” When his statement was read out to him, he stated: “No, that’s not what happened.”

[88] Mr Ostrowski accepted that Mr Stephen Boyd had made a similar complaint in early August, 2016 alleging that he was falsely imprisoned and assaulted at the same time and at the same place as Mr Ostrowski and that Mr Boyd also made a withdrawal statement on 26 August, 2016 although he stated that they did not discuss this in advance. The following portion of Mr Boyd’s withdrawal statement was read out to Mr Ostrowski “My friend Matty Ostrowski and I have both decided to withdraw our complaints.” And in response Mr Ostrowski couldn’t remember if this was the case. It was then suggested to Mr Ostrowski that he would say anything to help the Gilmores.

[89] Mr Ostrowski was then reminded that he had told the court that he was 100% certain that the two men he saw on the day of the murder were Mr David McMaw and Mr Brian McLean. To this he answered “I am a million percent positive.” He was then asked why he put the following in his statement to the police on 14 March, 2017: “The second man I think was Dee Dee McMaw.” Mr Ostrowski stated that he could not remember saying “I think”. He was convinced that the man was Mr David McMaw. It was suggested to him that the use of the phrase “I think” doesn’t give the impression that he was convinced at the time.

[90] Mr Ostrowski was then taken again to his statement and the following passages in particular: "As we drove up Blackthorn Park I saw Scotch Brian running in the road, towards our car....As our car went forward and past him I didn't see where Scotch Brian went to and he was on his own....I didn't see him carrying anything....We were going fast. We were flying."

[91] When asked why the car was accelerating, Mr Ostrowski stated that it was because "at that point we knew there was something wrong." When asked why he thought there was something wrong he said it was because of the way Mr David McMaw and Mr Brian McLean were getting on. When asked to explain he stated: "Well Dee Dee run into the alleyway waving us in. And then Brian, fuck, appears out of nowhere, in front of the car." Mr Ostrowski then accepted that he did not see Mr David McMaw again after he ran into the alleyway in Cherry Walk and the BMW vehicle did not stop in Blackthorn Park. It slowed down when Brian McLean ran out in front of it. He also eventually accepted that he was not too sure what Mr David McMaw was wearing when he saw him; whether it was a light or dark tracksuit or whether it was a tracksuit. He saw the men for about five seconds. He recognised Mr David McMaw by his face. He also accepted that he, Mr George Gilmore Junior and Mr Stephen Boyd were taken away from the scene in the one vehicle.

[92] Mr Ostrowski was then cross-examined by Mr Kelly in relation to his identification of Mr Brian McLean. He was reminded of what he had put in his statement to the police made on 14 March, 2017. "I think one of the men was a man I know as Scotch Brian." He was quizzed on why he used the phrase "I think" on the day following the shooting. When pressed, he stated he had no memory of the man he identified as Scotch Brian shouting anything before running up the alleyway. The picture he had in his head in the witness box was of Mr David McMaw gesturing with his arms: "...Come on. They wanted us to follow them. It was a trap." Mr Kelly QC then asked him:

"Why did you follow them if it was a trap?"

Mr Ostrowski gave the following answer:

"Well, I don't know why George Senior drove that way, you'd have to ask him. Me and George Junior took the normal route through Pinewood and up Pinewood and Blackthorn, you know what I mean."

He was challenged by Mr Kelly QC: "Blackthorn is not the normal route, is it?"

Eventually, he stated that the BMW had turned into Blackthorn Park because "we knew Brian would run out



of there...I seen big Geordie driving up Cherry Walk. We went through Blackthorn and then, you know the rest. It's all in my statement. If you want to know more about why he went that way ask the driver."

[93] Mr Ostrowski could not remember whether the man he identified as Mr Brian McLean threw anything. He was reminded that he said in his statement that he had nothing in his hands to which he replied: "Well then, obviously he couldn't have threw anything." He also accepted that his police statement recorded that Scotch Brian was wearing a light greyish tracksuit at the time yet when giving his evidence he could not remember what colour it was. Finally, when questioned by the court, Mr Ostrowski confirmed that turning into Blackthorn Park "wouldn't be usually our normal way home."

[94] The statement of Mr Joel Dunlop dated 15 March, 2017 was adduced in evidence by agreement on 5 December, 2018. This statement confirms that Mr Dunlop was a member of the Gilmore party during the earlier part of the day of the shooting. It confirms the encounter with Mr Lowry in Carrickfergus town centre and it confirms that he was left off in the vicinity of his father's business on the Woodburn Road.

[95] Mr Stephen Boyd gave evidence on 5 and 6 December, 2018. He confirmed that he was a friend of the Gilmore family and knew both Mr David McMaw (Dee Dee) and Mr Brian McLean (Scotch Brian). He confirmed that after Mr Joel Dunlop had been left off at Clipperstown, the two vehicles, previously described, proceeded through the Woodburn estate. He was the front seat passenger in the second vehicle, the white Vauxhall Insignia, driven by the deceased. The BMW was in front. Mr Boyd stated that there had been no discussion about the route to take after Mr Dunlop was dropped off. In his evidence, he described the route taken by the vehicles into Pinewood Avenue and how he noticed two people, Mr David McMaw and Mr Brian McLean at the entrance to Cherry Walk. He thought nothing of seeing them and returned to using his mobile phone to send a text. As far as Mr Boyd was concerned both men were just standing there and there was no discussion in the car about them or what they were doing.

[96] Mr Boyd's evidence was that the car he was travelling in then suddenly turned left into Cherry Walk while the BMW went straight ahead. It was a swift turn and he thought that this was strange and that is why he believed that something was thrown at the car. He confirmed that he did not see anything being thrown at the car. He then described seeing Mr David McMaw and Mr Brian McLean running along Cherry Walk. He stated that Mr Brian McLean was running towards Mr David McMaw's house (he had actually run past the entrance to the alleyway) when Mr David McMaw waved him back. Mr David McMaw then smirked at the car and then both he and Mr Brian McLean went up the alleyway. The car then drove past the alley way and at the end of the road, the deceased drove onto a

grassed area and drove over this grassed area which included a footpath and entered the roadway again at the top of Blackthorn Park.

[97] As the vehicle was progressing down Blackthorn Park, Mr Boyd saw Mr Brian McLean step out of the alleyway which was on Mr Boyd's right. He then stood at the edge of the footpath close to the road, looking at the vehicle as it approached him. As the vehicle drew closer to the entrance to the alleyway, Mr Boyd stated that he observed Mr David McMaw further back in the alleyway, slightly crouched down pulling a balaclava down over his face. He appeared quite flustered. He demonstrated where the balaclava was and it was just above Mr McMaw's eyebrows. According to Mr Boyd, Mr McMaw had a gun in his right hand at this stage and he shouted: "Gun, gun,. gun." The vehicle still wasn't level with the entrance to the alleyway at this stage. It was still travelling towards it. Mr Boyd stated that the vehicle then started to accelerate.

[98] As the vehicle passed the alleyway, Mr Boyd started hearing shots. Mr Boyd, froze and panicked and tried to hide using the car seat for protection. The car proceeded on along Blackthorn Park, crashed through the front wall of a house on Pinewood Avenue and came to rest in the front garden. The deceased's foot was still on the accelerator.

[99] Mr Boyd described a chaotic scene and stated that he kept kicking at the front passenger door until it opened. He then got out of the vehicle and ran around in front of the car and ducked down in case further shots were fired. Mr Boyd gave evidence about the immediate aftermath of the shooting, the efforts made to tend to the deceased and how he phoned the emergency services. He stated that he could not recall if he spoke to the police. He described how he, Mr Gilmore Junior, Mr Ostrowski and Mr Kelvin Graham were all in a state of shock and disbelief. He accepted that he, Mr Gilmore Junior and Mr Ostrowski left the scene together.

[100] Under cross-examination by Ms McDermott QC, Mr Boyd was asked whether there was a feud going on in Carrickfergus at the time and he stated that it was branded as a feud but he would not call it a feud. He was then taken to a passage in his statement dated 14 March, 2017 where he told the police: "I don't think this was a planned attack because of the feud." He explained this by saying that what he meant by this was that he did not think there was a feud. Ms McDermott QC then suggested that this "disagreement" had been going on for a number of months. Mr Boyd agreed. It was suggested to Mr Boyd that it started with the incident on 4 July, 2016 and his response was that it started before that time over a group of girls fighting and escalated thereafter. Ms McDermott QC referred to the attack on the doorman of the Royal Oak Bar and Mr Boyd accepted that one of those charged with this attack was his friend and he had gone to the Laganside Court on the morning of the shooting to support Mr Sinclair.

[101] Mr Boyd was asked whether he had gone to the police in August, 2016 to make a complaint about an incident which had occurred in the spring of 2016. He

confirmed that this was the case. He confirmed this incident had occurred a few days after the deceased and his brother had been questioned by police about the disappearance and murder of Mr Mark Gourley. He confirmed that his complaint to the police was that he had been taken against his will, falsely imprisoned and assaulted and threatened with a Stanley knife. He agreed that he had told police that he had been tied to a chair with cable ties and his jeans had been cut in the groin area with a Stanley knife. He also accepted that Mr Ostrowski had also been abducted. He accepted that he was eventually released and following this incident he had not sought medical treatment and had not reported it to the police until August, 2016. When he eventually reported the incident, he was aware that Mr Ostrowski had also reported it.

[102] Mr Boyd accepted that he had withdrawn his complaint on 26 August, 2016, having made it on 9 August, 2016. He was then shown the withdrawal statement and although the statement clearly indicated that there had been discussions between him and Mr Ostrowski about withdrawing their complaints, he stated couldn't recall discussing the withdrawal of the complaint with Mr Ostrowski.

[103] Mr Boyd was asked about his friendship with the deceased. He was asked about being in the deceased's car and he indicated that the deceased would pick him up to take him to the shops for groceries or to get a sandwich or simply to keep him company in the car. He was then questioned about and accepted that there had been heated confrontations when he had been with the Gilmores driving around during the "disagreement". However, he denied that the Gilmore party were driving through the Woodburn estate on the day of the shooting with aggressive intent.

[104] Mr Boyd was then shown the three video clips described above and he identified himself in the two videos involving the dark car. In relation to the item that he is seen lifting up off the road he stated that although he couldn't say what it was, he was sure it wasn't a sword and that it was "nothing offensive." He went on to explain this in the following manner:

"...this is around a time where there was heavy police presence in Carrickfergus. Now, there was rigorous stop and searches in the town; rigorous checks in the town. Now who's going to be driving about with an offensive weapon...in a car that clearly gets stopped by police?"

[105] Having agreed that the deceased was the driver of the white Vauxhall Insignia shown in the video clip and that George Gilmore Junior was the front seat passenger and that Mr Ostrowski and Mr Sinclair were also in the vehicle, he was asked to confirm that the video shows him acting aggressively to people outside the car. He agreed that he is shown "behaving in an erratic manner."

[106] Turning then to the incident itself, Mr Boyd confirmed that he believed that the deceased turned into Cherry Walk to give chase because he thought that

something was thrown at the car. He confirmed that when the white Insignia turned into Cherry Park, he did not see the BMW again until after the shooting.

[107] Mr Boyd was shown photograph 3 in Exhibit 4 and he was asked to mark with the letter "X" where Mr McMaw was when he saw him in the alleyway in Blackthorn Park. He marked a point on the end of the middle coping stone which forms the top of a wall to the side of the alleyway which was nearest the approaching white Insignia vehicle. Mr McLean's position was marked with the letter "y" and this was located on the footpath at the edge of the road in front of the mouth of the alleyway. Mr Boyd was then referred to Exhibit 3 RHM/3 and he indicated in answer to a question that the vehicle was level with number 16 Blackthorn Park or between 14 and 16 Blackthorn Park when he first saw Mr Brian McLean. The map depicts the alleyway as being located between 12 and 14 Blackthorn Park. Mr Boyd stated that he first noticed Mr David McMaw before the vehicle he was in was level with the alleyway (just after 16).

[108] Mr Boyd was referred to his statement made on 14 March, 2017 in which he described Mr McMaw crouching in the alleyway. He stated that he could see Mr McMaw because he wasn't completely crouched down. He described him as: "Legs briefly bent, almost hunched, it would probably be a better word to use." "Hunched means legs slightly bent."

[109] Mr Boyd stated in evidence that when he saw Mr McMaw he was trying to pull a balaclava down over his face but his head was up at the time and he could see his face perfectly. He then stated that he could see Mr McMaw holding a gun in his right hand which was being held up beside his head as he tried to pull the balaclava down with his left hand. He was asked whether he noticed the gun after he noticed the balaclava and he answered: "...it was all at the same time obviously." He was then asked: "Was it all in a flash?" His answer was: "Yes, well you could say so, yes."

[110] Pausing there; having studied the photographs which comprise Exhibit 4 and in particular photograph 3, it is immediately obvious that no one present in a vehicle travelling along Blackthorn Park in the direction in which the deceased's vehicle was travelling towards the alleyway would have had any view of the lower body or legs of an individual positioned in the alleyway where Mr Boyd placed Mr McMaw until the vehicle was level with the entrance to the alleyway. Further, Mr McMaw seems to have had great difficulty pulling this balaclava he was supposedly wearing down over his face that day. He doesn't seem to have made any progress from the time that Mr George Gilmore Junior stopped his vehicle and observed him for a number of seconds and then drove on and Mr Boyd in the deceased's vehicle came in the opposite direction down Blackthorn Park and observed Mr McMaw. This then brings me to the issue of the routes of the two vehicles in which the Gilmore party members were present at that time. Having regard to the topography and the description of the movements of the two vehicles, I am convinced that the two vehicles would have encountered each other or at least would have had sight of each

other on Blackthorn Park if they had been driven on the routes, in the manner and at the speeds described, particularly if the BMW stopped for a number of seconds on Blackthorn Park opposite the entrance to the alleyway. The witnesses all claim that such an encounter or sighting did not take place. Either this is false or the evidence concerning route, manner of driving and/or speed is false. I do not have to decide this particular issue. I must, however, carefully take account of a material falsehood when considering the evidence of these three witnesses in its entirety.

