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IN HER MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

—————
REGINA

v

CHRISTINE CONNOR

[Appeal against conviction]

—————
Before: Morgan LCJ, McCloskey LJ and Scoffield J
—————

Representation

Appellant: Mr Tim Moloney QC and Mr Conor O’Kane, of counsel (instructed by Carlin Solicitors)

Respondent: Mr Liam McCollum QC and Mr Robin Steer, of counsel (instructed by the Public Prosecution Service)

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Preamble

In the trial papers, the judgment of the trial judge and the appeal papers various civilians are identified by name. To the knowledge of this court none of them has been convicted of any offence arising out of the events relating to the convictions of the Appellant. The name of one of these persons, who is now deceased, appears with particular frequency. In this judgment we have employed the cipher “D” to describe him. We have not considered it necessary or appropriate to identify any of the other civilians.

McCLOSKEY LJ (delivering the judgment of the court)

Introduction

[1] On 29 July 2020, following a non-jury trial, Christine Connor (“*the Appellant*”) was convicted of the following offences:

- (i) The preparation of terrorist acts between 01 February 2013 and 30 May 2013, contrary to section 5(1) of the Terrorism Act 2006.
- (ii) Causing an explosion likely to endanger life or cause serious injury to property on 16 May 2013, contrary to section 2 of the Explosives Substances Act 1883.
- (iii) Causing an explosion (*etc*) on 28 May 2013, contrary to the same statutory provision.
- (iv) The attempted murder of Constable Polley on 28 May 2013, contrary to Article 3(1) of the Criminal Attempts and Conspiracy (NI) Order 1983 and common law.

These represented the first, third, fourth and sixth counts in an indictment comprising six counts altogether. The Appellant was not convicted of the other two counts (the second and fifth) which alleged possession of explosive substances on the same dates as the causing explosions counts, namely 16 May and 28 May 2013. The appeal to this court is against convictions (ii) and (iv), i.e. the first and fourth counts. Convictions (iii) [unchallenged] and (iv) [appealed] arose out of the same facts, constituting a single transaction.

[2] On 20 August 2020 the Appellant was punished by 20 years’ imprisonment plus an extended custodial period of four years in respect of the first count and, with regard to the second and third counts, 15 years’ imprisonment (each) to operate concurrently with the lead sentence.

[3] The Appellant appeals to this court against the two aforesaid convictions and sentence. This being a “Diplock” case the appeal does not require the prior leave of the court. A singular feature of these proceedings is that the Director of Public Prosecutions (“*DPP*”) has referred to this court the Appellant’s sentence pursuant to section 36 of the Criminal Justice Act 1988. Thus whereas the Appellant maintains that her sentencing was manifestly excessive, the DPP contends that it was unduly lenient. The court’s adjudication of these linked proceedings relating to the sentence imposed on the Appellant is in a separate judgment.

[4] The history of these proceedings also has a singular feature. On 03 May 2017 the Appellant pleaded guilty to all three counts and received an extended custodial sentence of 16 years and four months, with an extended licence period of three years and eight months. On appeal to this court her convictions were quashed due to reservations concerning her pleas of guilty – see [2018] NICA 49 – and a retrial was ordered. The appeals to this court follow upon her retrial.

The Prosecution Case

[5] The following overview is distilled from the "Prosecution Summary of Facts", a document presented to the trial judge by prosecuting counsel at the outset of the trial, together with the transcript of counsel's opening presentation. The prosecution case was that the Appellant's guilt would be proved beyond reasonable doubt on the basis of "*a wealth of circumstantial evidence*". The importance of considering all of the components of the notional chain in their totality was emphasised. With regard to the specifics, counsel stated the following (in summary): from the beginning of February 2013 the Appellant embarked on a terrorist path, beginning with the preparation of explosive devices, namely pipe bombs, with the intention of launching attacks on members of the security forces; she "*researched*" pipe bombs and purchased component parts from outside the jurisdiction; prior to 16 May 2013 she engaged in a pipe bomb explosion "*practice run*"; she was directly involved in the pipe bomb explosions which occurred on 16 May 2013 and 28 May 2013; the evidence of her commission of these two offences included hoax 999 calls and "*computer evidence*"; with specific reference to the second of the causing an explosion counts there was CCTV evidence, forensic evidence, telephone evidence, DNA evidence (particularly in relation to a Tesco shopping bag), a mobile phone, black gloves, a hooded top, two ladies' boots and a mobile phone recovered from the side garden of 801 Crumlin Road, Belfast in close proximity to the location of the pipe bomb attack, together with the contents of online communications and telephone text messages; the "*practice run*" was evidenced by a movie file recovered from the Appellant's computer; this was an audio visual file involving a voice attributed to the Appellant; the Appellant operated a Facebook account in a name other than hers ("*Kate McAuley*"); a paper entitled "*United Struggle*" was created on the Appellant's laptop; the recorded address of "*Kate McAuley*" was the same as that of the Appellant; the PayPal account relating to this paper was registered by the Appellant; and the Appellant had engaged in multiple Google searches relating to bomb materials.

[6] As regards the first of the dates, 16 May 2013, the prosecution case, in brief outline, was that at 02.11 hours a hoax 999 call was received by the police. A caller identified a specific location where she had seen a possible bomb, namely a metal tube 6 or 7 inches long with something protruding from the top. The police response was not immediate. Two explosions on the roadway, accompanied by a large plume of smoke, followed. Descriptions of what they heard and saw were provided by various civilian witnesses and there was also CCTV evidence (which was played to this court). One witness described a "*slightly larger than average female*" walking from the direction of the explosions towards the Appellant's home. The prosecution case that the Appellant was both the caller and the attacker was, more specifically, based on expert voice analysis evidence of a mobile phone and a "*Practice Run*" audio visual movie file stored on a laptop, both recovered from the Appellant's home in a

police search on 29 May 2013. The movie file was created on 02 May 2013 and saved to the laptop on 14 May 2013. The attendance of police at the scene of these explosions did not occur until approximately one hour later. There was also evidence of a Facebook conversation involving the Appellant in the aftermath of the explosions on 16 May 2013. In this she stated that two pipe bombs had exploded, they were powerful, they literally blew apart and their fragments scattered "... as far away as about half a mile ...". She also lamented that she had left a mobile phone at the scene.

[7] Prosecuting counsel summarised the evidence grounding the two counts relating to 28 May 2013 in the following way. Police officers were lured to the scene by a hoax 999 call; a pipe bomb attack was perpetrated against the two police officers who attended the scene in response; there was an explosion and ensuing material damage and widespread metal debris; the maker of this hoax call, based on voice ID, was the Appellant and it can also be linked to the "*Practice Run*" video; gloves and a Tesco shopping bag recovered from the scene bore her DNA; a SIM card found in the shopping bag related to a mobile phone recovered from a nearby alley which was connected to the Appellant through the SIM and the MIEI history; imprints of dog faeces at the scene matched the imprints from boots later recovered from her home; CCTV evidence showed a heavily built female with dark hair, attired in a distinctive top and black boots and carrying a bag in the nearby area prior to the explosion; CCTV evidence following the explosion showed the same person walking in the general direction of her home, carrying no bag; and a hooded top with the Appellant's blood was recovered a short distance from the scene of the explosives attack. Various items found either at or adjacent to the scene of the bombing were linked to the Appellant - a bag, a phone, black woollen gloves, a hooded top, two ladies' boots, a shoe imprint and a mobile phone; the hoax 999 call was made from the latter.

[8] There was a substantial quantity of evidence relating to the conduct of the Appellant during a period of some three months preceding the events of 16 and 28 May 2013. The prosecution case was that this demonstrated the Appellant's adherence to a terrorist path which had the twin goals of constructing the explosive devices and undertaking the attacks which occurred. This evidence *inter alia* connected her with the "United Struggle" ("US") organisation; identified her use of several aliases, as the operator of PayPal, mobile phone and Facebook accounts; and demonstrated extensive internet researches for items and components designed to be used in the construction of explosive devices - including fuses, aluminium powder, potassium nitrate, ammonia powder, potassium perchlorate, detonators, blasting caps and copper pipes. This activity intensified during April 2013. There was also extensive evidence of the Appellant's direct involvement in Facebook conversations with one particular person ("D") relating to the acquisition and delivery to her of the necessary component parts. All of this evidence had a bearing on the four counts of which the Appellant was convicted.