[111] Mr Boyd was then asked about the 999 call he made to the emergency operator which lasted for over 13 minutes and he confirmed that during this call other people were talking to him and he was talking to other people. It was suggested to him that it was clear from the recording of the call that at that time he did not know or have any opinion as to who had been responsible for the shooting of the deceased. Mr Boyd responded to this by stating that he clearly saw who was responsible for the shooting. His priority at that time was relaying information back from the call operator to try to save a man's life and, in any event, he was in shock at that time, as someone had tried to shoot and kill him and had shot someone beside him.

[112] Mr Boyd was then questioned on the information allegedly provided by him to a Constable McMahon, a police officer who has spoken to him at the scene. Ms McDermott QC asked Mr Boyd to accept that he had provided the following information to the police officer at the scene.

"They...(I take it that's you and Mr Gilmore Senior and Mr Graham)...drove in from the Woodburn side and up Pinewood Avenue?"

Mr Boyd replied: "Yes that's correct."

Ms McDermott QC continued: "When he seen Dee Dee McMaw, he described Dee Dee as skinny with no teeth, and another person he knows as Scotch Brian. He stated they followed them into Blackthorn."

Mr Boyd replied: "Ok."

Ms McDermott QC continued: "And then, when driving back out he seen them standing at the alleyway which leads to Cherry Walk. He stated that the shorter of the two then put on a balaclava and fired six shots using a handgun, possibly a 9 millimetre. He stated it was like a gun you would see on TV."

[113] Having pointed out the stark differences between the account given to the police officer at the scene and the evidence given by Mr Boyd at the trial,

Ms McDermot QC then asked Mr Boyd whether he knew what the height difference was between Mr McMaw and Mr McLean. Mr Boyd was initially unable to answer this but then suggested that that they were of similar height.

[114] It was then suggested to Mr Boyd that he had heard Mr McMaw's name being shouted or mentioned by some of the people gathered around 61 Pinewood Avenue after the shooting. Mr Boyd's answer was: "No, I ...a million percent I seen him. Listen the events of that day'll live with me for the rest of my life. It's not something I'm going to forget. It's not something I'm going to fabricate or make up either."

[115] Mr Kelly QC then cross-examined Mr Boyd and picked up on the issue of the relative heights of Mr McMaw and Mr McLean. He reminded him of Constable McMahan's note (the shorter of the two then put on a balaclava and fired six shots using a handgun) and then he reminded him of what appeared in his police statement made on the day following the shooting that Mr Brian McLean was the smaller of the two. He then stated: "I said that because that's what I believed." He was then asked the following question: "So, if you had said to the police officer that it was the smaller of the two men who put on the balaclava and fired the gun, that was wrong?" Mr Boyd answered in the following manner: "Yes, as I say, I give that -- I can't even recall giving that. But I was under a lot of duress, as you can imagine. Somebody's just tried to...to murder me, and I've just witnessed a man being shot beside me. I think that's a very, very minor detail."

[116] Mr Boyd was then questioned about and confirmed that his police statement did not refer at all to him texting at the time when he stated he saw Mr McMaw and Mr McLean in Cherry Walk. He confirmed that when he did see them in Cherry Walk, neither man was doing anything other than just standing. Mr Boyd was then asked by Mr Kelly QC about the route taken by the two vehicles when the two men alleged to be Mr McMaw and Mr McLean ran into the alleyway leading from Cherry Walk to Blackthorn Park and he stated that no one had ever spoken to him or told him about the route of the BMW prior to Mr Kelly QC bringing this to his attention. He also confirmed that none of his friends had ever discussed this with him or had ever informed him that one of the reasons that red BMW had gone that way was to chase the person that they thought was Scotch Brian. It was also put to Mr Boyd that at no time during the 999 call did he mention that Scotch Brian was to blame, or part to blame, or involved in the shooting of the deceased.

[117] Mr Duffy QC then cross-examined Mr Boyd on whether, when he was making his statement to the police on the following day, he considered that the attack was a planned attack. He was referred to a passage of this statement: "I don't think anyone in their right mind would plan to do it in broad daylight, without gloves, and then try to pull on the balaclava." Irrespective of whether the attack was planned or opportunistic, it is clear that the use of the phrase "without gloves" by Mr Boyd contrasts starkly with Mr Gilmore Junior's account of the gunman wearing "black woolly gloves".

[118] Both George Gilmore Jnr and Stephen Boyd made calls to the emergency services immediately after the shooting. Both calls were recorded and the digital recording of the two calls was by agreement adduced in evidence as Crown Exhibits 56 and 57. By agreement of the defendants in this case, the Crown also adduced in evidence transcripts of the two calls. Crown Exhibit 56 D574 and Crown Exhibit 57 D859 These are incomplete transcripts in that there are sections in which the word “(inaudible)” appears. This term appears to have been generically used for portions of the digital recording when the caller’s voice is inaudible but it also appears to have been used when it has been impossible for the person reviewing the recording to accurately make out what the caller is saying. The transcripts must be treated with some caution and I judged it essential that I review and listen to the digital recordings on a large number of occasions to ensure that the transcript was accurate and in order to ensure that no relevant evidence was overlooked.

[119] The call made by George Gilmore Junior, commenced at just after 2.15pm and lasted 1 minute 57 seconds. The caller was naturally very distressed. This call does not contain anything of central forensic interest in terms of the outcome of this trial. The call made by Mr Stephen Boyd commenced at 2.12pm and it lasted just over 13 minutes and 50 seconds. It is obvious that Mr Boyd was shocked and very upset during the call. He constantly queries why the ambulance is taking so long to arrive. Having obtained information concerning the location of the shooting, the nature and site of the gunshot wound and the condition of the victim, the ambulance service controller’s main concern was to give advice on how to stem the bleeding from the deceased’s wound. However, so far as the present criminal trial is concerned, there are some important matters arising from the content of this call.

[120] At 1 minute 25 seconds into the call, the caller Mr Boyd states:

“I know but you need to get the ambulance quickly. He’s bleeding out here.

NIAS control asks: “Right ok, tell me exactly what happened.”

Having listened to the digital recording, I am satisfied that Mr Boyd then said:

“He’s been shot. A masked gunman just jumped out and fired shots at us.”

[121] At 2 minutes 28 seconds into the call the NIAS controller asks several times:

“Is the attacker still nearby?”

Mr Boyd responds:

"You need to send the cops. There's a gunman running about this street."

The NIAS controller then states:

"Right he is running about the street.

After a short delay Mr Boyd stated:

"Yes."

[122] At approximately 3 minutes and 28 seconds into the call Mr Boyd is heard talking to someone at the scene and he makes a comment about a shot at a house. After the call has been in progress for almost 4 minutes, it is quite clear that Mr Boyd is also talking to others at the scene and continues to do so thereafter. For instance, at 4 minutes and 57 seconds, Mr Boyd is heard saying to another: "You were in the car."

[123] At an earlier stage of the recording at approximately 4 minutes 15 seconds into the call, Mr Boyd is heard talking to someone else. Although the transcript records the words "Stevie, Stevie" being spoken by the caller, having listened to the recording on a number of occasions, I am satisfied that that Mr Boyd says the following:

"Ok, the ambulance is coming mate."

NIAS controller: "Ok."

Mr Boyd: "Dee Dee. Dee Dee."

NIAS controller: "Hello."

Mr Boyd: "He shot....."

NIAS controller: "Hello."

Mr Boyd: "Hello."

NIAS controller: "Right. Are you still doing it?"

Pausing there, I have listened to this section of the recording on numerous occasions and I am satisfied that it is more likely than not that when Mr Boyd said: "Dee Dee. Dee Dee" he did so with an expression of surprise and it is likely that he was repeating what he had just overheard someone (unidentified and unheard on the recording) who was at the scene say.



[124] At 5 minutes 25 seconds, Mr Boyd states:

“Here! It hit, it near hit that woman. It went through her door.”

Having listened to the digital recording, I am satisfied that Mr Boyd then said at 6 minutes 38 seconds:

“...that thing flew past me, too! Fuckin’ whizzed right past me! Near, near shot your woman. It went through her front door, the stupid cunt.”

He goes on to say at 6 minutes 46 seconds:

“Here, near shot you too, Kel. Near shot you too, Kel.”

[125] At just before 7 minutes into the call, Mr Boyd states:

“The cops are here. I’m hanging up.”

He is persuaded not to do so by the NIAS controller. He then is heard talking to someone else at the scene and he says the following:

“It was Dee Dee McMaw.”

The NIAS controller requests Mr Boyd to put the police on the phone and Mr Boyd is heard saying:

“Not sure. He near shot that woman in the house too.”

[126] At approximately 8 minutes into the call, Mr Boyd is heard saying in response to the NIAS controller:

“I am listening to you. I understand what you’re saying, you know what, somebody just shot into a car and” he is interrupted by NIAS controller and then he says “the driver.”

[127] At approximately 9 minutes and 12 seconds into the call, Mr Boyd is heard saying to another:

“He shot at your woman in that house as well. And me and Kelvin.”

Then at 9 minutes and 54 seconds into the call, Mr Boyd is heard saying:

"I know we are going round in circles. You understand, somebody just shot into a car. I am in it here."

I have listened carefully to the recording and I believe that Mr Boyd then responds to the NIAS controller by saying at 10 minutes and 6 seconds into the call:

"I was in the passenger seat, mate and it whizzed past. They near shot that woman in that house too..."

At 10 minutes and 18 seconds into the call, Mr Boyd states:

"I am talking to the police now. The bullet whizzed straight past me."

Then at 10 minutes and 38 seconds into the call, Mr Boyd is heard to say:

"The bullet whizzed straight past me and hit him in the neck."

[128] At 11 minutes and 10 seconds into the call, Mr Boyd informs the NIAS controller that he is talking to the police. At 12 minutes and 2 seconds into the call, Mr Boyd is heard saying the following:

"I seen a bullet whiz past me. Just whizzed past. I was in the passenger seat of the car, mate."

At 12 minutes and 9 seconds into the call, Mr Boyd is heard saying:

"He fired...Here... he fired 6 shots. He fired 6 shots. There's one in the house. He fired 6 shots. Dee Dee McMaw run out of the alleyway and fired 6 shots."

Mr Boyd then states at 12 minutes and 20 seconds into the call:

"Me and Kelvin were in the car when they fired them shots, Linda."

At 12 minutes and 50 seconds into the call, Mr Boyd states:

"Here. I heard the bullet whiz past my head there. I heard one of the bullets just whiz past me."

At 13 minutes into the call Mr Boyd states:

“They fired 6 shots. Six. Look. One of them through the door of the house. They fired into your woman’s house and near hit your woman as well.”

[129] At 13 minutes and 18 seconds into the call, Mr Boyd asks someone:

“Who else was in the car with you?”

He then says:

“...I was in the passenger seat, mate. He wasn’t in the car. Only us two in the car, mate.”

[130] Then at 13 minutes and 34 seconds into the call, Mr Boyd states:

“It’s Dee Dee McMaw fired the shots. I watched him pull the trigger above me.”

At 13 minutes and 36 seconds into the call, Mr Boyd is heard giving his name to someone and then he states:

“Hello mate, talking to the police I have to let you go here.”

The ambulance then arrives at 13 minutes and 50 seconds into the call and the call is terminated. Having listened to the recording of this telephone call, I am convinced that during this call, Mr Boyd was being given or was overhearing information provided by others at the scene and even at this very early stage after the shooting, Mr Boyd was giving a grossly inaccurate account to others of what he had actually seen that afternoon. “It’s Dee Dee McMaw fired the shots. I watched him pull the trigger above me.” This simply is not true. “The bullet whizzed straight past me and hit him in the neck.” This simply cannot have happened. The bullet that struck the deceased struck him on the right side of the back of the head as he was seated in the driver’s seat of the vehicle. Whatever the prior trajectory of this bullet, it did not whizz straight past Mr Boyd who was seated in the front passenger seat of the vehicle.

[131] As has been set out above, Mr Gilmore Junior was spoken to by a number of police officers at the scene. Constable John Magill and Constable Cathy Darragh were both called to give evidence in this case. Constable Magill gave evidence on 10 December, 2018. He adopted his statement dated 13 March, 2017. He spoke to Mr Gilmore Junior at the scene. He stated that it was not a calm scene and a number of people were hysterical. He stated that Mr Gilmore Junior confirmed that he had been driving his own car at the time. Constable Magill confirmed that Mr Gilmore Junior had informed him that he had seen a male come out of the lower entry on Blackthorn Park and Mr Gilmore Junior thought he was going to throw something at

his vehicle. Another male had then fired shots at his father's car and both males ran off. Mr Gilmore Junior stated that one male ran back down the entry both males had come from towards Cherry Walk and the other took the entry opposite towards the upper end of Blackthorn Park. Constable Magill helped set up a crime scene and observed a number of spent cases lying on the ground close to a purple coloured Nissan Qashqai beside the entry where George Gilmore Junior alleged that the shots had been fired from.

[132] Constable Magill was cross-examined by Mr Kelly QC on behalf of Mr McLean and he confirmed that his notebook contained a less detailed account of his conversation with Mr Gilmore Junior due to pressures of time when making his notebook entry but that he remembered the conversation fully when he made his statement. The note made at the time was that "Two males came out of alleyway on Blackthorn Park to shoot at vehicle. One left on foot to alleyway to right and the other back down the alleyway they came from." Constable Magill did specifically confirm to the court that the impression he obtained from Mr Gilmore Junior was that Mr Gilmore Junior had witnessed the shooting.

[133] Constable Cathy Darragh gave evidence on 11 December, 2018. She adopted her statements dated 14 March, 2017 and 29<sup>th</sup> November, 2018. When she arrived at the scene at approximately 2.30pm, other police officers were already present. She confirmed that she had spoken to Mr Gilmore Junior who was very irate at that time pacing up and down the street. He informed her that Mr David McMaw had carried out the shooting and that he had run off in the direction of Cherry Walk and he was sitting in Cherry Walk in the end house. He also described Mr David McMaw's clothing as a grey tracksuit, black balaclava, black woolly gloves. He stated that he saw a gun in Mr McMaw's hand but could not describe it to the Police Officer. Constable Darragh also spoke to Mr Mateusz Ostrowski at the scene who also stated that Mr David McMaw had carried out the shooting. In her second statement, Constable Darragh noted that when she arrived at the scene, Mr George Gilmore Junior informed her that Mr David McMaw and an individual known as Scotch Brian had been involved in the shooting and that they had both run off down an alleyway. They possibly got into a Ford Focus. Mr David McMaw was believed to have gone into a house at the end of Cherry Walk (1 Cherry Walk) which he shared with his girlfriend Ms Zoe McKenzie.

[134] It is clear that the evidence of Mr George Gilmore Junior, Mr Mateusz Ostrowski and Mr Stephen Boyd forms a central pillar of the Crown case against the three accused. In assessing the foundations, soundness, integrity, strength and build quality of this particular pillar, I have been urged by counsel for the Defendants to utilise all the safeguards, warnings, checks and measures set out in the cases of *R v Turnbull* [1977] QB 224 and *R v Makanjola* [1995] 3 All ER 730. Having given the matter careful consideration, I do not consider that it is necessary for me to embark on such an exercise. Before doing so, I would have to be satisfied that the evidence is capable of belief. My detailed and pains-taking examination of the evidence of these three witnesses and the various accounts given by them which I have set out above

leads me to the inescapable conclusion that their evidence, riven as it is with utterly implausible, internally conflicting and mutually contradictory accounts is incapable of belief and that no conviction in this case could be safely founded on this evidence. I simply do not believe that any of these three witnesses saw what they say they saw on the day in question. If the defendants or any of them are to be convicted of any of the offences with which they are charged or, indeed, other alternative charges, then any such conviction can only be based on the other strands of evidence adduced by the Crown in this case and not upon the discredited testimony of these three witnesses and it is to the other strands of evidence that I now turn my attention. I conclude this section of the judgment by stating that other strands of circumstantial evidence may well be sufficiently strong to establish facts which would ground convictions in this case. However, the establishment of those facts or the existence of circumstantial evidence tending to establish those facts would not establish that Mr George Gilmore Junior, Mr Mateusz Ostrowski and Mr Stephen Boyd were witnesses to those facts, having regard to the utterly implausible, internally conflicting and mutually contradictory accounts given by them.

[135] On 10 December, 2018, without objection being taken by any of the defendants, three statements were adduced in evidence. The statement of Ann Thompson, the proprietor of Delacey's Café, 3 North Street, Carrickfergus confirmed that she served the Gilmore party at about 1.30pm on 13 March, 2017 at the bakery counter. The group of 5 or 6 men were noted to be in jovial form at that time. The statement of Lorraine Sloan dated 16<sup>th</sup> March, 2017 was also adduced in evidence. In it she stated that on the afternoon of 13 March, 2017 at about 2.10pm she was walking down Blackthorn Park which is a street off Pinewood Avenue when she noticed a white car being driven over an area of grass. The sound of the car drew her attention to it before she turned her head to observe it. It was not being driven fast at that time. She subsequently heard bangs which would have been the shots being fired. As she walked from Pinewood Avenue along Blackthorn Park, she did not notice anyone else at all in the area. Finally, the statement of Annette Gibney dated 15 March, 2017 was adduced in evidence. She was lying in her bed in her upstairs bedroom in Blackthorn Park at about 2.15pm when she heard 4 or 5 loud bangs. She then heard a car speeding and this was followed by what sounded like a crash. She then looked out her bedroom window and saw Mr Gilmore's stationary crashed car. As a healthcare support worker, Ms Gibney went to assist. She assisted in keeping pressure on the wound in the right side of the back of the deceased's neck. She kept his chin up to keep the airway open. The deceased was in the driver's seat and he still had his seatbelt on. He was breathing but unconscious at that time. She remained with the deceased applying pressure to the wound until the paramedics arrived and took over. Her statement does not indicate that she overheard any conversation relating to the identity of the gunman.

[136] As a matter of agreed background information, it is common case that paramedics arrived at Pinewood Avenue to attend upon the deceased at 2.26pm. Upon arrival and following initial examination, it was discovered that the injured man was still breathing but ineffectively. He had a gunshot wound to the occipital

region of the head which was bleeding profusely. There were no obvious exit wounds. The deceased was removed from the vehicle and placed in an ambulance. Mr George Gilmore Junior attempted to enter the ambulance but was prevented from doing so by paramedics who were tending to his father. The ambulance left the scene at 2.47pm and arrived at the Royal Victoria Hospital at 3.10pm.

[137] Following my consideration and rejection of an objection from the defendants as to the relevance and admissibility of evidence from a Constable Simon Moran, this witness was called to give evidence on 10 December, 2018. Constable Moran had been in Laganside Court on the morning of 13 March, 2017. On his return to Carrickfergus, he overheard a radio transmission about a shooting in Pinewood Avenue and he made his way to the scene. He arrived in the vicinity at 2.30pm and noticed Mr Colin Simms and Mr Kenneth Graffin in Cherry Walk. Mr Simms was very animated and appeared to be in a very good mood. The police officer asked Mr Colin Simms about his whereabouts at the time of the shooting and Mr Simms answered that he was in the Spar shop and there would be CCTV footage to prove it. Mr Simms made the comment "when you play with bulls you get horns." Mr Kenny Graffin was also asked about his whereabouts and he informed the police officer that he had collected his children from school at 2.00 pm and then dropped them off. He then went to the shop and was on the Woodburn Road when he received a call informing him of the incident. He then went home to Cherry Walk. Whatever the motivation behind the comment made by Mr Simms, the accounts given by these two men about their movements at the time of the shooting which were not challenged let alone undermined by the Crown do not strike me as being the actions of individuals involved in a pre-planned scouting or surveillance exercise intended to facilitate an attack on the deceased.

[138] The statement of Sergeant Tony McClelland, PSNI, was adduced in evidence without objection from the Defendants on 10 December, 2018. This statement is dated 6 April, 2017. Sergeant McClelland arrived at the scene of the shooting with other police officers at 2.30pm. He assisted in establishing a scene by directing members of the public away from the area. In doing so he noticed 5 shell casings on the ground near an alleyway on Blackthorn Park, Carrickfergus. He then placed traffic cones over the shell casings to protect them from being kicked or damaged. The shell casings appeared to be from 9mm rounds. Sergeant McClelland directed Constable Gourley to stand in the area to prevent the casings being tampered with.

[139] The statement of Sergeant Chris O'Flaherty dated 21 March, 2017 was also adduced in evidence on 10 December, 2018 without objection from any of the defendants. As he arrived at the scene the deceased was being placed in the rear of an ambulance. He observed Mr Gilmore's white Vauxhall Insignia vehicle which had crashed through the garden wall of 61 Pinewood Avenue and he noted the significant damage to the offside of the rear window of the vehicle. There was a round hole in the window and the window was starting to fall out of its housing. There were three or four small holes in the boot area of the vehicle and these appeared to have been caused by material penetrating the vehicle. The front

windscreen had also been smashed. Within the vehicle there was some blood and body matter on the driver's head rest. There was a round hole in the window of the front door of 61 Pinewood Avenue and there was a strike mark on the bannister of the stairs in the premises and also on the wall near the top of the stairs. Sergeant O'Flaherty then assisted in securing the scene. As he proceeded up Blackthorn Park past number 12, he observed a number of empty casings that appeared to be from 9mm rounds and a £5 note. He obtained a traffic cone from his vehicle and placed this over the £5 note. He noted at this time that traffic cones had also been placed over the casings. The agreed evidence of Constable McClelland and O'Flaherty is consistent with the shooter in this case discharging a 9mm weapon from a location on Blackthorn Park near an alleyway and close to number 12 and directing those rounds towards the rear of the deceased's vehicle with several rounds striking the boot area and at least one round striking the rear window. It would appear that one round penetrated the glass panel of the front door of number 61 Blackthorn Park before striking the bannister of the stairs and then striking the wall at the top of the stairs. This graphically illustrates just how reckless this particular shooting attack was.

[140] The formal admissions in this case which were adduced in evidence pursuant to the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 on 19 December, 2018, include the following matters. At 6.25pm crime scene investigators conducted a forensic examination of the scene. Seven cartridge casings (Exhibits JI9 to JI15) were recovered from the ground on Blackthorn Park. Some copper coloured fragments (Exhibit LH 2) and the possible remains of a bullet (Exhibit LH 4") were recovered from inside the deceased's car. Offsite examination of the vehicle by a Higher Crime Scene Investigator revealed that there were four bullet strike marks on the rear of the vehicle and one on the leading edge of the rear offside wheel arch. The locations of the other bullet strike marks on the rear of the vehicle were on the rear windscreen, the edge of the boot lid, the rear trim of the vehicle and the offside edge of the rear bumper. There was blood staining on the driver's seat, the headrest, the driver's window and the interior trim in the area. A small piece of skull was recovered from the door pocket of the rear offside door.

[141] The formal admissions in the case include the following matters. Six of the seven cartridge casings recovered from Blackthorn Park were forensically examined and were found to be spent 9 x 19mm calibre cartridges bearing the headstamp "S&B 16" signifying that they were manufactured by Sellier and Bellotin in the Czech Republic in 2016. Examination of the cartridges revealed that they had been fired from a self-loading pistol with a right hand twist barrel.

[142] The statement of Mr Frankie Patrick Rocks dated 21 March, 2017 was also adduced in evidence on 12 December, 2018 without objection from any of the defendants. Mr Rocks and another man Mr Kieran Hughes on a number of dates in February and March, 2017 were engaged in occasional sub-contracted maintenance work on behalf of the Northern Ireland Housing Executive at 1 Cherry Walk which is a NIHE property occupied by Ms Zoe McKenzie, the former partner of

Mr David McMaw. On 13 March, 2017 they arrived at the premises at approximately 9.15am to replace a section of fencing at the rear of the property and to paint a section of fencing at the front. At that time, Mr Rocks observed and briefly spoke to an unknown male person at the premises with Ms McKenzie. The detailed description of this individual and his clothing given by Mr Rocks in his statement would lead me to confidently conclude that this individual was Mr David McMaw. During the course of the morning Mr David McMaw engaged in conversation with the workmen and Mr Rocks described him as friendly but inquisitive. Ms McKenzie's father arrived at the premises during the course of the morning and took the old gate that was being removed from the premises. Mr Rocks left the premises for a short while at 10.00am to go to the local shops. When he returned, he and Mr Hughes sat in their van and had their break. Ms McKenzie and Mr David McMaw were still in the house at that stage. Later in the morning, Mr Rocks noticed that another man with a Belfast slang accent appeared briefly in the back yard area and he remembers the smell of frying food coming from the kitchen. His work colleague Mr Hughes left around midday as he was working a half day that day, leaving Mr Rocks to complete the work on his own.

[143] Mr Rocks had his lunchbreak between 1.00pm and 1.30pm and sat in his van during this time. Ms McKenzie was observed to be cleaning/hovering the house. He had not seen Mr McMaw since sometime before his work colleague left at midday. After his lunchbreak, Ms McKenzie spoke briefly to Mr Rocks to inform him that she was going out to collect her children from school. Shortly after 2.00pm, Mr Rocks heard a number of loud bangs that he believed to be gunfire. He went to his van and observed a crowd gathering on Pinewood Avenue. He knocked the front door of 1 Cherry Walk but there was no reply. He went to another house for a short while and then returned to 1 Cherry Walk and at that stage Ms McKenzie and her father were standing at the front of the premises. Ms McKenzie stated that she had heard the gunfire and had run up the road with her two boys. A short time later armed police arrived at the house and secured the scene.

[144] The formal admissions in this case include the following. At 2.50pm police were directed to 1 Cherry Walk, Carrickfergus as an address associated with Mr David McMaw. When police arrived at the property, Ms Zoe McKenzie came to the door. She was asked to exit the property which she did. Police asked if there was anyone else present in the property to which she said "no". The property was contained and subsequently searched and was found to be vacant.