Defence Statement

[9] The Defence Statement may be summarised thus:

- (i) The Appellant did not know D and at no time communicated with him.
- (ii) The laptops and phone recovered from her home did not belong to her and had never been used by her.
- (iii) She was neither responsible for nor involved in any of the events on the two relevant dates.

These denials were followed by some positive assertions:

- (iv) The Appellant walked daily at irregular times in the vicinity of the attempted murder/pipe bomb attack on police on 28 May 2013, having attended Weight Watchers for some 5 to 6 weeks previously.
- (v) There is no dispute about the various materials recovered from the Appellant's home when searched.
- (vi) The Appellant and her mother had been active members of "Republic Network for Unity" ("RNU") in 2012/2013: *"... there would have been frequent visitors to the family home ... RNU in North Belfast met weekly at their home. In addition, a group supporting Cougus Republican Prisoners would also meet there"*.
- (vii) The Appellant was prosecuted for *"... her part in a street performance in 2012 outside the offices of the Alliance party in North Belfast"*.
- (viii) In September/October 2012 the Appellant *"... attended a well-publicised camp out in West Belfast ... organised by RNU in support of Republican prisoners"*.
- (ix) In December 2012 the Appellant *"... attended a protest outside Bishop Street Court House in Derry ... organised by RNU to highlight the case of a Derry republican alleged to have had links to ONH. She travelled there and back in the vehicle of C who is alleged by police to have been the OC of Belfast's ONH. During the protest a number of pairs of gloves were purchased by RNU leaders from a nearby Pound shop to enable activists to keep warm. These gloves were distributed by the [Appellant] to the protestors"*.

The Defence Statement also canvassed the possibility that either of two named persons was, or both were, involved in the events giving rise to the charges preferred against the Appellant.

[10] The evidence included a written statement of the Appellant, in manuscript and dated 30 May 2013, provided to the police during the phase of her interviews. This contains the following material assertions: she had been attending a Weight Watchers group for some five to six weeks; linked to this, she had a daily walking routine embracing specified locations at irregular hours; during “*the night of 27 May or the early hours of 28 May 2013*” she was out walking; she walked down the Ligoniel Road onto the Crumlin Road and then along specified other routes; her journey home began at the Ardoyne Shops on the Crumlin Road; when walking past an off licence on the Crumlin Road she heard two loud bangs; she dropped her phone; a lady from a nearby residence opened a window and spoke to her; a male and female couple came out of another residence and also exchanged conversation with her; she suffered a cut to her hand caused by “*flying debris*”; she did not “*see*” the scene of the explosion; she observed the approach of police land rovers; someone shouted “*take cover*”; she crossed the road and continued on her pedestrian journey home; she was wearing a grey blazer, a white top displaying a heart and cross; blue jeans and black boots; she attributed any blood on her white top to her cut finger; and finally:

“I acknowledge that there was a note in my property written by me on the pretext that should I be jailed in respect of another matter my mother could contact my friends ...”

[11] This statement is confined exclusively to the events of the second of the dates of the alleged offending. It is silent as regards the first.

[12] In police interviews the Appellant said nothing, with one exception. She admitted that the hooded top was hers and claimed that she had been out for a walk as part of her Weight Watchers programme.

Judgment of the trial judge

[13] The judge noted, at the outset, that the prosecution case against the Appellant was based on “*a combination of circumstantial, physical and forensic evidence*”. Elaborating, he observed that the case was based “*primarily on circumstantial evidence*”. He summarised the circumstantial evidence in these terms:

- (i) Computer, mobile telephone and social media online communications between the Appellant and a male person (D) who had been her co-accused prior to his suicide, evidencing the sourcing of constituent parts for explosive devices and the planning and preparation of the attacks.
- (ii) Opportunity to commit the attacks, physical proximity to the critical events and motive.

- (iii) Physical/scientific/forensic/CCTV evidence connecting the Appellant to the critical events.
- (iv) DNA evidence.

The prosecution case also relied upon the asserted failure of the Appellant without good cause to “... *mention facts which she could reasonably have been expected to mention in interview with police*”.

[14] The judge, having noted the outline of the Defence Statement (above), then formulated the following self-directions:

- (i) The prosecution has the burden of establishing the guilt of the Appellant.
- (ii) The standard of proof is beyond reasonable doubt, i.e. “... *proof that leaves the court firmly convinced of the defendant’s guilt*”.
- (iii) The case must be decided only on the evidence adduced.
- (iv) Separate consideration must be given to each of the six counts on the indictment, with a separate verdict for all.
- (v) The familiar *Exall* direction in respect of circumstantial evidence applies. Thus the combination of several strands of evidence may be of sufficient strength.
- (vi) Circumstantial evidence must be examined narrowly and with particular care. Special attention must be paid to circumstantial facts which tend to establish innocence and, more importantly, are inconsistent with guilt: any such evidence is “*more potent than all the other circumstances*”.
- (vii) Circumstantial evidence must be examined as a whole rather than piecemeal.
- (viii) While the court is obliged to have regard to all expert evidence adduced, it is not bound to accept it and any such evidence must be considered in conjunction with all other evidence adduced.

(See [16] – [17].)

[15] At [18]ff the judge began his summary of the evidence adduced. He noted firstly the items recovered from a search of the Appellant’s home on 29 May 2013: a t-shirt of a design similar to that worn by the Appellant (per CCTV footage) walking in the vicinity of the second bombing incident on 28 May 2013; a Dell laptop; a Sony

mobile phone; and a Compaq laptop, all located inside a mattress and accessed by a cut in the material. Next he noted the two laptops and two mobile phones recovered from a search of D's home on 30 May 2013.

[16] At [22]ff the judge outlined evidence bearing on the events of 16 May 2013: the hoax 999 call at 02.11 hours from a mobile phone by a female person claiming to live at 179 Ligoniel Road; the caller's description of a metal tube device situated on her neighbour's wall at 176 Ligoniel Road; two large explosions on the Ligoniel Road at or about 02.20 hours; the arrival of two police officers at the scene at 03.20 hours; a local resident's description of a slightly larger than average female walking along Mill Valley Road from the direction of Ligoniel Road; two texts transmitted from the mobile phone to D's mobile phone on 15 and 16 May 2013, the latter timed three minutes prior to the hoax call; the "*Practice Run*" video recovered from the Dell laptop DY8, made on 23 April 2013 and relating to a female person's transit from Mill Valley North to its junction with Ligoniel Road; the author's discussion of two possible hiding places from which objects could be thrown onto the road as police passed by; her further reflection on utilising an area to the right corner of a junction fronting the Health Centre and the relative advantages of this option; the words recorded at the end "*Right, so that's us, that's more or less our partial plan*"; the accessing of this video file on computer DY8 on 14 May 2013; the discovery of two thirds of this video file on D's mobile phone, saved on 02 May 2013; and a further movie file recovered from D's mobile phone last opened on 11 May 2013 depicting a female walking around the Appellant's home giving a commentary.

[17] The judge then turned to consider the **voice analysis** evidence provided by two expert witnesses. This related to the hoax calls made on the two dates, the "*Practice run*" video file, the second video file, the recordings of eight telephone calls made by the Appellant when in custody, between 30 May and 04 June 2013 and, finally, an extract from a voice recording made during police interviews. The experts produced a joint report.

[18] The analytical tools employed by the experts included careful personal listening and computer based acoustic testing. They confined their evidence to voice samples which they considered "*adequate for analysis*", excluding others. They compared these voice samples with "*known recordings*" of the Appellant's voice. Their analysis gave rise to substantial similarities in relation to voice quality, voice pitch, segmented features and vowel formation. No significant differentiating features were identified. The overall combination of features common to the voice samples tested and the Appellant's known voice samples was rated "*highly distinctive*", the second highest rating in a hierarchy of five. Applying a new scale of ratings developed post-2013, there was "*very strong support*" for the analysis that the voice examined in all of the recordings was that of the Appellant, with one exception: as regards the hoax call of 28 May 2013 the rating was that of "*moderate support*".

[19] The judge noted the experts' acknowledgement that voice analysis is a developing field; it is a less exact science than DNA or finger print evidence; it does not yield evidence as potent as DNA evidence; neither voice nor speech is unique to the individual; both can change and be modified; unlike DNA they do not retain stability with the passage of time; the audio and auditory method employed is widely recognised as an appropriate form of speech analysis; no database of Belfast accents had been considered in the compilation of the joint report; one of the joint experts had over 35 years familiarity with Belfast accents; and some of the segmented features of the accent analysed were common to the Belfast area while others were not.

[20] At [46] – [51] the judge set forth his "*conclusions on voice analysis*". Having highlighted a series of features of the voice recordings, the first conclusion made by the judge was that "... *the auditory phonetic and quantitative acoustic analyses adopted by the experts was appropriate and reliable*". Second, he accepted the experts' evidence relating to voice similarities. Third, he accepted their "*very strong support*" conclusion (*supra*). Fourth, he accepted their "*moderate support*" opinion relating to the recording of the hoax call of 28 May 2013.

[21] The judge further considered that the "*Practice Run*" video recording provided support for the experts' view that the narrator was the Appellant, given that this recording begins with the maker having just left the Appellant's home and ends where the incident of 16 May 2013 occurred.

[22] The next chapter of the judgment is entitled "*Preparation of Terrorist Acts*", which can be linked to the third count on the indictment. The judge noted that the evidence relating to research into the manufacture of improvised explosive devices, the sourcing of component parts and their purchase emanated from text, email and social media content on computers and mobile phones recovered from the homes of the Appellant and D. The most concentrated period of activity dated from mid-April 2013. He then summarised the defence riposte which was, fundamentally, the asserted absence of evidence – in particular fingerprint or other forensic evidence – linking the Appellant with the explosives devices allegedly employed. It was further sought to distance the Appellant from the communications with D.

[23] The judge then examined in a little detail the technical evidence – much of it uncontested – relating to the two laptops and mobile phone found by police in their search of the Appellant's home and the two identified mobile phone numbers. The interrogation of these devices uncovered a series of online identities and phone numbers, to which the Appellant was linked, during the period of some months preceding the two incidents in May 2013. *Inter alia*, references to the United Struggle organisation ("US") were recovered. Various text and social networking communications between the Appellant and D were also uncovered.

[24] The next discrete subject considered by the judge was "*Planning and preparation phase*": see [76] – [105]. He identified the relevant period as February to

May 2013. He noted the evidence relating to *inter alia* pro-Republican and anti-British conversations; the “US” paper created on one of the laptops recovered from the Appellant’s home; the “US” badges delivered to her home; photographic images from the Appellant’s mobile phone showing the dismantling of a table lamp or similar object to extract a hollow piece of metal tubing; photographs from the same mobile phone of the viewing on a laptop of an article concerning a pipe bomb and timer switch; Google searches focusing on blast bombs and bomb making, of a sustained nature during April and May 2013; searches for incendiaries, explosives, chemical fertiliser and related goods; the purchase of potassium perchlorate by D on 20 April 2013; the purchase by D of two heavy tubular extended nipples and four BS pipes and caps on 21 April 2013; the uploading of the “Practice Run” video recording from the Sony mobile phone to one of the laptops seized at the Appellant’s home; a series of communications between the Appellant and D on 02 and 03 May 2013 relating to the acquisition of pipes, metal caps, good quality aluminium powder, potassium perchlorate and a fuse; the accessing of the “Practice Run” video recording on 14 May 2013, some 26 hours prior to the first of the explosions on 16 May 2013; text messages exchanged between the Appellant and D during the three hours immediately preceding the explosion; a text message from the Appellant to another person some 11 hours after the event describing “two massive explosions last night [which] the media hasn’t picked ... up”; further text and Facebook messages during the following hours relating to the explosions, the hoax call, the potency of the pipe bombs and the possibility of trying to lure the police to the scene again; a text message on the same date from D to the Appellant stating “... he knew he could build some shall we try and do some more?”; the purchase by D on 17 May 2013 of more potassium perchlorate, iron barrel nipples and pipe fittings; and the evidence of posting on 10 May and 23 May.

[25] The following section of the judgment, at [106] – [116], entails the judge’s consideration of the “second incident – attempted murder/explosions – 28 May 2013”. The evidence outlined by the judge in these passages related to *inter alia* the hoax 999 call at 02.12 hours on 28 May 2013 and the related “moderate support” evidence of the voice analysis experts; a motorist’s description of a heavily built lone female person walking up the Crumlin Road in the direction of Ligoniel Road at around 02.10/02.15 hours; the undisputed evidence that this person was the Appellant; the further undisputed evidence of a resident conversing with the Appellant on the Crumlin Road immediately following the explosion; and the sighting of a male person running across the Crumlin Road in the vicinity of the explosion.

[26] The judge next described the activities of police officers at the scene of the explosion on 28 May 2013. Two officers, Constables Polley and Bartlett, responded to the hoax call, attending the scene at 02.21 hours. They went directly to 797 Crumlin Road. Constable Polley had concerns about a possible attack from the adjacent alley and had begun to check this with his torch whereupon he heard a fizzing noise and a loud metallic clump on the ground. An object had been thrown from the direction of the alley, landing a couple of inches from his right foot. He fled running, falling to the ground at the same time as the detonation of the first explosion. He saw a

person in the alley whom he initially described as a male. As he rose to his feet he heard another metallic clump and had just taken shelter inside a second alley, on the opposite side of the road, when he heard another loud explosion. A call made to a television organisation some seven hours later came from a location and mobile phone and used a codeword, all of which was indicative of connections with D.

[27] The judge then summarised the CCTV evidence. This depicted *inter alia* a female person closely resembling the Appellant by reason of heavy build and clothing on the Crumlin Road, Ardoyne Road and Ligoniel Road between 00.58 hours and 02.32 hours. This person was carrying a large, square shopping bag similar to the Tesco bag recovered from the garden of 801 Crumlin Road adjoining the alley way from which the pipe bombs were thrown. The two explosions occurred at 02.22 and 02.28 hours. The CCTV depicts a female person walking up the Ligoniel Road (i.e. away from the scene) who is seen to be checking her hands and stops a few times, looking backwards in the direction of the explosions. She was wearing a distinctive top and dark boots, each similar to those seized from the Appellant's home by police two days later. In the post-explosion footage she is no longer carrying the Tesco bag.

[28] The judge next noted:

- (i) Evidence of the forensic scientific examination of various items of metallic debris recovered from the scene, which revealed potassium and perchlorate ions on one of the items.
- (ii) Evidence from Professor Crane, the Northern Ireland State Pathologist, relating to the potential for serious injury and death posed by pipe bomb devices.
- (iii) The scientific examination of a dark blue hooded top recovered from a skip positioned at the opposite end of the relevant alley (the most obvious escape route for any fleeing attacker) revealing three blood stains containing a DNA profile matching that of the Appellant.
- (iv) The forensic evidence that the dog faeces on the ground in the alley photographed by police in the aftermath of the explosions matched the imprint of the outsole of a right ladies' female boot recovered during the police search of the Appellant's home. DNA analysis of blood staining on the inside heel of both boots provided full profiles matching that of the Appellant. *Ditto* the DNA profiles from the inside of a black pair of woollen gloves recovered from the scene, the collar and cuffs of the dark blue hooded top and the inside top of the aforementioned boots. The expert evidence was that this combination of characteristics would be expected to arise in fewer than one in a billion females unrelated to the Appellant.