[145] The statement of Mr Kieran Hughes dated 22 March, 2017 was also adduced in evidence on 10 December, 2018 without objection from any of the defendants. This largely echoes the contents of Mr Rocks' statement. I note, however, that Mr Hughes was somewhat uncomfortable about the nature of the inquisitive questioning directed to him by the individual I conclude was Mr David McMaw. Mr Hughes was permitted to enter the house to use the toilet at one stage and he heard the occupants raising their voices (in effect arguing) against a background of very loud rave type music being played in the house. He thought Mr David McMaw was on edge the



whole time he was there. Mr Hughes also described another male coming to the house and speaking to the male I conclude was Mr David McMaw before both males went into the house. He did not see either of these two males thereafter. Just before he left for the day, Mr Hughes was approached by another male, Ms McKenzie's father who asked him if he could take the old gate. Mr Hughes evidence was not tested in cross-examination. It would be inappropriate to attribute much significance to Mr Hughes' perception of Mr David McMaw's demeanour and behaviour. However, it is clear that his stated perception is consistent with Mr McMaw being pre-occupied and being suspicious of strangers being about the house.

[146] A number of statements provided by Mr Ian Bogie, the proprietor of Hamilton Bogie Mini Piling Company, the then employer of Mr Darren McMaw, the owner of the van Mr McMaw was driving at the time and the owner of the mobile phone Mr McMaw was using, were adduced in evidence on 12 December, 2018 without objection from any of the Defendants. These statements are dated 20 March, 2017, 24 March, 2017 and 7 September, 2017. The contents of the first statement reveal that Mr Bogie met with Mr Darren McMaw and his work colleague Mr James Deignan on 13 March, 2017 at 9.00am at a building site in Belfast. It would appear that this was the only contact Mr Bogie had with the men that day. Mr Darren McMaw was next in contact with Mr Bogie using his work mobile the following morning to inform him that the van was stuck inside a police cordon as it had been parked outside his sister's house the previous evening. Mr Bogie received another call from Mr Darren McMaw about lunchtime on 14 March, 2017 to inform him that the van had been removed from the scene. Mr Darren McMaw was not present at work on 14 March, 2017 but was back on site in Belfast on the morning of 15 March, 2017 with Mr James Deignan. It would appear that a tracker was fitted to the van to ensure that the van was not used for Mr McMaw's personal use. In the second statement dated 24 March, 2017, Mr Bogie recorded that he had retrieved the work mobile used by Mr Darren McMaw from him and had handed it over to the police. He stated that he was aware that the phone had been subjected to a factory reset. This would have had the effect of removing any user specific data from the phone.

[147] The third statement prepared by Mr Bogie dated 7 September, 2017 clarifies certain matters about the use of the works van by Mr Darren McMaw. He was not supposed to use the van for personal use and had been reminded about this on a number of occasions. It is also clear from this statement that in relation to the job that was taking place in Belfast on 13 March, 2017, Mr Bogie knew that the work on site would not take long to complete that day and that Mr Darren McMaw and Mr James Deignan would probably be returning to Carrickfergus in the van around lunchtime. He stated that he would have expected Mr Darren McMaw to leave Mr Deignan home and then park the van at his own home and not use it for the rest of the day. Mr Darren McMaw certainly had no job-related reason to be anywhere else in the van after leaving Belfast other than to leave Mr Deignan home and then return to his own home in the van.

[148] Excerpts from the statement of Detective Constable Niall Shortt dated 23 May, 2017 were also adduced in evidence on 13 December, 2018 without objection from any of the Defendants. This statement recounted Constable Shortt's involvement in the search of Mr Brian McLean's house at 47 The Birches, Carrickfergus, during the early hours of 14 March, 2017. During the course of this search a UDA tie, Exhibit "BDP 4" and a UDA plaque, Exhibit "CMD 2" were found. Both these exhibits were produced to the court on 13 December, 2018 and examined by me. The presence of this UDA memorabilia and attire in Mr McLean's house is supportive of the case that Mr McLean is a member of, is supportive of or has an affinity with the Ulster Defence Association. He refused to address the issue of these finds during his police interviews. The significance of this will be considered below.

[149] The formal admissions in the case include the following matters. The foregoing search operation which commenced at 1.58am on 14 March, 2017 was also an arrest operation. However, the suspect Mr Brian McLean was not present on the premises. At 9.55am on 16 March, 2017, Mr Brian McLean attended Musgrave Police Station by arrangement. He was arrested in respect of the murder of the deceased and made no reply after caution. When charged at 7.57pm on 17 March, 2017 with the murder of the deceased and the attempted murder of Mr Stephen Boyd, he replied to both charges: "It wasn't me."

[150] A search of 1 Starbog Road, Larne was also conducted at 2.01am on the 14<sup>th</sup> March, 2017 in an attempt to arrest Mr David McMaw. He was not present at that address at that time. At 9.55am on 16 March, 2017, Mr David McMaw attended Musgrave Police Station by arrangement. He was arrested in respect of the murder of the deceased and made no reply after caution. When charged at 7.45pm on 17 March, 2017 with the murder of the deceased and the attempted murder of Mr Stephen Boyd, he replied to both charges: "Not guilty."

[151] Excerpts from the report on autopsy which was performed by Dr Peter Ingram, Assistant State Pathologist, on 14 March, 2017 on the body of the deceased was also adduced in evidence on 14 December, 2018 without objection from any of the defendants. This report reveals that Mr Gilmore was struck by one bullet to the right side of the back of the head. There were no signs to indicate that this projectile was discharged from a weapon at very close range from the target. This bullet penetrated the underlying skull, causing a roughly circular hole and a number of quite extensive, associated skull fractures. The bullet then fragmented and the two major fragments of the bullet then followed different trajectories through the brain, causing massive brain injury and leading to death. The lead portion of the projectile (Exhibit JC 9) which was subsequently positively identified as a bullet fragment was discovered within the skull at the tip of the right frontal lobe and the copper jacketing subsequently confirmed to be from the same bullet (Exhibit JC 10) was found within the skull at the superior surface of the right parietal lobe. Although Mr Gilmore was still alive when he was taken from the scene of the shooting to the Royal Victoria Hospital, it was clear that he had sustained an unsurvivable brain injury and he died at 11.58 am on 14 March, 2017.

[152] On 19 December, 2018, the statement of Constable Glen Taylor dated 30 January, 2018 was adduced in evidence without objection from any of the Defendants. According to this statement, on Sunday 12 March, 2017 at approximately 3.30pm, Constable Taylor was on mobile patrol in the Cherry Walk area of Carrickfergus. On that occasion, Constable Taylor spoke to Mr David McMaw, Mr Brian McLean, Mr Kenneth Graffin and Mr Samuel McConnell outside 25 Cherry Walk, Carrickfergus. The police officer observed that the group were discussing the previous night's attack on a doorman at the Royal Oak Bar and the group expressed the view that something needed to be done about this attack. Mr David McMaw stated that this was the second time that the deceased had tried to attack his sister's boyfriend, Mr William Graham. He had tried to run him off the road. Mr David McMaw was angry and again said something needed to be done. Mr David McMaw then went on to speak about Mr Thomas Morgan who was remanded at the time on firearms charges and he made a joke about how they could do with him about now so they could buy a few Glocks off him. Constable Taylor subsequently made a note of this conversation in his notebook.

[153] The Crown alleges that this conversation is highly significant in that the formal admissions in this case include the following matters. The said Mr Thomas Morgan was arrested in February, 2017, having attempted to buy firearms on the "Dark Web". The apparent vendor was an undercover police officer. On 6 March, 2017, he applied for High Court bail and it was then reported in the press that Mr Morgan had tried to buy two Glock pistols. The attempted purchase was in connection with the then ongoing Loyalist feud in Carrickfergus. It is a matter of public record that on 10 December, 2018, Mr Thomas Morgan, following a plea of guilty to the charge of conspiracy to possess firearms was sentenced to 4 years with 20 months in custody and 28 months on licence.

[154] The formal admissions included the fact that Mr Thomas Morgan was a brother in law of the deceased and that at the sentencing hearing the case was made on his behalf that he had tried to act as some form of mediator in the feud. In his sentencing remarks, the Learned Trial Judge stated: "He has tried to mediate in the feud and ironically may have made enemies on both sides." It was also advanced on his behalf that he wanted the weapons for defence purposes but this was rejected by the Crown.

[155] As indicated above, further strands of evidence relied upon by the Crown in this case were the results of the analysis of voice call and text message records relating to a number of mobile phones which were accepted as being ascribed to the Defendants and named associates in the period leading up to the murder and on the day of the murder itself. The named associates were Mr Michael Lowry, Mr Jamie Adams, Mr Clifford Irons, Mr Colin Simms and Mr Kenneth Graffin. This evidence in the form of Exhibit FOH 1 was introduced and admitted in evidence at the trial on 18 December, 2018.

[156] Exhibit FOH 1 sets out the analysis of the telephone records relating to the telephone which was accepted as being accurately ascribed to Mr David McMaw and this analysis is limited to the period between 13 February, 2017 and 13 March, 2017. For each day during that period, the total number of episodes of contact (voice and text) are recorded together with the number of such contacts with the other Defendants and named associates. There is relatively heavy contact between Mr David McMaw and Mr Brian McLean in the period between 13 February, 2017 and 25 February, 2017 (105 initiated contacts). Thereafter, only 3 further contacts occur; 1 on 4 March, 2017, 1 on 9 March, 2017 and 1 on 12 March, 2017. There are no such contacts on 13 March, 2017. In contrast, although the total number of contacts between Mr David McMaw and Mr Colin Simms was 90 during this month-long period, Mr David McMaw had little contact with Colin Simms during the first half of the month in question with more intense contact occurring during the latter half of the month with 25 contacts on 12 March, 2017, 18 on 10 March, 2017, 13 on 11 March, 2017 and 6 on 13 March, 2017.

[157] Mr David McMaw's contacts with Mr Kenneth Graffin (97 in total) occurred more regularly throughout the month in question but the preponderance of contact occurred in the second half of the month. There were 6 contacts on 13 March, 2017. In relation to contact with Mr Clifford Irons, during the entirety of the month in question there were 32 contacts between Mr David McMaw and Mr Clifford Irons and 31 on those occurred on 12 March, 2017 and 1 on 13 March, 2017.

[158] Mr David McMaw's contact with his brother Darren during this month in question was intermittent with a total of 30 contacts in this period. The largest number of contacts on one day occurred on 19 February, 2017 with 10 such contacts. There were 9 contacts on 12<sup>th</sup> March, 2017 and 5 contacts on 13 March, 2017. Prior to 12 March, 2017, there was a gap of 4 days with 1 contact on 6 March, 2017 and 1 contact on 7 March, 2017.

[159] The day with the highest number of contacts was 12 March, 2017 with 113 contacts, 10 of which were with the other defendants (9 with his brother and 1 with Mr McLean) and 68 of which were with the other named associates. On the day of the shooting there were a total of 20 contacts with 5 being with his brother, 6 each with Colin Simms and Kenneth Graffin and 1 with Clifford Irons. Outgoing phone activity ceased on this telephone on 13 March, 2017 at 14:16:59 hours (hh:mm:ss format) at the end of a call to Colin Simms which lasted 13 seconds. It should be remembered that this contact occurred about 13 minutes before Mr Colin Simms was spoken to by Constable Moran who noted Mr Simms to be very animated and in a very good mood. It should also be remembered that Mr Kenneth Graffin told Constable Moran that he had collected his children from school at 2.00pm and then dropped them off. He then went to the shop and was on the Woodburn Road when he received a call informing him of the incident. He then went home to Cherry Walk.

[160] Exhibit FOH 1 reveals that Mr Kenneth Graffin received a call from Mr David McMaw at 13:53:47 which lasted for 46 seconds. Mr Darren McMaw then telephoned Mr Kenneth Graffin at 14:07:17 with the call lasting 51 seconds. The agreed evidence in the case demonstrates that the first 999 call was logged at 14:12:48. Exhibit FOH 1 does not show Mr Kenneth Graffin receiving any calls after the time of the 999 call i.e. after the deceased was shot. However, he did make two calls to Mr Darren McMaw shortly after the shooting. The first was made at 14:13:35 and this lasted 24 seconds and the second was made at 14:17:41 and this lasted 1 minute and 39 seconds. Was it during one of these calls to Mr Darren McMaw which were both initiated by Mr Graffin that Mr Graffin was informed of the shooting of the deceased?

[161] The admissions formally adduced in evidence on 19 December, 2018 include the admission by the defendants of the following facts. On 19 March, 2017, police seized a telephone from Mr William Graham of 36 Blackthorn Park, Carrickfergus. The telephone (Exhibit PT1) was examined. The following message was recorded as having been sent to the telephone 07751450088, the telephone ascribed to Mr David McMaw, on 13 March, 2017 at 14:22:05. The text stated: "Come back to allys when you can mate." The Crown rely on this message as indicating that Mr Graham was attempting to contact Mr David McMaw to encourage him to make his way back to Alison McKnight's house in Castlemara Drive whenever he could.

[162] The analysis of the telephone records relating to the telephone which was accepted as being accurately ascribed to Mr Darren McMaw appears to relate to the period between 13 February, 2017 and 18 March, 2017 with 3 contacts stated to have occurred on 17 March, 2017 and 2 on 18 March, 2017. However, page 29 of 30 of the Exhibit FOH 1 states that "the parameters of the outgoing calls for 07841954390 only cover up to 10:00 on 16 March, 2017, therefore it is not possible to state whether 07841954390 made any calls or sent any text messages after this time...." In light of this, it is intended only to have regard to the data contained in the report relating to the period between 13 February, 2017 and 16 March, 2017.

[163] For each day during that period, the total number of telephone contacts are recorded together with the number of contacts with the other defendants and named associates. The day with the largest number of contacts was 15 March, 2017 with 46 contacts on that date, none of which were with the other defendants or any other named associate. The extent of the contact between Mr Darren McMaw and Mr David McMaw is set out above.