- (v) The forensic examination of the Tesco bag revealing DNA profiles with a major and minor contributor, the opinion being that it was around one billion times more likely that the major contributor was the Appellant than someone unrelated to her. [This concerned the smaller plastic bag found inside the Tesco bag.]
- (vi) The forensic examination of three areas of the Nokia mobile phone: its receiver, the phone edges and the SIM card. As regards the first and second, it was far more likely that these DNA profiles would be obtained if there were DNA from the Appellant (and her mother) rather than if it had originated from persons unrelated to them. There was no meaningful evidence associating the Appellant with the DNA profile taken from the SIM card.
- (vii) The evidence that the Nokia device was the mobile phone used to make the hoax call to police on 28 May 2013. This device's number was an unregistered Vodafone 'pay as you talk' number and was connected for the first time on that date. Based on this mobile number, its SIM card number and its IMEI number, connections were made to establish that the Appellant had made at least one previous call from this device, on 27 February 2013. The different mobile number used when this call was made was found in the contacts list of a different mobile phone device (Sony) found hidden in the mattress when police searched the Appellant's home on 29 May 2013. This number was also stored in D's mobile phone and there was a large number of messages between the two.
- (viii) The SIM card for another telephone number associated with the Appellant was used in the Nokia device on 27 May 2013. The contacts list on the Sony device included one ("Mummy") with the aforementioned mobile number.
- (ix) One of the laptops seized at the Appellant's home contained Facebook conversations between her and D apparently some hours after the attack on 28 May 2013 and a Facebook conversation between the Appellant and BC on the same date, the contents of which readily point to the pipe bomb attack.
- (x) On 29 May 2013 there was a unilateral Facebook communication between D and "Cait", D stating that he was back, his hood had gone, he had swapped caps and he was using a different laptop. (This was some 30 minutes after the Appellant's arrest: at 20.58 hours on 29 May 2013.)

[29] The judge then observed that throughout her police interviews the Appellant had said nothing other than "no comment". The prepared written statement noted

in [10] above provided during her seventh interview was noted. He then summarised the Appellant's evidence under oath at the trial. This included the following:

- (i) Republican politics had always been of importance to her and she was a member of the RNU, of which her mother was also a member and secretary. Meetings and social interaction involving RNU members were frequent at her home. She had attended RNU public protests on occasions.
- (ii) She was unaware of the Republican organisation "US".
- (iii) She did not know D and had never communicated with him. She had never pretended to be "Cait" or anyone else. She had not made the "Practice Run" video and the voice on the recording was of a person other than her.
- (iv) She agreed that she had been walking in the Crumlin Road area on the night of 28 May 2013 and carrying a Tesco bag, which she attributed to the carriage of water being a Type 2 diabetic. (No mention of this had been made in her prepared written statement.)
- (v) She claimed to have dropped her mobile phone after hearing the explosion. She spoke to a lady at the scene.
- (vi) She knew nothing about the items recovered from the mattress in her home during the police search.
- (vii) The ladies' boots removed during this search were not hers and would not have fitted her due to their small size.
- (viii) Her "no comment" police interviews were the product of legal advice from two successive solicitors.

[30] The Appellant was cross-examined about, *inter alia*, the mobile phone device which she claims to have dropped on the night in question and immediately picked up. Having summarised several of the questions and answers pertaining to this issue the judge stated at [152]:

"During this cross-examination she was evasive and argumentative. She clearly knew these were important issues and she struggled to give a credible answer to the questions put to her. I found her evidence on this issue implausible."

The judge elaborated on the latter assessment. When asked to explain why her name was "all over" the electronic devices recovered from the mattress, the connections on

these devices to her and her connection to the Facebook messages on the devices, she did not answer. She could not offer any reason why a Blackberry phone had taken a photograph of her. The judge considered her claims that she did not have a laptop in 2013 and did not know her email address “*made up*”.

[31] While admitting that a particular video had been made inside her home and that it implicated her in the offences, she claimed that she did not know who had made it, at one stage suggesting that the author was a participating police informant and refusing to answer other related questions. She denied any contact or connection with a named person. She could not explain this person’s arrival at her home on 29 May 2013, when she and her mother were present. She denied any involvement in the “Practice Run” video recording. She replied “*Probably yes*” when asked whether the person using the “Christine.Connor” account and the “Cait” account on the Dell laptop were one and the same person.

[32] She refused to answer certain questions relating to the Nokia phone found in the garden of 801 Crumlin Road on 28 May 2013. She asserted that the gloves found at the scene had clearly been planted there, suggesting the involvement of a participating informant. The judge comments that this was evidently “*mere speculation*”. She speculated that her blood traces on the hooded top found close to the scene could have been caused by her bleeding on the person wearing it in a car crash 10 years earlier. She speculated that she may have cut herself, thereby accounting for the blood found inside the ladies’ boots. She could not explain why so many of the communications on the Sony mobile phone recovered during the police search of her home were addressed to her using her first name. She refused to answer questions relating to her DNA on the SIM card of the Nokia found at the scene of the explosions. She denied any association with either the two phone numbers or the PayPal accounts noted above. Her response to the clear evidence linking her to the Dell laptop and its use for the “US” movement was one of simple bare denial. She could not explain who had been the last user of the laptop some six months before her arrest on 29 May 2013.

[33] The judge stated the following at [176]:

“I have had the benefit of seeing and hearing the defendant give evidence and be cross-examined. Generally in cross-examination as highlighted above, she was evasive, argumentative and often when it suited her refused to answer questions. She gave lengthy and detailed accounts and provided explanations which were not proffered during police interview.”

At this juncture the judge began his consideration of the discrete question of whether he could properly draw an inference adverse to the Appellant arising out of the last mentioned matter. He noted the terms in which she had been cautioned. He described her explanation for her silence – legal advice (*supra*) – as an “*important matter*”. He continued at [179]:

“The defendant can choose whether to follow legal advice or not and was made aware at the time of the interview that her defence might be harmed if she did not mention facts on which she later relied at trial.”

Next the judge formulated the following self-direction:

“The circumstances of the defendant, the complexity of the facts being put to her and any reason for the advice being given should be taken into account. If she has a good defence but chose to say nothing on her solicitor’s advice, the court should not draw an adverse inference against her. If the court is sure that the real reason for her silence was that she had no defence to put forward and merely hid behind the legal advice given, then the court is entitled to draw an adverse inference against her. However, if the court draws such an inference it must not convict the defendant wholly or mainly on the strength of it.”

[34] At [180] the judge highlighted in particular the Appellant’s failure to mention in interview the “story” of her lost iPhone or her participation in protests *et al* involving the distribution of clothing, including gloves, coats and hats or her carriage of a Tesco shopping bag when walking on 28 May 2013. His resolution of this issue was in the following terms at [180]:

“I reject her explanation as to why she did not raise these matters with police. I am satisfied that she did not mention giving out gloves and clothing or having a reusable Tesco bag with her because she has invented this later to try and explain away the presence of gloves, a Tesco bag and a mobile phone connecting her to the scene of the 28 May bombing ... the advice of her solicitors at the time did no more than provide her with a convenient shield to hide behind.”

This was followed by the self-direction:

“I must not find [the Appellant] guilty only, or mainly, because she failed to mention these facts, but I can take it into account as some additional support for the prosecution case. I am satisfied I should draw an adverse inference in relation to her failure to mention these matters.”

[35] The judge then set out his findings and conclusions in relation to the three electronic devices found in the search of the mattress at the Appellant’s home. He began with the Dell laptop, at [184]:

"I am satisfied that the defendant is linked to and was the user of Dell laptop DY8. I find it was recovered from a mattress in her bedroom where a T shirt similar in design to one she was wearing when captured on CCTV was recovered. I am satisfied she ordered and purchased the laptop on behalf of United Struggle using her own name, address and email details. That she ordered a replacement charger for it using her own name and address. Significantly, the laptop was last used just six minutes before she was arrested when the only persons in her house were the defendant, her mother and S. I listened carefully to her cross-examination on this issue and consider she was most unimpressive when attempting to answer this point. I consider the totality of the agreed evidence set out earlier in the judgment establishes a compelling link connecting the defendant to this laptop and the communications on it."

[36] He then turned to the Sony mobile telephone, at [185]:

"Similarly, I am satisfied there is cogent evidence linking her to the Sony Xperia DY9 and phone number 985 found in the mattress of her bedroom. The Sim card with telephone number 985 was used in this phone. This relates to a pre-pay O2 account where the subscriber is recorded as Christine Connor [address]. This 985 number being the verification number of the Christine Connor 358 Facebook account. I am also satisfied she used this number when ordering badges for United Struggle. It is also of significance that a mobile phone seized from S had the name Christine Connor listed in the contacts under the 985 number. I consider the totality of the agreed evidence set out earlier in this judgment provide a compelling link between the defendant and this mobile phone Sony Xperia DY9, the phone number 985 and the communication on it "

[37] At [186] the judge addressed the second of the two laptops recovered:

"I am further satisfied that the defendant is clearly linked to and was the user of HP laptop DY10. There are web page fragments containing her name, address and partial email recovered from it. There is part of a recovered job application form to work in the Northern Ireland Mail Centre on it together with the defendant's name and address. A file named United Struggle Position Paper.dox was found on this laptop saved by Christine Connor. Again, I consider the totality of the agreed evidence set out earlier in this judgment establishes a compelling link between the defendant, this laptop and the communication on it."

[38] He next addressed the attribution of the telephone number 557 at [187]:

"I am satisfied that this phone number is properly attributable to the defendant Connor. It is a Vodafone prepay mobile registered to Christine Connor, DOB 6 July 1985. It is the phone number used with the job application in the name of the defendant on HP Laptop DY10. It is the phone number used to register a number of PayPal accounts in the defendant name and postal address."

[39] He then gave consideration to the discrete topic of "Facebook Attribution and Log in Activity" at [188]:

"I am satisfied that the user of the Christine Connor and Cait Facebook accounts are one and the same person – Christine Connor. The agreed Facebook business activity for the Christine Connor and Cait Nicambloibh Facebook accounts show that when the user of one account logs off the other account frequently logged on within a seconds using the same IP address and device details. In cross examination while not accepting she used either of the Facebook accounts when it was put to the defendant that the person using the Christine Connor Facebook account and the Cait Facebook account were the same person she agreed they probably were."

[40] At [190] – [195] the judge addressed the count of preparation of terrorist acts between 01 February 2013 and 30 May 2013, setting out his findings:

"I am satisfied that the defendant Connor commenced an online relationship with D posing as a Swedish model Sanne Anderson. On 11 February 2013 the defendant Connor opened a PayPal account in the business name of United Struggle. On 13 February a United Struggle Facebook account was set up with the image of a United Struggle badge taken on Connors Sony Xperia Mobile Phone used as the Facebook cover page.

In March 2013 Connor began to research pipe bombs on the internet. Images of hollow pieces of metal tubing, a pipe bomb and timer switch were recovered from Connors Sony mobile DY9. Connors HP laptop searched for the terms metal pipe and how to make a bomb in Mom's kitchen and pipe bombs. Articles viewed encouraged the use of nails as shrapnel in pipe bombs and claimed 'in one or two days the bomb could be ready to kill at least ten people'. Another site viewed on Connors HP Laptop warned 'the fragmentation of the pipe itself creates potentially lethal shrapnel'.

I am satisfied Connor looked up the term 'sustained synonym' on her HP laptop DY9 and having communicated with D he contacted AGS on 12 April 2013 from the call box in Meole Estate give the code word sustained for the new republican organisation United Struggle. Throughout April there was intense research and development by Connor and D with Connors Dell laptop DY8 actively searching for terms related to pipe bombs, their construction, chemical composition of explosive fill, fuses and their lethal potential. Connors HP laptop DY9 on 19 April opened a web page on pipe bombs which warned the pipe itself creates potentially lethal shrapnel. Meanwhile, communications between Connor and D intensified in terms of what components were to be used in terms of fuse and explosive fill. Connor posing as Cait asked D's if the filler of choice would make a 'tasty cake?' and they discussed the dangers involved in making pipe bombs and how D would communicate with no hands.

On 23 April Connors laptop DY8 was used to upload a video from a Sony Xperia ST26i the same make and model as her mobile phone. This was a copy of the Practice run video. I am satisfied that this video was recorded by the defendant Connor. It commence from outside her home, there is very strong support that the voice on the recording is Connor, it was recorded on her phone and downloaded to her Laptop. It also make reference to her not being the most agile and from agreed photos and CCTV video from May 2013 she can be seen to be obese. I am satisfied It is also evidence of planning and preparation for the throwing of pipe bombs at police by Connor herself. The narrator say 'I'm literally fucking it at them (the police)...' This Practice run video is shared with D with 67% of this video being saved on D's HTC phone CRB3.

I am satisfied further refinement of the planning and preparations took place with D ordering Viscos fuse and German black powder for explosive filler. On 10 May 2013 I am satisfied D's posts to Connor under the name Cait the explosive devices. Connor's Laptop DY8 is used to track and chase up the parcel she is expecting from D. On 14 May just over 26 hours before the detonation on the Ligoniel road the Practice Run video is accessed on Connors computer. The following day a text is sent from Connors 985 phone to D which read 'Wake Up! Come On! This is what we've been waiting on! Up! Up! Up! Please! Please! Please!'

I am satisfied that the defendant Connor between 1 February and 30 May was engaged in gathering and sharing information on making pipe bombs and acquiring materials, component parts and explosive fill in order to make pipe bombs, with the intention of committing acts of terrorism specifically to target and deploy those pipe bombs against the police."

[41] The judge then turned to examine the count of causing an explosion likely to endanger life or cause serious injury to property on 16 May 2013. He began by rehearsing the following findings at [196]:

"I am satisfied that Connor uses the 678 phone to make the hoax call to police and subsequently throw the pipe bombs on to the road at a passing car. I take into account all the various surrounding circumstances just described including the Practice Run video in which she says 'I'm literally fucking it at them ...'. Together with the expert voice analysis evidence which provides very strong support for the proposition Connor was the caller who made the hoax call to police in coming to this conclusion."

The judge then rehearsed the competing arguments of the parties which, in substance, arose out of the defence contention that the evidence adduced by the prosecution relating to physical findings at the scene, coupled with certain other evidence, failed to establish the use of a pipe bomb.

[42] At this juncture the judge considered two decisions of the Northern Ireland Court of Appeal, namely *R v Jones* [2007] NICA 28 and *R v Marcus* [2013] NICA 60, noting in particular paragraph [17] of the judgment of Girvan LJ in the latter case. Having done so he expressed his findings and conclusions at [205] – [206]:

"In determining this aspect of the case I do not take in to consideration any expressed intention or inferred intention of the defendant. I am satisfied that the defendant caused two explosions to detonate. Given the circumstantial evidence of extensive research into constructing pipe bombs by Connor and D, the ordering of the necessary component parts and explosive fill I am satisfied pipe bombs were thrown into the road at the approaching car by the defendant Connor. The nature of these explosions are visible in the CCTV footage and occur as Mr McAuley and Ms Gray are driving past. CCTV footage shows a large plume of smoke in the aftermath of the explosions. There is also the description of both occupants in the car of the very loud explosion, the sky lighting up and a lot of white sparks. While there was no damage to their car and police

did not find any component parts of a device on the road or damage to the road I do not consider that conclusive. The weather was inclement, wet and in darkness when the police attended the scene with vehicles having driven through the scene. The lack of any findings by police are in stark contrast to the defendant's messages to BC saying there were two pipe bombs went off and she saw parts of a pipe on the grass. Her further conversations also describe the explosions as massive and one of the caps of a pipe bomb travelling a considerable distance. In her message to ("D") she reported to him that the good news was that the pipe bombs were so powerful they literally blew apart and ended up in numerous different places with one cap as far away as about half a mile in the opposite direction. Allowing for a degree of hyperbole this is a description from the defendant herself in my view graphically describing the nature of the explosions. In considering the nature of the explosions at the junction I reject the suggestion that it is a reasonable possibility these were fireworks. I am satisfied they were pipe bombs with the real capacity to endanger life or cause serious physical damage to property deployed onto a road and into the path of an oncoming vehicle.

I am satisfied that after the successful detonation of the two pipe bombs Connor and ("D") are again in communication with each other and later on 16 May ("D") tells Connor 'he knew he could build some' and 'shall we try and do some more?'. The following day ("D") orders more potassium perchlorate and pipe components. Connor continues to search for component parts."