[164] There was very limited contact between Mr Darren McMaw and Mr Brian McLean and certainly none in the lead up to the day of the shooting. Of all the named associates, the one with whom Mr Darren McMaw had the most frequent contact was Mr Kenneth Graffin with 33 contacts in total. There were 3 contacts between Mr Darren McMaw and Mr Kenneth Graffin on 13 March, 2017 and 5 contacts with Mr Colin Simms on the same date. The total number of contacts between Mr Darren McMaw and Mr Colin Simms during the relevant period was 16.

The formal admissions in this case which as I have stated above were adduced in evidence pursuant to the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 on 19 December, 2018, at paragraph 29, indicate that between 20 and 24 March, 2017, Mr Darren McMaw's employer retrieved this mobile telephone from him as it was a mobile which was owned by his employer. The mobile phone was then provided to the PSNI on 24 March, 2017 and it was noted at that time that it had been reset to factory reset.

[165] The analysis of the telephone records relating to the telephone which was accepted as being accurately ascribed to Mr Brian McLean is limited to the period between 13 February, 2017 and 13 March, 2017. Most of the contact activity on this phone occurred prior to 28 February, 2017. Thereafter, outgoing contact is very sparse. A description of the contact with Mr David McMaw during this period is set out above. On 13 March, 2017, the phone ascribed to Mr McLean was involved in only one episode of contact and that was with Mr Colin Simms. This was a text message sent by Mr Simms to Mr McLean at 13:26:43. Activity on the telephone ascribed to Mr McLean ceased thereafter. The last outgoing activity on Mr McLean's phone occurred on 4 March, 2017 when a text was sent from this phone.

[166] Turning then to the telephones accepted as being accurately ascribed to the named associates of the Defendants, the analysis of the telephone records relating to the telephone which was accepted as being accurately ascribed to Mr Michael Lowry is limited to the period between 13 February, 2017 and 15 March, 2017. There is intermittent and infrequent contact with Mr Darren McMaw during this period but no contact with the other two Defendants. The most regular contact occurs with Mr Jamie Adams with 9 contacts on 13 March, 2017. Great reliance is placed by the Crown on the call made by Mr Michael Lowry to Mr Jamie Adams at 13:47:52 on that date. The Crown case is that this call was made by Mr Lowry when he observed the Gilmore party on Lancastrian Street on the way to the bakery for the purpose of informing others of the whereabouts of the Gilmore party.

[167] The analysis of the telephone records relating to the telephone which was accepted as being accurately ascribed to Mr Jamie Adams is limited to the period between 22 February, 2017 and 16 March, 2017. There is intensive contact with Mr Clifford Irons on 12 March, 2017 (159 contacts on that date). The only contact with any of the defendants during this period occurs on the same date with 5 contacts with Mr David McMaw. There are no contacts with the defendants on 13 March, 2017 and this is important because Mr Darren McMaw informed the police during his interviews that Mr Jamie Adams telephoned him to inform him of the shooting. There were 5 contacts between Mr Jamie Adams and Mr Clifford Irons on 13 March, 2017 and the Crown rely heavily on the occurrence of one of these contacts which took place at 13:49:55 when Mr Jamie Adams telephoned Mr Clifford Irons. The Crown case is that during this call, Mr Adams relayed to Mr Irons the information he had received a short time earlier from Mr Lowry.

[168] The analysis of the telephone records relating to the telephone which was accepted as being accurately ascribed to Mr Clifford Irons is limited to the period between 21 February, 2017 and 13 March, 2017. The heavy contact with Mr Jamie Adams is described above. There were 31 contacts between Mr Irons and Mr David McMaw on 12 March, 2017 and 1 on 13 March, 2017. This 1 episode of contact with Mr David McMaw on that date at 13:52:20 is heavily relied upon by the Crown. The Crown case is that during this call, Mr Irons relayed to Mr David McMaw the information that had originated a short time earlier from Mr Lowry concerning the whereabouts of the Gilmore party.

[169] The Crown also place reliance on the admitted facts relating to the cessation of telephone activity in respect of the telephones ascribed to the Defendants and the named associates. The cessation of telephone activity in respect of telephones attributed to the Defendants has been discussed above. In respect of the named associates, the Crown places weight on the fact that telephone activity on the telephones ascribed to Mr Michael Lowry, Mr Jamie Adams, Mr Clifford Irons and Colin Simms ceased at various times after the murder between 13 March, 2017 and 16 March, 2017.

[170] In addition to the evidence set out above relating to the nature, extent and timing of voice call and text message communications between the Defendants and their known associates during the relevant period, the Crown placed particular reliance on evidence relating to the positions of the mobile telephone cell masts located at different sites in Carrickfergus to which each of the Defendants' telephones were connected at various times on the day of the murder.

[171] Reliance was also placed on the evidence contained in various CCTV images garnered from a number of static CCTV cameras and one mobile CCTV camera operating in Carrickfergus on the day of the killing which said images related to the Defendants, the Gilmore party and the vehicles used by the Gilmore party and Mr Darren McMaw. The Crown also relied upon the data produced by way of output from the GPS vehicle tracking system fitted to the van owned by Hamilton Bogie, Mr Darren McMaw's then employer, which said vehicle Mr Darren McMaw accepts he was driving on the day of the murder. This data provides information relating to the location, speed and direction of the vehicle at intervals of a number of seconds and, subject to the strength of the GPS fix and the inherent limitations in the accuracy of the GPS system, allows the location of the vehicle at any given time to be plotted on a map. The location, movements and route of the vehicle can also be visually demonstrated with the aid of computer mapping programmes.

[172] In this case, a sophisticated computer mapping programme was used to combine the vehicle tracking data produced by the tracking system fitted to the van with photographs taken by police photographers and the video images produced by the various CCTV camera systems interrogated during the police investigation into this killing and the data garnered from the mobile phones used by the defendants in order to produce an evidential product which was put in evidence by the Crown as

constituting a video timeline of the movements, activities and interactions of the Gilmore party, the defendants and their associates on the day of the killing.

[173] The Prosecution called Ms Heather Grills, a Director of First Forensic Solutions Limited, on 11 December, 2018 to describe contents and the method of creation of the said evidential product. Ms Grills was subjected to skilful, forensic cross-examination by Mr Duffy QC and a number of important limitations in the evidential value of the evidential product were highlighted during this cross-examination. As a result, the formal admissions which were agreed in this case included a number of admissions (41, 42 and 43) concerning the evidential value of the evidential product. In addition to this, segment 7 of the evidential product was amended in order to address the issues highlighted by Mr Duffy QC. Further, admissions 39 and 40 specifically relate to the locations of the mobile phones used by the three defendants at various times on the day of the murder of the deceased.

[174] Drawing together the evidential materials which formed the basis of the evidential product and the contents of the admissions, the following sequence of events and propositions form a further strand of the evidence relied upon by the Crown in this case.

[175] Segment 1 illustrates the journey undertaken by the van from 1 Starbog Road, Kilwaughter, Larne, the home of Mr Darren McMaw, at 7.47am on 13 March, 2017 to 135 Castlemara Drive, Carrickfergus, the home of his former partner, Ms Alison McKnight. The vehicle arrives in the vicinity of her address at 8.01am on the same date and the ignition is switched off for 7 minutes. The court has no hesitation in concluding that Mr Darren McMaw was the driver of the vehicle at the relevant time.

[176] Segment 2 illustrates the journey undertaken by the van from 135 Castlemara Drive, Carrickfergus at 8.08 am to Darby Road, Carrickfergus, at 8.11am. The vehicle is stationary for a short while and the ignition is not turned off. The court has no hesitation in concluding that Mr Darren McMaw was the driver at the relevant time and that the purpose of this short journey was to pick up his work colleague. The vehicle then retraces its route back along Prince Andrew Way but stops in the carpark of the Centra Store between 8.16 am and 8.20am when the ignition is turned off. The vehicle then completes the return journey to 135 Castlemara Drive, Carrickfergus, arriving there at 8.29am. The vehicle remains there until 8.31am with the ignition engaged. The court has no hesitation in concluding that Mr Darren McMaw was present in the vehicle during this part of the journey.

[177] Segment 3 illustrates the journey undertaken by the van from 135 Castlemara Drive, Carrickfergus at 8.31am to the Duncrue Industrial Estate, Duncrue Pass, Belfast, at 8.58am. The vehicle is stationary at this location until 9.39a.m. At 8.32am, mobile phone record analysis yields data which is consistent with Mr Darren McMaw's mobile being located on North Road, Carrickfergus. The court has no hesitation in concluding that Mr Darren McMaw who was in possession of his



mobile phone at that time accompanied by a work colleague made this journey for purposes connected with their employment with Messrs Hamilton Bogie.

[178] Segment 4 illustrates the journey undertaken by the van from Duncrue Pass at 9.39 am to St Andrew's Square East off Sandy Row, Belfast at 9.5 am. The vehicle remains stationary at this location with the ignition turned off until 11.24am. The court notes that it is accepted that between 9.13am and 10.45am, mobile phone record analysis yields data which is consistent with Mr Darren McMaw's mobile being located in the general Belfast area. This segment of the evidential presentation also contains the video captured on the CCTV system operating in the "Today's Express" mini store at 12 Hawthorn Grove, Carrickfergus. Mr David McMaw is seen entering the store and making some purchases between 10.43am and 10.45am He is wearing a grey hoodie, black track suit bottoms and black training shoes with thick white soles. Mobile phone record analysis yields data which is consistent with Mr David McMaw's mobile being located in Carrickfergus including 1 Cherry Walk and Pinewood Avenue, Carrickfergus between 9.07am and 10.12am and between 12 noon and 1.26pm.

[179] Segment 5 of the evidential product illustrates the journey undertaken by the van from Sandy Row at 11.29am back to Duncrue Industrial Estate at 11.39am. The van then left this location and travelled back to Carrickfergus stopping briefly in the vicinity of Oakfield Drive and Darby Road at 12.10pm and then travelling to the vicinity of 47 The Birches which is accepted to be the home of Mr Brian McLean, arriving there at 12.16pm. The vehicle remained there until 12.46pm with 15 idle starts during this period which indicates that although the vehicle did not move anywhere during this period, the key was in the ignition and the ignition was turned on. Mobile phone record analysis yields data which is consistent with Mr Darren McMaw's mobile being located in Carrickfergus including The Birches during this period. The court has no hesitation in concluding that Mr Darren McMaw was the driver at the relevant time and that on his return to Carrickfergus, he first left his work colleague off in the vicinity of Oakfield Drive and then for some reason travelled to a location adjacent to Mr Brian McLean's house. However, the 15 idle starts suggest that the driver remained in the driver's seat of the vehicle.

[180] This segment also contains video footage captured on the CCTV system operating in the "Winemark" at 2 Woodburn Road, Carrickfergus. Mr Brian McLean is seen entering the store and making a purchase between 12.17pm and 12.18pm He is wearing a dark blue shirt under a dark blue jumper with blue shoulder patches, black track suit bottoms with white stripes on the side and white training shoes. This segment demonstrates that the ignition of the van was turned off at 12.17pm and it remains off until 1.20pm when the ignition is turned on again. The vehicle remains stationary in the vicinity of 47 The Birches during this period and the mobile phone record analysis yields data which is consistent with Mr Darren McMaw's mobile being located in Carrickfergus including The Birches during this period.

[181] In this segment (segment 5), Mr McLean is seen entering and leaving the off licence with another unidentified individual. It is possible that Mr McLean returned to his house from the off licence and met up Mr Darren McMaw there but it is impossible to conclude with certainty that this is the case. The actions and demeanour of Mr McLean in the off licence and the fact that he is accompanied by another unidentified individual who leaves with him do not strongly support the theory put forward by the Crown of him being intimately involved in an audacious public murder a short time later.

[182] Segment 6 illustrates the journey undertaken by the van from a parked position in the vicinity of number 47 The Birches at 1.23pm, turning right out onto Northland and then turning left onto the North Road. The vehicle then travelled up the North Road and then turned right onto the Marshallstown Road. At 1.26pm the vehicle was at a point on the Marshallstown Road where photographs and a site inspection by the court which took place on the afternoon of 11 December, 2018 confirm that the driver of such a vehicle would have had a limited view across a field towards the deceased's house in Sullatober Square. Segment 6 continues by demonstrating that the van then turned right into Oakfield Drive, passing Sullatober Square at 1.27pm. Having regard to Mr Darren McMaw's admissions during his police interviews, I am convinced that Mr Darren McMaw was the driver of the vehicle at this time and his purpose of driving to this location was to ascertain whether there were any vehicles outside the deceased's house. The vehicle continued down Oakfield Drive and onto Dunluskin Gardens at 1.29pm. Thereafter, the vehicle turned right onto Prince Andrew Way and then turned left onto North Road and right onto Northland at 1.30pm, turning left onto Sunnylands Avenue at 1.31pm and then right onto Hawthorn Avenue at 1.32pm. The vehicle then turned right onto Pinewood Avenue and then left into Cherry Walk and proceeded to the vicinity of 1 Cherry Walk at 1.33 pm where it stopped close to Mr David McMaw's house. The vehicle remained stationary at this location with the ignition turned on until 1.36pm when the vehicle moved out of Cherry Walk and turned left onto Pinewood Avenue and then left into Blackthorn Park where it stopped and remained stationary in the vicinity of 64 Blackthorn Park at 1.37p.m. with the ignition turned off. Mobile phone record analysis yields data which is consistent with Mr Darren McMaw's mobile being located in Carrickfergus including these locations during this period. Such analysis also yields data which is consistent with Mr David McMaw's mobile being located in Carrickfergus including 135 Castlemara Drive and Dunluskin Gardens between 1.29pm and 1.30pm and in an area of Carrickfergus including Cherry Walk and/or Pinewood Avenue between 1.31pm and 1.33pm.