[43] Finally the judge examined the two counts of attempted murder and causing an explosion likely to endanger life or cause serious injury to property, both on 28 May 2013. He made the following specific findings:

- (i) The Appellant made the hoax emergency call at 02.12 hours on 28 May 2013.
- (ii) Her pretence of being a distressed female having been attacked by her partner was calculated to bring police to the scene rapidly.
- (iii) The voice analysis evidence provided moderate support for the finding that she was the caller.
- (iv) This call was made on the Nokia mobile phone recovered from the scene.

- (v) This phone was forensically connected to the Appellant by low level DNA on the IRD, the phone edges and the SIM card.
- (vi) The Appellant failed to answer questions about this in cross examination.
- (vii) The same phone was used to make a call on 27 February 2013 using a SIM from the Appellant's Vodafone pre-pay account.
- (viii) The person depicted in the CCTV evidence before the attack walking in the area and carrying a shopping bag is the Appellant.
- (ix) The Appellant's belated claim that she was indeed carrying such a bag (etc) was "*... a recent fabrication to explain why a Tesco reusable bag with her DNA on it was recovered from the alley way from where the attack on police was launched*".
- (x) The two woollen gloves containing the Appellant's DNA found in the alley way at the point from which the pipe bombs were thrown were discarded there by her. The alternative explanations belatedly proffered by the Appellant - evidence planting, the involvement of a participating informant, regular RNU meetings at her home, giving clothes away online - constituted "*a recent fabrication by her to attempt to account for her DNA on the glove and hooded top discovered at the scene*".
- (xi) The Appellant was further connected to this attack by the imprint made in animal faeces by the boots later recovered from her home which the judge found she was wearing at the time. Her exculpatory claim about having cut herself with blood spilling onto the boots was dismissed as "*fanciful*".
- (xii) The hooded top with traces of the Appellant's blood and DNA recovered from a skip in the alley way further connected her to the scene of the offending.

[44] Having made a global finding that the Appellant was "*closely and intimately involved in the attack on Constable Polley*", the judge reminded himself that proof beyond reasonable doubt that she intended that Constable Polley be killed was required. The defence argument, based on the descriptions of contemporaneous events provided in the evidence of two civilian witnesses, was that there were strong indications of someone other than the Appellant having thrown the pipe bomb and/or having brought the device to the scene.

[45] The judge balanced the competing arguments of the parties and highlighted certain features of the evidence. He resolved this issue in the following terms, at [225] - [230]:

“The defence are correct that Constable Polley initially gave an account of a man 6 foot tall with a hood up and mask over his face. However, this have to been looked at in context and in light of the other forensic and circumstantial evidence in the case. Constable Polley gave evidence that as he walked towards the alleyway it was dark and he was worried the alleyway provided a good vantage point for an attack. He said he has his torch out and couldn't say it was on. The first thing he said he could recall was a fizzing and metallic clump on the ground and saw a large metal object fizzing a couple of inches from his foot. He ran tripped and fell as the bomb exploded. I am satisfied this pipe bomb was close enough to have killed Constable Polley well within the 1 – 3 metre lethal zone described by Professor Crane. I am further satisfied who ever threw that pipe bomb was intent on killing police. Indeed it was followed almost immediately by the deployment of another pipe bomb.

Constable Polley described the explosion as causing ringing to his ears and filling the air with smoke in an already dark environment. He said in evidence all he could see at the time was a figure standing in the middle of the alleyway. This was immediately after the first explosion. He explained that when he made his statement he said it was a male but had given a description of what he thought a terrorist looked like rather than what he was seeing. In such circumstance it may well be understandable the quality of any description given would be compromised.

Setting against this description it is necessary to look at circumstantial matters which point away for the defendant having committed this offence as well as matters pointing to the defendant's involvement. Considerable credence must be given to matters that point away and I have looked at this anxiously as I am obliged to do and in accordance with the direction I gave myself at the start of this judgment. I have considered this matter carefully as a matter that could point away from the defendant's involvement in throwing the pipe bombs. However, this has to be set against the accumulation of other circumstantial and forensic evidence. Forensic evidence in the alleyway connecting the defendant inexorably to the scene. Gloves with her DNA right at the mouth of the alleyway where the pipe bombs were thrown. An imprint of her right boot in animal faeces about halfway down the alleyway – a phone and Tesco bag in the garden beside the alleyway with her DNA on them. A hooded jacket with her blood and DNA

on it in a skip at the opposite end of the alleyway from the point of attack where someone would make good their escape.

All of this in the context of the circumstantial evidence relating to Connor also having been closely involved in the planning, making and development of the pipe bombs with D and being well aware of their lethal potency from the internet. And finally, just a matter of 10 days earlier, on 16 May, the day she had thrown two pipe bombs at a vehicle she believed to be a police car, she had ridiculed ONH on Facebook messenger to BC for having '... no desire of killing a cop! Saying had they actually wanted to kill those cops, they would have achieved it.'

Accordingly, having considered all of the forensic and circumstantial evidence in relation to the events of the 28th May 2013 the court is satisfied that the combination of circumstances present in this case is such that it produces compelling evidence that the defendant Christine Connor threw the two pipe bombs from the alleyway of the Crumlin Road towards constable Polley and at the time of doing so she intended to kill him.

Accordingly, in light of my findings in this case I convict the defendant Connor of the Attempted murder of Constable Polley on 28 May 2013, causing an explosion contrary to section 2 on 28 May 2013, causing an explosion contrary to section 2 on 16 May, I consider the s 3 counts on 16 May and 28 May to be an alternative count and in the circumstance I am not required to deliver a verdict. I convict the defendant of Preparation of terrorist acts between 1st February 2013 and 30th May 2013."

Grounds of Appeal

[46] There are two grounds of appeal:

- (i) The trial judge erred in law in refusing the Appellant's application for a direction of no case to answer in respect of the fourth count, namely causing an explosion likely to endanger life or cause serious injury to property on 16 May 2013.
- (ii) The trial judge erred in law in finding the Appellant guilty of attempted murder.

By virtue of s 2 of the Criminal Appeals (NI) Act 1980 the single overarching question for this court is whether either of the convictions under appeal is unsafe. As confirmed by *R v Pollock* [2007] NICA 34, this entails the application of the test of whether this court has a sense of unease, or a lurking doubt, about the safety of the conviction under challenge. See [32], per Kerr LCJ:

“1. The Court of Appeal should concentrate on the single and simple question 'does it think that the verdict is unsafe'.

2. This exercise does not involve trying the case again. Rather it requires the court, where a conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.

3. The court should eschew speculation as to what may have influenced the jury to its verdict.

4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal.”

First ground of appeal

[47] The essence of the submission that the Appellant had no case to answer in respect of the fourth count was that there was no evidence that anything deployed in the area in question at the material time on 16 May 2013 was of a nature likely to endanger life or cause serious injury to property. This submission drew attention to the evidence concerning a flash and loud bangs, the absence of any debris, the presence of two scorch marks on the road but no other damage to the road surface, the absence of any damage to the vehicle driven by a witness (J), the CCTV footage showing a quick flash and rapidly vanishing plumes of smoke and, finally, the view expressed by the attending police officers that fireworks had been set off. It was submitted that, given the foregoing, the court could not be sure that (a) a pipe bomb had exploded and thus, that the Appellant had caused an explosion likely to endanger life and, consequently, (b) the court could not be sure that the Appellant intended to endanger life. It was accepted that the Appellant had a case to answer as to whether it was she who was responsible for what had occurred.

[48] The *Galbraith* application was made on 10 December 2019. It was refused by the judge on the same date, in a brief *ex tempore* ruling. He stated:

“I have asked myself whether I am convinced that there are no circumstances in which I could not properly convict and I have come to the conclusion that the evidence is not so weak or does not so discredit that I could not conceivably support a guilty verdict sitting as a judge alone.”

The judge indicated that he would provide his reasons subsequently.

[49] As appears above the judge addressed this issue at [197] ff of his substantive judgment following completion of the trial. He noted at [198] that the prosecution riposte to the application had drawn attention to the following aspects of the evidence:

- (a) The phone and laptop evidence was powerful proof that the Appellant had been researching pipe bombs and explosive devices and ordering component parts.
- (b) The Appellant’s hoax call described something that looked like a bomb, a metal tube six to seven inches long with something sticking out of the top.
- (c) A text message from the Appellant in the aftermath described two massive explosions and part of a pipe lying on the grass.
- (d) In the same communication she stated that the detonation had been caused by a pipe bomb and that it was galvanised, also speaking of having told the police that two pipe bombs had gone off.
- (e) In other conversations the Appellant described the explosions as massive and powerful.

[50] The legal test which the judge had to apply is well settled. It is formulated in Blackstone’s Criminal Practice (2021), D16.54, based on *R v Galbraith* [1981] 2 All ER 1060 in terms of two limbs:

“First limb The first limb ... does not cause any conceptual problems. The test of there being ‘no evidence that the crime alleged has been committed by the defendant’ is intended to convey ... no evidence to prove an essential element in the alleged offence ...

Second limb ... The second limb of the test ... is far less straightforward. ...

The judgment in Galbraith makes clear that it is not appropriate to argue on a submission of no case that it would be unsafe for the jury to convict, which would be an

invitation for the judge to impose his or her own views of the witness's veracity ...

*However, the second limb of the **Galbraith** test does leave a residual role for the court as assessor of the reliability of the evidence. The court is empowered by the second limb of the **Galbraith** test to consider whether the prosecution's evidence is too inherently weak or vague for any sensible person to rely on it".*

The trial being conducted before a judge without a jury, the test which the trial judge had to apply was whether, as the tribunal of fact properly self-directed, there was sufficient evidence for him to decide that the discrete ingredient of causing "... *an explosion of a nature likely to endanger life or to cause serious injury to property ...*" was established.

[51] In *Chief Constable of the PSNI v LO* [2006] NICA 3 the Divisional Court discussed the application of these principles in the context of a non-jury trial. The following passages from the judgment are relevant: -

"[13] In our judgment the exercise on which a magistrate or judge sitting without a jury must embark in order to decide that the case should not be allowed to proceed involves precisely the same type of approach as that suggested by Lord Lane in the second limb of Galbraith but with the modification that the judge is not required to assess whether a properly directed jury could not properly convict on the evidence as it stood at the time that an application for a direction was made to him because, being in effect the jury, the judge can address that issue in terms of whether he could ever be convinced of the accused's guilt. Where there is evidence against the accused, the only basis on which a judge could stop the trial at the direction stage is where he had concluded that the evidence was so discredited or so intrinsically weak that it could not properly support a conviction. It is confined to those exceptional cases where the judge can say, as did Lord Lowry in Hassan, that there was no possibility of his being convinced to the requisite standard by the evidence given for the prosecution.

[14] The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in Galbraith. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask

himself the question, at the close of the prosecution case, 'do I have a reasonable doubt?'. The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict."

In *R v Courtney* [2007] NICA 6 Kerr LCJ stated at [20]:

*"Where, as in this case, the prosecution rely on circumstantial evidence to establish the defendant's guilt, it is well established that a particular approach to the evaluation of the evidence is required. This is perhaps still best encapsulated in the well-known passage from the judgment of Pollock CB in *R v Exall* [1866] 4 F&F 922 at 928; 176 ER 850 at 853 (endorsed in this jurisdiction by the Court of Appeal in *R v Meehan No 2* [1991] 6 NIJB 1):*

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'What the jury has to consider in each case is, what is the fair inference to be drawn from all the circumstances before them, and whether they believe the account given by the prisoner is, under the circumstances, reasonable and probable or otherwise . . . Thus it is that all the circumstances must be considered together. It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more likely the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence -- there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of.'

[52] We have reproduced in [42] above the judge's resolution of this issue. First, he pronounced himself satisfied beyond reasonable doubt that the Appellant had caused two explosions to detonate, highlighting the circumstantial evidence of extensive research by the Appellant and D into constructing pipe bombs and ordering the necessary component parts and explosive fill. He was satisfied beyond reasonable doubt that two pipe bombs were thrown by the Appellant at the approaching civilian vehicle. Next he adverted to all of the features of the evidence noted in earlier passages of this judgment. He also took into account the factors of wet weather and darkness. He attributed particular weight to the Appellant's descriptions in her subsequent communications with D, while making allowance for some hyperbole. (We interpose the observation: the essence of the post-explosion conversations involving the Appellant was that the enterprise had been an unqualified success. They had overtones of celebration and self-congratulation.) He rejected the suggestion of a reasonable possibility that what was seen and heard had been caused by fireworks. He expressed himself satisfied beyond reasonable doubt that –

“...they were pipe bombs with the real capacity to endanger life or cause serious physical damage to property deployed onto a road and into the path of an oncoming vehicle.”

In addition to those aspects of the evidence highlighted above the prosecution pointed to the “Practice Run” video tape in its entirety and the evidence of the planning and preparation phase between February and May 2013 which demonstrated extensive references to research into pipe bombs, the acquisition of component parts and chemical ingredients for these devices, their manufacture and, finally, the delivery of a parcel from D to the Appellant.

[53] There was no error in the judge's self-direction in law. Nor did he commit any error of fact in his rehearsal of those elements of the evidence which he highlighted. Furthermore, the materiality of such evidence is beyond dispute. The judge, correctly, considered these items of evidence in their entirety. He correctly espoused the “*could well happen*” test applied by this court in *R v Marcus* [2013] NICA 60 at [17]. The judge's determination of the *Galbraith* application did not entail any fact finding. Nor did it involve making any conclusions of an irrevocable nature. It was based largely on undisputed and indisputable evidence.

[54] Having correctly directed himself in law, the exercise to be undertaken by the judge was one of forming an evaluative judgement having regard to the various strands of material evidence. Nothing material was omitted from his purview, nor was anything immaterial or extraneous permitted to intrude. It was not suggested, correctly, that this was a “*no evidence*” case (*Galbraith*, first limb). Rather, being a *Galbraith* second limb case, the fundamental exercise to be performed by the judge was one of assessing *the sufficiency of the material evidence*. Mr Moloney QC was disposed to accept that, in essence, the task for this court is one of reviewing the

weight attributed by the judge to multiple strands of material and largely uncontested evidence.

[55] The debate before the judge in substance telescoped to the central question of whether, at the stage when the prosecution case was closed, on one possible view of the facts there was sufficient evidence upon which he as a tribunal of fact could properly conclude that the Appellant was guilty beyond reasonable doubt of having perpetrated the attack using a pipe bomb. To frame the issue in this focused way serves to draw attention to the modest hurdle which the prosecution had to overcome. Significantly, there was no evidence to the effect that pipe bombs necessarily or invariably behave in a certain way. In this context the evidence of Professor Crane had been couched in general and not doctrinaire terms. There was no evidence, expert or otherwise, effectively obliging the judge to conclude that a pipe bomb had to have certain characteristics and had to behave in a certain way giving rise to specified consequences. In the judge's resume of Professor Crane's evidence at [117] – [118] of his judgment, the repeated use of "*usually*" is of note. So too are the inter-related themes of variables and the absence of absolutes. The key consideration was the potential of the device to endanger life. Furthermore the judge made clear that he was not confining his determination of the issues raised by the *Galbraith* application to the evidence bearing directly on the events of 16 May 2013. As noted in his judgment at [196] his assessment was also based on the evidence of anterior events. He specifically took into account "*all the various surrounding circumstances just described including the Practice run video ...*". Proof of actual injury to person or actual damage to any property is not an essential ingredient of this offence, he added correctly.

[56] There was an abundance of evidence supporting the view that the devices prepared for the purpose of and deployed in the attack on 16 May 2013 were pipe bombs. The "*could well*" legal test focuses on the potential of these devices, rather than their actual effects. At the direction stage the judge applied the test of whether the prosecution had adduced evidence which could "*conceivably support*" a verdict of guilty in respect of this count. He asked himself whether there were any circumstances in which he could properly return a verdict of guilty. The judge expressed himself satisfied beyond reasonable doubt that the Appellant had thrown the devices and the devices were pipe bombs. There is no discernible flaw in his approach. The undisputed evidence was that pipe bombs are constructed with the aim of showering shrapnel in all directions. We consider that there was ample evidence to support the judge's finding that the devices were pipe bombs and that, in those circumstances and in light of the other evidence before him, they were likely to endanger life or cause serious injury to property. Our foregoing analysis and conclusion are dispositive of the first ground of appeal, which we dismiss.