[183] It has not been suggested that Mr David McMaw was in vehicle with his brother Mr Darren McMaw when he was allegedly carrying out surveillance on the deceased's home. In fact, if the Crown case is correct, he could not have accompanied his brother on this scouting exercise because at the time when Darren McMaw's van is up on the Marshallstown Road (1.26pm), mobile phone analysis yields data which is consistent with Mr David McMaw's mobile being located in an area of Carrickfergus including 1 Cherry Walk and/or Pinewood

Avenue. However, if he is not in the van with his brother and is in the vicinity of 1 Cherry Walk/Pinewood Avenue at 1.26pm, how is it possible to explain why his mobile is in the vicinity of 135 Castlemara Drive/Dunluskin Gardens between 1.29pm and 1.30pm and is back in the vicinity of 1 Cherry Walk/Pinewood Avenue between 1.31pm and 1.33pm?

[184] Before describing the contents of Segment 7, it is again worthy of note that it was necessary for the Crown to produce a second version of Segment 7 as a result of the issues raised during the cross-examination of Ms Heather Grills by Mr Gavan Duffy QC. It was as a result of this cross-examination by Mr Duffy QC that a number of inaccuracies and ambiguities in version 1 of Segment 7 were brought to light and this necessitated the production of a version 2 of Segment 7 and any subsequent reference to Segment 7 in this judgment is a reference to this later version.

[185] Segment 7 illustrates the journey undertaken by the van from a parked position in the vicinity of 64 Blackthorn Park at 1.37pm, turning left onto Pinewood Avenue, turning right onto Northland at 1.39pm and then turning left onto the North Road at 1.40p.m. The vehicle then travelled up the North Road and then turned right onto Castlemara Drive, stopping in the vicinity of 135 Castlemara Drive at 1.41pm. The ignition was turned off at this stage and remained off until 1.51pm. Mobile phone record analysis yields data which is consistent with Mr David McMaw's mobile being located in an area Carrickfergus including Castlemara Drive between 1.41pm and 1.48pm.

[186] At 1.41pm, a CCTV camera located at the public entrance of Seapark PSNI complex, recorded the two vehicles of the Gilmore party travelling on the carriageway in the direction of Carrickfergus. At 1.45pm, the CCTV system inside and outside the Ulster Bank on High Street, Carrickfergus, records Mr Michael Lowry being served by a teller at a counter in the bank and then leaving the bank. At 1.46pm, a CCTV camera located on an external wall at the De Courcey Centre, records Mr Michael Lowry's green Vauxhall Corsa travelling along Antrim Street, Carrickfergus. Shortly thereafter, at 1.47pm a CCTV system located at Mahood's Taxis, 31 North Street, Carrickfergus captures the Gilmore party walking down North Street, towards Delacey's café. Mobile phone record analysis yields data which is consistent with Mr Michael Lowry's mobile being located in Carrickfergus town centre at this time. Such analysis also reveals that Mr Michael Lowry called Mr Jamie Adams for 99 seconds at 13:47:52 and this is followed by Mr Adams calling Mr Clifford Irons at 13:49:55 for 107 seconds followed by Mr Clifford Irons calling Mr David McMaw at 13:52:20 for 50 seconds. During this sequence of calls, Mr Jamie Adams' phone was located to the north of Belfast city centre, Mr Clifford Irons' phone was located in the central area of Carrickfergus including Castlemara Drive, Cherry Walk and Pinewood Avenue. Crucially, however, mobile phone record analysis yields data which is consistent with Mr David McMaw's mobile being located in an area of Carrickfergus which included Pinewood Avenue and

1 Cherry Walk at 13:52:09 just 11 seconds before the start of the call allegedly made by Mr Irons to Mr David McMaw.

[187] Pausing there, it is important to remember that the Crown adduced in evidence with no objections from any of the defendants certain portions of a statement of Ms Andrea Reid, the former partner of Mr Michael Lowry, dated 20 March, 2017. The admitted portions of Ms Reid's statement indicate that Mr Lowry was in her house at sometime around 12.30pm or 12.45pm on 13 March, 2017. He was in the house for about half an hour. Mr Lowry informed Ms Reid that he had to go the Ulster Bank in Carrickfergus town centre and he then left in his car. Pausing there, it is clear from the CCTV evidence adduced in this case that Mr Lowry did go to this bank. Ms Reid's statement then indicates that about half an hour after Mr Lowry left her house, he telephoned her and then returned to her house a short time later. Pausing again, Exhibit "FOH 1" confirms that a call was made by Mr Lowry to Ms Reid at 13:56:24 and that the call lasted for 1 minute and 40 seconds. Ms Reid's statement goes on to recount how after he had returned, Mr Lowry remained in her house for a further period of about half an hour and while he was present in the house, he received a telephone call. Following this, Mr Lowry said he was going and then left her house. Exhibit "FOH 1" reveals that at 14:24:54 Mr Jamie Adams called Mr Michael Lowry with the call lasting 45 seconds. Mr Lowry called Mr Adams at 14:34:25 with the call lasting 1 minute and 1 second. Mr Adams then called Mr Lowry at 14:51:22 with the call lasting 1 minute and 19 seconds and he also sent him a text at 14:54:10.

[188] Mr Lowry's presence in Ms Reid's house in the early afternoon of 13 March, 2017 and his subsequent presence in the Ulster Bank are not strongly supportive of the case that there was any form of pre-planned scouting or surveillance operation in place on the day in question. The Crown places great reliance on the fact that Mr Michael Lowry made a call to Mr Jamie Adams at 13:47:52 and that this call lasted 1 minute and 39 seconds. The Crown case is that it was during this call that Mr Michael Lowry informed Mr Jamie Adams about his sighting of the Gilmore party and that this information was passed through another intermediary to Mr David McMaw. As stated above, the timing of this call between Mr Michael Lowry and Mr Jamie Adams is consistent with Mr Michael Lowry informing Mr Jamie Adams of his chance encounter with the Gilmore party in Carrickfergus town centre at approximately 1.47p.m. However, there is no other evidence as to the content of this call and no evidence was adduced as to the content of the call made by Mr Lowry to Ms Reid a short time later. Given the timing of the call from Mr Jamie Adams to Mr Michael Lowry just after 2.24pm, it is possible that this is the call Mr Lowry received when he was in Ms Reid's house. However, again no evidence was adduced as to the contents of this call and so there is no direct evidence before the court in relation to Mr Lowry either making or receiving a telephone call in which the location of the Gilmore party or the shooting of Mr Gilmore was discussed. In short, the contents of the admitted portions of Ms Reid's statement do not lend any support to the Crown case.

[189] Returning to the evidential product, Segment 7 continues with the ignition of the van which was in the vicinity of 135 Castlemara Drive being turned on at 1.53pm. The sequence of calls set out in paragraph [185] above is argued by the Crown to be consistent with information concerning the whereabouts of the Gilmore party being passed from Mr Lowry to Mr David McMaw. The activation of the ignition of Mr Darren McMaw's van shortly after the last of these calls would be consistent with Mr Darren McMaw being in the presence of Mr David McMaw and reacting to information provided to him by Mr David McMaw, if the analysis of mobile phone records yielded data which placed Mr David McMaw's mobile phone in the vicinity of Mr Darren McMaw's van at that time. It must be remembered that at 13:52:09, such analysis revealed data consistent with Mr David McMaw's mobile phone being located in the vicinity of 1 Cherry Walk/Pinewood Avenue. This does not appear to support his presence in the van with his brother or in the immediate vicinity of the van when the ignition is turned on. In light of this, and without more, it cannot be said with any degree of certainty that on the basis of the evidence discussed above, the ignition of the van was turned on because of information about the whereabouts of the Gilmore party being passed face to face from Mr David McMaw to Mr Darren McMaw. I use the caveats "and without more" and "on the basis of the evidence discussed above" because there is another matter which is relevant to the determination of this issue and that matter concerns the movements of Mr Darren McMaw's van after this chain of calls and I will discuss the importance of this matter later in the judgment.

[190] If the evidence discussed in the preceding paragraphs was the only relevant evidence having a bearing on this issue I would be compelled at this stage to conclude that it could not be said with certainty that that any information about the location of the Gilmore party which was passed through the chain of calls which did take place was in furtherance of a plot to kill or seriously injure the deceased or anyone else for that matter. It would be a matter of common sense to observe that if there was a plan to murder or seriously injure the deceased, the less people involved in that plan the better and no explanation as to why there would be a chain of calls in the execution of such a plan has been put forward by the Crown, particularly when the first link in the chain was to a person seemingly present in Belfast. Further, if there was such a plan, Mr Lowry, Mr Adams, and Mr Irons were seemingly involved in it, yet no charges have been brought against them in respect of this criminal enterprise. These issues are relevant when it comes to considering whether the theory that this chain of calls was in furtherance of such a plan can and should be regarded as compelling. The theory is superficially at least a cogent theory but more is needed to render it compelling.

[191] Segment 7 continues by showing the journey in real time undertaken by the van from a parked position in the vicinity of 135 Castlemara Drive at 1.53pm, along the eastern section of Castlemara Drive, turning left onto North Road and then turning right onto Northland. Just at about the time when the vehicle reached the junction of North Road and Northland, mobile phone record analysis yields data which reveals that Mr David McMaw called Mr Kenneth Graffin at 13:53:47 with the

call lasting 45 seconds. Such analysis also yields data which is consistent with this phone being located in an area which includes the route of the van including the junction of Castlemara Drive and North Road. The vehicle then travelled along Northland to where the road becomes Oakwood Road and then turned left into Woodburn Avenue and immediately left into The Hollies at 1.55pm. The vehicle is shown in real time as moving slowly along this “U” shaped section of carriageway but the GPS data does not positively demonstrate that the vehicle stopped at any stage. The Crown case is that Mr Darren McMaw drove his vehicle into The Hollies to allow those directly involved in the attack to disembark from his vehicle and get into position for the attack. Although it is, to say the least, strange that the vehicle followed this route at this time, the Crown has not proffered any specific reason why The Hollies, as opposed to, say, for instance, The Birches would have been used as a drop off point.

[192] More importantly, however, at this stage there was no indication whatsoever that the Gilmore party was either in this vicinity or was likely to drive into this vicinity any time soon. If the Crown case is right, the Gilmore party had been spotted on Lancastrian Street which is quite far removed for this vicinity. In its starkest terms, the Crown case is that Mr Darren McMaw left off his brother and Mr Brian McLean in this area to set up a shooting attack against the deceased. For this case to be compelling, the court would require some evidence that indicated that in advance of the shooting team being deposited in this vicinity, the Gilmore party was either there or thereabouts or was likely to arrive there or thereabouts shortly thereafter. There is no such evidence in this case and as will be discussed below, if Mr Darren McMaw was actually engaged in some sort of surveillance exercise, the route followed by Mr McMaw’s van would suggest that he did not know where the Gilmore party was intending to go to following the siting of the Gilmore party on Lancastrian Street.

[193] I have concerns about the specificity of the evidence relating to the location of Mr David McMaw’s mobile phone in the 60-minute period prior to the killing of the deceased. Either he is flitting regularly back and forth from 1 Cherry Walk/Pinewood Avenue to Castlemara Drive or these two locations are covered by the same mobile phone cells so that it cannot be determined with any degree of certainty where in this general area Mr David McMaw’s mobile phone was at any particular time. To illustrate this point, I will summarise the evidence agreed by way of written admissions. At 1.26pm, mobile phone analysis yields data which is consistent with Mr David McMaw’s mobile being located in an area of Carrickfergus including 1 Cherry Walk and/or Pinewood Avenue. Such analysis also yields data which is consistent with Mr David McMaw’s mobile being located in an area of Carrickfergus including 135 Castlemara Drive and Dunluskin Gardens between 1.29pm and 1.30pm and in an area of Carrickfergus including 1 Cherry Walk and/or Pinewood Avenue between 1.31pm and 1.33pm. Such analysis yields data which is consistent with Mr David McMaw’s mobile being located in an area in Carrickfergus including Castlemara Drive between 1.41pm and 1.48pm. But at 13:52:09, such analysis reveals data consistent with Mr David McMaw’s mobile phone being

located in the vicinity of 1 Cherry Walk/Pinewood Avenue. Then at 13:53:47 such analysis yields data which is consistent with Mr David McMaw's phone being located in an area which includes the route of the van allegedly driven by Mr Darren McMaw including the junction of Castlemara Drive and North Road. I am driven to conclude that there was either a lot of unexplained movement back and forth between these two locations or both locations are covered by the same cells so that it is impossible to place a phone at one of these locations to the exclusion of the other. In either event, there is a clear need to treat this evidence with caution when determining whether it is supportive of the Crown case.

[194] Segment 7 continues with the van emerging from The Hollies with the time display still at 1.55pm. The video shows the vehicle turning left onto Woodburn Avenue and continuing along this road. At 1.56pm, mobile phone record analysis yields data which is consistent with Mr Darren McMaw's mobile being located in an area of Carrickfergus which includes the location of the aforesaid van at Woodburn Avenue. The van then progresses to the junction with Woodburn Road when it is depicted as turning left onto Woodburn Road at 1.56pm. The van then proceeds past the Clipperstown filling station and is seen travelling towards the town centre in CCTV footage obtained from a camera covering the forecourt of the filling station (camera 3) at 1.56pm. One minute later, video images of the van are captured by a dashcam operating on a school bus that is travelling along Ellis Street, immediately behind the van. The van is seen passing the Used Clothing Company shop at 39 Ellis Street. When the van stops at traffic lights on Minorca Place at 1.57 pm, the signage "Hamilton Bogie" is clearly seen on the rear of the van in the school bus dashcam footage. When the traffic lights change to green, the van proceeds straight onto Davy's Street, whereas the bus turns off to the left onto Irish Quarter West at 1.58pm.

[195] The van is then depicted reaching the major junction with Marine Highway at 1.59pm. It is then depicted turning left onto Marine Highway and then leaving the roundabout via the first exit on the left onto Irish Gate/Albert Road. Video images of the van are captured at 2.00pm by a CCTV camera located on premises on Irish Quarter South, with the camera directed towards the junction with Irish Gate/Albert Road. The van is travelling at that time in the direction of St Bride's Street. At the same time, mobile phone record analysis yields data which is consistent with Mr David McMaw's mobile being located in an area of Carrickfergus which includes Pinewood Avenue/1 Cherry Walk. The van then progresses along St Bride's Street and then onto North Road. At 2.01pm, the Gilmore party are seen on CCTV footage walking up North Street, away from Delacey's café. The van is depicted as continuing to travel up North Road but just before 2.02pm the van performs a U turn on North Road a short distance before the junction with Northland and then proceeds to travel down North Road again in the direction of centre of Carrickfergus.

[196] At 2.03pm, the two vehicles containing the Gilmore party with the red BMW leading the white Vauxhall Insignia are recorded by the CCTV camera sited on the exterior of the De Courcey Centre being driven along Lancastrian Street/Antrim

Street in the direction of Joymount. Mr Darren McMaw's works van is depicted turning left into Lancastrian Street as the Gilmore party vehicles are depicted turning left from Antrim Street onto Joymount. However, it is clear that as there were no tracking devices fitted to the Gilmore party vehicles, the precise location of the vehicles at any time can only be ascertained as a result of visual sightings by means of CCTV image capture. Therefore, the relative positions of the Gilmore party vehicles and the van driven by Mr Darren McMaw at this time, is, to some extent, a matter of conjecture. Having said that, at 2.05pm the Gilmore party vehicles are captured by a CCTV camera located on the rear of the Danske Bank on High Street which captures images of traffic progressing along Marine Highway. The vehicles, still travelling in the same order, are seen turning right and emerging onto Marine Highway and travelling towards Belfast. At the same time, Mr Darren McMaw's van is captured by the CCTV camera sited on the exterior of the De Courcey Centre being driven along Lancastrian Street/ Antrim Street in the direction of Joymount.

[197] The Crown case is that as Mr Darren McMaw's van would have turned onto Antrim Street, the driver would have had a view onto Marine Highway and would or could well have seen one or both of the Gilmore party's vehicles travelling along Marine Highway. Having carefully studied the photographs of the scene and having visited the scene and observed for myself the view enjoyed by a pedestrian walking along Antrim Street, I am satisfied that although such a sighting is possible, it cannot be said with any degree of certainty that such a sighting did take place. One would have thought that such a sighting would have precipitated a call from Mr Darren McMaw to Mr David McMaw to confirm such a sighting. The analysis of telephone records reveals that Mr Darren McMaw did call his brother Mr David McMaw at 14:06:02 with the call lasting 35 seconds. Therefore, this call coming at this time lends some support to the theory that Mr Darren McMaw did observe the Gilmore vehicles at this time. However, having regard to the limited opportunity for and quality of the view, I cannot conclude that such an observation did definitely take place. The opportunity for a brief sighting did exist and the call made at that time would support the theory that Mr Darren McMaw did see one or more of the vehicles of the Gilmore party.

[198] At 2.06pm, Darren McMaw's van is captured by the Danske Bank CCTV camera emerging and turning right onto Marine Highway and travelling along Marine Highway in the direction of Belfast. The vehicle tracking evidence and the CCTV evidence are mutually supportive strands of evidence confirming the location of the van at this time. At 2.06pm, analysis of mobile phone records yields data which is consistent with the phone ascribed to Mr Darren McMaw being located in an area which includes the route of the van including Joymount.

[199] The Crown case is that the vehicles containing the Gilmore party drove along Marine Highway in the direction of Belfast and then exited Marine Highway via the first roundabout onto Irish Gate/ Albert Road. The vehicles then turned immediately left onto Irish Quarter South and are captured on CCTV camera footage at 2.06pm turning left into and travelling along Irish Quarter South in the direction of



Davy's Street. At 2.07pm, Mr Darren McMaw's van is captured by the same CCTV camera travelling along Irish Gate/Albert Road past the junction between Irish Gate/Albert Road and Irish Quarter South. It is clear that the Gilmore party's vehicles turned left at this junction but Mr Darren McMaw's van proceeded straight up Albert Road. If Mr Darren McMaw had been following the Gilmore party, he lost them at this stage. He obviously did not anticipate their direction of travel over towards Mr Dunlop's father's business premises and he seems to have assumed that the Gilmore party would progress on up the North Road towards the deceased's home at Sullatober Square. Mobile phone records show that Mr Darren McMaw made a call to Mr Kenny Graffin at 14:07:17 and that the call lasted for 51 seconds. Analysis of the records also yields data to indicate that Mr Darren McMaw's mobile phone was in an area in Carrickfergus which included the route taken by his van including Irish Gate/Marine Highway.

[200] It is clear from CCTV footage that when the Gilmore party vehicles emerged from Irish Quarter South onto Davy's Street, both turned right and proceeded along Davy's Street, continuing onto Minorca Place and then Ellis Street. The vehicles are captured on CCTV footage driving past Ivan Kerr Tyres (2b Ellis Street, Carrickfergus) at 2.07pm. and continuing past Marina Motors (83 Ellis Street, Carrickfergus) at 2.08pm. At the same time, Mr Darren McMaw's van is depicted travelling along St Bride's Street and onto North Road. At 2.09pm, CCTV imagery shows the Gilmore party vehicles stopping for a short while on Woodburn Road beside the entrance to the forecourt of the Star Filling Station (10a Woodburn Road) in order to let Mr Joel Dunlop out of the rear driver's door of the red BMW. Mr Dunlop is then seen walking across the forecourt towards his father's business premises and the Gilmore party vehicles then move off along the Woodburn Road.

[201] In the meanwhile, Mr Darren McMaw's van is depicted as progressing along the North Road away from the town centre. At 2.10pm it is depicted approaching the junction with Northland on the left. At the same time, the red BMW which is the lead vehicle of the Gilmore party is seen on CCTV images captured by a camera located at Planet Bingo, 2 Hawthorn Grove, Carrickfergus, turning right off Woodburn Avenue onto Hawthorn Grove. It would seem that this vehicle turned right off the Woodburn Road onto Woodburn Avenue after stopping in front of the Star Filling Station to let Mr Joel Dunlop out of the vehicle. At 2.11pm Mr Darren McMaw's van is depicted progressing straight up North Road towards the T-junction with Middle Road. At the same time, analysis of mobile phone records indicates that Mr David McMaw's mobile was located in an area of Carrickfergus which included Pinewood Avenue and 1 Cherry Walk. Mr Darren McMaw's van is depicted as reaching the junction with Middle Road at 2.12pm. The van then turns right onto Middle Road which then becomes the Marshallstown Road. At 14:12:48, the first 999 call is received indicating that the deceased has been shot. At 14:12:56 mobile phone records reveal that Mr Darren McMaw telephoned Mr David McMaw and that the call lasted 2 seconds.

[202] Mr Darren McMaw's van is then depicted continuing along the Marshallstown Road with the driver having a view to the right over open ground to Sullatober Square. The vehicle then continued along the Marshallstown Road until it reached the junction with Oakfield Drive to the right. The vehicle is depicted doing a U-turn at 2.13pm and then travelling back down the Marshallstown Road and turning left onto the North Road again still at 2.13pm. At 14:13:45 mobile telephone records analysis reveals that a telephone ascribed to Mr Kenneth Graffin made a call to Mr Darren McMaw. This call lasted 24 seconds. At 2.14pm Mr Darren McMaw's van is depicted as having reached the junction between North Road and Northland. At 14:14:46, mobile phone record analysis reveals that Mr Darren McMaw called Mr David McMaw and the call lasted all of one second. At 2.15pm Mr Darren McMaw's van is depicted turning right into Northland and proceeding along Northland. At 2.16pm. Mr Darren McMaw's van is depicted turning left off Northland onto Woodburn Avenue, Carrickfergus. At the same time, mobile phone record analysis reveals that Mr Darren McMaw telephoned Mr David McMaw and that the call lasted 5 seconds. Analysis of mobile phone records for the period between 14:12:49 and 14:22:04 produces data which indicates that Mr David McMaw's phone was located in an area of Carrickfergus including Cherry Walk, Pinewood Avenue and Hawthorn Grove during that time.

[203] Segment 7 (version 2) continues by depicting Mr Darren McMaw's van travelling down Woodburn Avenue and turning left onto Hawthorn Grove and then turning left again onto Hawthorn Avenue before negotiating a 90 degree right hand bend onto Sandes Court. Mobile phone record analysis reveals that there was a call made from Mr David McMaw's phone to Mr Colin Simms' phone at 14:16:59 and that this call lasted 13 seconds. At this time, Mr Darren McMaw's van is depicted turning left onto Sunnylands Avenue and proceeding up towards Northland again reaching the T junction with Northland at 2.18pm. At 14:17:41 mobile phone record analysis reveals that Mr Kenneth Graffin's mobile called Mr Darren McMaw's mobile and the call lasted 1 minute and 39 seconds. Mr Darren McMaw's van is depicted as turning left onto Northlands from Sunnylands Avenue at 2.18pm and then continuing onto Oakwood Road and then Burleigh Drive at 2.19pm. The van is then depicted turning left onto Woodburn Road and then turning left again at 2.20pm onto Woodburn Avenue and continuing along Woodburn Avenue, past the junction with Hawthorn Grove, travelling up to Northland again. At 14:20:19 mobile phone record analysis reveals that there was a call made from Mr Darren McMaw's phone to Mr Colin Simms' phone which lasted 2 seconds. Upon reaching the T-junction with Northland at 2.21pm the van is depicted turning right onto Northland towards the North Road. However, before it reaches this junction, the van is depicted turning right onto Salla Avenue at 2.22pm, executing a 90 degree right turn on Salla Avenue, turning left onto Drumhoy Drive and then turning right onto Bridewell Drive at 2.23pm. The van is then depicted proceeding along Bridewell Drive, turning right onto Sunnylands Avenue and then left onto Sandes Court at 2.24pm.

[204] Segment 7 (version 2) continues with the van travelling along Sandes Court and turning left onto Hawthorn Avenue before turning right onto Hawthorn Grove and then turning right onto Woodburn Avenue at 2.25pm. The vehicle proceeds along Woodburn Avenue until it is near The Birches when, at 2.26pm, the ignition of the van is turned off and it is stationary at this location. Mobile phone record analysis for the period between 2.20pm and 2.46pm yields data which reveals that Mr Darren McMaw's mobile phone was located in an area of Carrickfergus which included Cherry Walk and Pinewood Avenue and that between 14:26:24 and 14:39:05 Mr David McMaw's mobile phone was located in an area of Carrickfergus which included the same specific locations. Segment 7 (version 2) concludes by depicting the location of 1 Cherry Walk which is adjacent to The Birches. Although it is not included in segment 7, it should be remembered that during a police search, a mobile telephone ascribed to Mr William Graham, the partner of Mr McMaw's sister, was recovered and interrogated by the police and a text message was recorded as having been sent to Mr David McMaw's phone, on 13 March, 2017 at 14:22:05. The text stated: "Come back to allys when you can mate." The Crown says that in this text Mr Graham was asking Mr McMaw to make his way back to Ms Alison McKnight's house at 135 Castlemara Drive, Carrickfergus.

[205] It should be remembered that the information contained in this evidential product was in substance put to each of the defendants during their police interviews. As indicated above at paragraphs [35] and [36] above, Mr David McMaw and Mr Brian McLean both chose not to provide meaningful answers to questions focusing on their whereabouts and contacts on the day in question. As is indicated in paragraph [37] above, Mr Darren McMaw initially adopted a more forthcoming attitude and it is important to consider the accounts given by him in light of the information contained in this evidential product.

[206] In relation to the issues of his whereabouts, movements and contacts during the relevant period, it is clear that Mr Darren McMaw's accounts differ from the generally accurate information contained in the evidential product in a number of important respects. Firstly, whereas Mr Darren McMaw informed the police that he spent the Sunday night in Castlemara Drive, it is clear that he spent the Sunday night at 1 Starbog Road and did not leave there until early on the Monday morning. By itself this discrepancy might not seem all that important but it indicates that either Mr McMaw's recollection of where he was the night before the shooting was poor when he gave this account to the police a few days after the shooting or he felt the need to deliberately give false information to the police about this matter.

[207] However, there are much more important discrepancies between the accounts given to the police by Mr Darren McMaw and the information contained in the evidential product relating to his movements and interactions following his return to Carrickfergus at lunch-time on 13 March, 2017, just after he had left his work colleague back home. Mr McMaw's account is that he went to 135 Castlemara Drive in order to pick up his son and take him up to his parents' farm. However, when he got to Castlemara Drive, his sister and her partner Mr William Graham were there

with their two children and so he left his son to play with the other two children and went off to get some food. It was on his way down North Road that he received a call from Mr Lee Andrews informing him of a shooting in Pinewood. He then made his way to Pinewood in order to assure himself that other family members were safe. A detailed summary of Mr Darren McMaw's account of his movements and interactions that afternoon is contained in paragraphs [37] to [46] above.

[208] Having carefully considered the contents of his various interviews and having carefully compared these with the information contained in the evidential product, I am driven to conclude that Mr Darren McMaw's accounts of his movements and interactions which were given to the police were deliberately inaccurate, misleading and evasive. In short, Mr Darren McMaw lied to the police about his movements and interactions on the afternoon of the killing. One example graphically illustrates this. Mr Darren McMaw when interviewed by the police stated that he had left Ms Alison McKnight's house to get food and was driving down the North Road when he was informed of the shooting in a call received from Mr Lee Andrews. He then diverted into the Woodburn estate to make sure his family was safe. The first 999 call was made just before 2.13pm. The court can assume that if Mr Darren McMaw was informed about the shooting by telephone call then this call would also have been made on or after 2.12pm. The only calls Mr Darren McMaw received after 2.12pm. were calls from Mr Kenneth Graffin at 14:13:45 (duration 24 seconds) and 14:17:41 (duration 1 minute 39 seconds). There is no evidence that he received a call from Mr Lee Andrews or indeed make a call to Mr Lee Andrews at any stage between 13 February, 2017 and 14 March, 2017. Mr Darren McMaw lied about receiving a call from Mr Lee Andrews. However, the fact that I have concluded that Mr Darren McMaw lied to the police about his movements and interactions on the afternoon of the killing does not establish that he is guilty of the offences with which he is charged. I cannot exclude the reasonable possibility that he lied simply to distance himself from involvement in the feud which was ongoing between the UDA factions in Carrickfergus at that time.

[209] I accept that the van that he was driving turned right off North Road onto Northland at approximately 2.15pm. If one assumes that some credence can be attached to Mr Darren McMaw's claim that he turned into the Woodburn estate as a result of receiving information about the shooting during a phone call then he must have received that information during the first call he received from Mr Kenneth Graffin at 14:13:45 (duration 24 seconds) or during one of the two calls he made to Mr David McMaw at 14:12:56 (duration 2 seconds) and 14:14:46 (duration 1 second). The duration of each of these two calls to his brother is so short as to render it unlikely that meaningful conversation took place during either call. However, this analysis is largely academic in that I consider that little store can be placed in Mr Darren McMaw's claim that he diverted from his intended course because he received information during a phone call about the shooting.

[210] The admission by Mr Darren McMaw to the police that he drove up past the deceased's house to "take a look" is compelling evidence which supports the Crown

case that his motive for lying to the police about his movements and interactions that afternoon was to hide the true nature and extent of his involvement in attempts to locate the whereabouts and track the movements of the Gilmore party on the afternoon in question. His established movements and interactions that afternoon particularly the two visits up onto the Marshallstown Road and his passage along Lancastrian Street can only reasonably be explained on the basis that he was attempting to locate the whereabouts and track the movements of the Gilmore party on the afternoon in question. His established mendacity in his police interviews equally can only reasonably be explained by reason of his desire to hide the true nature and extent of his involvement in attempts to locate the whereabouts and track the movements of the Gilmore party on the afternoon in question.

[211] These conclusions clearly have an important bearing on other aspects of this case. For instance, they certainly have a bearing on the issue of the rationale behind Mr Darren McMaw's decision to perform a factory reset on his mobile phone prior to handing it back to his employer and the court's assessment of the content of the chain of calls starting with Mr Michael Lowry and ending with Mr David McMaw which is discussed in detail at paragraphs [186] to [190] above. These conclusions clearly strengthen the Crown argument that the mobile phone which was being used by Mr Darren McMaw was reset to dispose of relevant evidence and they also strengthen the circumstantial case made out by the Crown in respect of the purpose behind and content of this chain of calls referred to above. The one nagging doubt I have about this matter is the agreed fact set out in sub-paragraph (o) of paragraph 39 of the Admissions dated 19 December, 2018 which is discussed in paragraphs [186], [189] and [193] above. "At 13:52:09, DDR data from David McMaw's 0088 telephone was consistent with the phone being in the area of Carrickfergus which included Pinewood Avenue and 1 Cherry Walk." This is just 11 seconds before the start of the call allegedly made by Mr Irons to Mr David McMaw. The Crown case is that Mr David McMaw was in the van with his brother when he received this call and that after the call, he then immediately imparted information to Mr Darren McMaw which resulted in him turning on the ignition in the van and moving off from 135 Castlemara Drive. Paragraph 39 (o) of the Admissions does not appear support this theory. I appreciate that the contents of the text from Mr William Graham to Mr David McMaw does indirectly lend some support to the Crown theory in that if he is being asked to make his way back to Alison McKnight's house after the shooting, that suggest he was in the house at some stage before the shooting.

[212] Having given these specific issues anxious and careful consideration, and having concluded that the movements of Mr Darren McMaw in his van are only reasonably consistent with him attempting to locate the whereabouts and track the movements of the Gilmore party, and having reached this conclusion by paying particular regard to his transits along the Marshallstown Road and Lancastrian Street, I am compelled to conclude that Mr Darren McMaw's choice of route along Lancastrian Street can only have been as a result of his receipt of information about the presence of the Gilmore party on Lancastrian Street and that this information can only reasonably have come from Mr Lowry. In essence, Mr Darren McMaw's very

peculiar pattern of movements in his works van that afternoon coupled with his lies about what he was doing that afternoon, convince me beyond a reasonable doubt that information about the whereabouts and movements of the Gilmore party was passed through a chain from Mr Michael Lowry to Mr Darren McMaw via Mr David McMaw even though at 13:52:09, DDR data from David McMaw's 0088 telephone was consistent with the phone being in the area of Carrickfergus which included Pinewood Avenue and 1 Cherry Walk which was just 11 seconds before the start of the call made by Mr Irons to Mr David McMaw. No other rational or plausible explanation explains Mr Darren McMaw's movements after this chain of calls.

[213] That is not to say that any information about the location of the Gilmore party which was passed through the chain of calls was in furtherance of a plot to kill or seriously injure the deceased. Nor does the above conclusion necessarily lead to a finding that Mr Darren McMaw's movements and interactions either before or after this chain of telephone calls were performed by him in furtherance of a plot to kill or seriously injure the deceased or anyone else for that matter.

[214] On 9 January, 2019, at the close of the Crown case and following my rejection of the *Galbraith* application by the third-named defendant that there was no case to answer, I addressed the three Senior Counsel for the three defendants and made the appropriate inquiries under Article 4 of the Criminal Evidence (Northern Ireland) Order 1988 and I was informed that none of the defendants intended to give evidence and that no evidence would be called on their behalf. The question for the court to consider is what if any inferences is it proper to draw from the defendants' decisions not to give evidence in their defence in this case.

[215] Given that I have concluded that I do not accept the accounts of Mr George Gilmore Junior, Mr Mateusz Ostrowski and Mr Stephen Boyd in relation to the actions of Mr David McMaw and Mr Brian McLean in the immediate lead up to the shooting as being truthful accounts, I do not consider that it would be proper to draw any adverse inferences from the decisions made by Mr David McMaw and Mr Brian McLean not to address the specific allegations arising out of the discredited evidence of these three individuals. However, I do consider that the other strands of circumstantial evidence adduced by the prosecution in this case in respect of the actions of all three defendants clearly call for answers from the defendants. The question is whether the only sensible explanation for their silence is that they have no answers or none that would bear examination.

[216] Mr Darren McMaw initially did attempt to give an account of his movements on the day of the shooting to the police and I have concluded that his account during interview does not bear examination. I am, therefore, able to conclude that if he had given evidence at the trial, his evidence would similarly not have borne examination. Can I legitimately and fairly conclude that any evidence given by the other two defendants at the trial would not have borne examination and that this explains their failure to give evidence? When considering these questions, I am of the view that

there are two other matters which are relevant. Firstly, both these defendants were untraceable for a number of days following this shooting, despite the fact that the police were actively searching known addresses for them. This period of time would clearly have allowed for a “decontamination” process to have been completed in relation to firearms residues and other forensically significant materials such as fibre deposits. Secondly, both these defendants decommissioned and put beyond the reach of the police the mobile telephones that were in use in the lead up to this shooting and in the immediate period thereafter. This is not a case of defendants simply saying nothing. This is a case of suspects (at least insofar as their phones are concerned) deliberately taking steps to ensure that the phones in question were never made available for forensic examination. In such circumstances, and having regard to their unexplained conduct in the aftermath of this shooting, I conclude that I am also entitled to draw adverse inferences against these two defendants arising out of their decisions not to give evidence in their defence at this trial in relation to the evidential strands put before the court by the Crown other than in respect of the evidence of Mr Gilmore junior, Mr Ostrowski and Mr Boyd.

[217] Bringing all the strands of cogent evidence together, in relation to the defendant David McMaw, the clear animus that existed between the Gilmore faction and the faction with which Mr David McMaw was obviously associated, the conversation with Constable Taylor before the killing, the text from William Graham after the killing, his unexplained disappearance after the killing, his decommissioning of his mobile phone, his behaviour in front of the two workmen working at his partner’s house in the hours before the killing, his presence in the vicinity of the killing when it took place, the nature, extent and pattern of his telephone contacts during the relevant period, his likely face to face contacts with the other defendants including his likely presence in Castlemara Drive and in Mr Darren McMaw’s van coupled with the proper adverse inference to be drawn from his failure to give evidence at trial raise the index of suspicion in respect of this Defendant to a very high level but careful and anxious scrutiny of the evidence does not allow me to conclude beyond a reasonable doubt that Mr David McMaw was in possession of a gun that day or that he was the gunman who aimed shots at the car in which the deceased, Mr Stephen Boyd and Mr Kelvin Graham were present on 13<sup>th</sup> March, 2017. I, therefore, find the defendant Mr David McMaw not guilty of each of the charges faced by him.

[218] In relation to the defendant Brian McLean, the circumstantial case against this defendant is somewhat weaker than the circumstantial case against Mr David McMaw. There are the matters of his presence in the vicinity at the time of the shooting, his disappearance thereafter, the decommissioning of his phone and the UDA memorabilia and clothing found in his home, the limited evidence as to the nature, extent and pattern of his telephone contacts during the relevant period, and his possible face to face contacts with the other defendants coupled with the proper adverse inference to be drawn from his failure to give evidence at trial and these matters clearly raise the index of suspicion to a significant level in respect of this defendant but not to a level approaching the criminal standard of proof in respect of

the charges faced by him and I therefore find him not guilty in respect of each of those charges. Having regard to my factual findings, I do not consider that there is any basis upon which a charge of unlawful act manslaughter could be made out against this defendant.

[219] In relation to the defendant Darren McMaw, again in his case, the clear animus that existed between the Gilmore faction and the faction with which Mr Darren McMaw was obviously associated, his unexplained disappearance after the killing, the factory resetting of his mobile phone, the very peculiar route traced by his van on the afternoon in question including the presence of the van on the Marshallstown Road and Lancastrian Street, Carrickfergus, the extent and pattern of his telephone contacts during the relevant period, his likely face to face contacts with the other defendants including his likely presence in Castlemara Drive and at locations proximate to the addresses of the other two defendants coupled with the proper adverse inference to be drawn from his failure to give evidence at trial and his giving of an account to the police which was materially false, raise the index of suspicion in respect of this defendant to a very high level. I am satisfied beyond a reasonable doubt that on the day in question this defendant was engaged in attempts to locate the whereabouts and track the movements of the Gilmore party on their return from court in Belfast. However, careful and anxious scrutiny of all the evidence does not allow me to conclude beyond a reasonable doubt that Mr Darren McMaw's engagement in this exercise which did take place was in furtherance of a plot to kill or seriously injure the deceased or anyone else for that matter, either with one, other or both of the other defendants or with another or others unknown. I, therefore, find him not guilty of all charges. Having regard to my factual findings, I do not consider that there is any basis upon which a charge of assisting offenders under section 4 of the Criminal Law Act Northern Ireland) 1967 could be made out against this defendant.

[220] Nothing I have said in this judgment can and should be interpreted as diminishing in any way the horror of the events actually witnessed by Mr Gilmore junior, Mr Ostrowski and Mr Boyd on the afternoon of 13 March, 2017. The shooting of the deceased was a wholly unjustified, despicable act committed in broad daylight on a road in the middle of a densely populated estate. It happened just after 2.00pm when very young children were making their way home from the nearby primary school with their parents and carers. It was an utterly reckless attack which put at grave risk the lives of others completely unconnected in any way with any feud or power struggle between UDA factions in Carrickfergus. This recklessness is graphically illustrated by the fact that one of the bullets fired from that 9 mm handgun that afternoon punched its way through the glass panel of the front door of 61 Pinewood Avenue and ricocheted off the newel post of the bannister of the staircase before lodging in a wall beside the staircase. Anyone standing behind that front door or on the stairs in that house would have been killed or seriously injured by this reckless disregard for human life. When is this society going to finally realise that these self-styled paramilitary organisations are nothing other than a cancer feeding off the deeply rooted tribal fears of the communities in which they operate



and that resorting to the use of a gun solves absolutely nothing and only serves to engender further violence and the further perpetuation of hatred?