Second Ground of Appeal

[57] This ground is directed to the Appellant's conviction of the attempted murder of Constable Polley on 28 May 2013. The contours of this ground may be

summarised thus. The court, it was argued, could not be sure of the requisite intent on the part of the Appellant, namely an intention that the Constable be killed as a result of the attack, by reason of four considerations: the court could not be sure that the Appellant had thrown the pipe bombs and, moreover, the prosecution had not advanced this case at any stage; second, the use of a pipe bomb is not something from which an intent to kill must inevitably be inferred, based particularly on Professor Crane's evidence; third, the circumstances of the throwing of the pipe bombs were not supportive of an intention to kill; and finally, there was no additional, immediate, contextual evidence supportive of a direct intention to kill.

[58] In our evaluation of this ground of appeal it is appropriate to consider firstly the prosecution case. The indictment, in the usual way, simply rehearsed that the alleged offence was that of attempted murder of the constable without elaborating on the specific role attributed to the Appellant. The language of primary party/secondary party did not feature. We turn next to how the prosecution case was opened to the trial judge. As noted, this exercise had both written and oral elements. In the "Summary" document the following was stated inter alia:

"The evidence will also establish that the Defendant was directly involved and/or directly participated in the pipe bomb explosions that occurred on 16/5/13 and 28/5/13

In addition to the large body of evidence establishing that the Defendant was deeply involved in the preparation of the pipe bombs there is also evidence directly linking her to the incidents on 16/5/13 and 28/5/13 ...

*The purchase of bomb parts and the preparation of additional and new pipe bombs continued after 16/05/13. In relation to 28/5/13 the prosecution say that the evidence against the Defendant will establish that she was involved in the preparation of the explosive devices, made a hoax 999 call, is present on the Crumlin Road close to the location of the attack on the police and **either threw the bomb herself or was part of a joint enterprise with other persons unknown.** It must be remembered when assessing this issue that the court must consider the totality of the evidence and that the evidence of involvement in the preparatory role is relevant to the issue of participation. There is CCTV evidence, forensic evidence, telephone evidence, DNA evidence, particularly in relation to a Tesco bag, a mobile phone, black gloves, a hooded top and two lady's boots and the recovery of a mobile phone from the side garden of 801 Crumlin Road. **All of this evidence links the Defendant to direct participation at the time of the attack, remembering that evidence of such involvement is not essential to proving guilt.***

*It is also the prosecution case that the contents of online communications and phone text messages firmly establish the Defendant's participation in carrying out the attacks. The prosecution stress that **the prosecution do not have to prove the exact role played by an accused, only that an accused willingly participated with the necessary mens rea.***"

[Emphasis added.]

[59] The materials available to this court include the transcript of the oral presentation of prosecuting senior counsel, Mr Liam McCollum QC. This includes the following passages:

*"The evidence will also establish the Defendant was directly involved and/or directly participated in the pipe bomb explosions that occurred on 16 May 2013 and on 28 May 2013. There is evidence she was directly involved in a practice run prior to 16 May 2013. **And I should emphasise, your honour, the prosecution do not prove and in particular in relation to the second incident that the Defendant was in fact the person who threw the pipe bombs. She may well have been but we do not have evidence to say who it was who threw them, but we say that the evidence will point to her direct participation in those offences that occurred on that day by virtue of the wealth of evidence that there is in relation to the run up to the events and also on the night in question and the forensic evidence tying her to the scene"**.*

[Emphasis added.]

And some few lines later:

*"In relation to 28 May 2013, the prosecution say the evidence against the Defendant will establish that she was involved in the preparation of the explosive devices, made a hoax 999 call, is present on the Crumlin Road, close to the location of attacking the police **and either threw the bomb herself or was part of a joint enterprise with other persons unknown.** It must be remembered, when assessing this issue, the court must consider the totality of the evidence and that the evidence of involvement in the proprietary [sic] role is relevant to the issue of participation. There was CCTV evidence, forensic evidence, telephone evidence, DNA evidence particularly in relation*

to a Tesco bag, a mobile phone, black gloves, a hooded top and two lady's boots and recovery of a mobile phone in the side garden of 801 Crumlin Road. All of this evidence links the Defendant to direct participation at the time of the attack, remembering that evidence of such involvement is not essential to proving guilt. It is also the prosecution case that the contents of online communications and phone text messages firmly establish the Defendant's participation in carrying out the attacks. The prosecution stress that the prosecution do not have to prove the exact role played by an accused, only that an accused willingly participated with the necessary mens rea."

[60] Four observations are appropriate. First, based on a reading of the transcript as a whole, it is clear that counsel's oral outline of the prosecution case at the beginning of the trial was essentially a mixture of the text of certain passages in the Summary and an abbreviation thereof. As recorded in the transcript, at the outset counsel expressed the intention of providing the court with a "*kind of general opening*". Reference was made at this stage, and at several subsequent stages, to the Summary. The court was informed "*I don't intend to read it out*". Second, the simple exercise of juxtaposing and comparing the quotations in [58] above (derived from the Summary) and [59] (taken from the transcript) readily identifies passages from the former which were read to the court virtually verbatim. Third, the same exercise demonstrates that there was no disharmony between the written and oral outlines of the prosecution case. Fourth, in common with all transcripts of this kind, there are readily identifiable typographical errors. For example, the word "*proprietary*" highlighted above should almost certainly be "*preparatory*".

[61] The closing submissions of the prosecution were also provided to the trial judge in written form and have been furnished to this court. They include the following passage (at numbered paragraph 8):

*"The purchase of bomb parts and the preparation of additional and new pipe bombs continued after 16/5/13. In relation to 28/5/13 the prosecution say that the evidence against the Defendant establishes that she was involved in the preparation of the explosive devices, made a hoax 999 call, was present on the Crumlin Road close to the location of the attack on the police and **either threw the bomb herself or was part of a joint enterprise** with other persons unknown. It must be remembered when assessing this issue that the court must consider the totality of the evidence and that the evidence of involvement in the preparatory role is relevant to the issue of participation. There is CCTV evidence, forensic evidence, telephone evidence, DNA evidence particularly in relation to a Tesco bag, a mobile phone, black gloves, a hooded top and two*

lady's boots and the recovery of a mobile phone from the side garden of 801 Crumlin Road. All of this evidence links the Defendant to direct participation at the time of the attack, remembering that evidence of such involvement is not essential to proving guilt. It is also the prosecution case that the contents of online communications and phone text messages firmly establish the Defendant's participation in carrying out the attacks. The prosecution stress that the prosecution do not have to prove the exact role played by an accused, only that an accused willingly participated with the necessary mens rea."

[Emphasis added.]

The direct correlation between the written and oral presentations of the prosecution case at the commencement of the trial has already been demonstrated. The passage reproduced immediately above demonstrates a further direct correlation consisting of an inseparable nexus between the prosecution case at the outset of the trial and the prosecution case at its conclusion, which left open to the tribunal of fact a finding that the Appellant had herself thrown the pipe bombs (albeit contending that this finding was not necessary for a conviction). It is inescapably clear that this passage from the written closing submission was extracted *verbatim* from the opening Summary.

[62] The relevant passages in the judgment of the trial judge, namely [106] - [116], have been considered above. They are not of course to be viewed in isolation but must be considered in conjunction with earlier passages in the judgment which rehearse the related pieces of evidence. At [106] - [116] the components of the evidence specifically highlighted by the judge were: the hoax 999 call; the observations of the civilian witness from his vehicle; the descriptions of what was heard and seen by a nearby householder; the evidence of the two police officers who attended the scene; the CCTV evidence of the movements of a female person spanning some two and a half hours both before and after the explosion; the damage to property; the spread of metallic debris over a wide area; the forensic evidence that pipe bomb-type improvised explosive devices had been used; the evidence of Professor Crane relating to pipe bomb injuries and fatalities and, in particular, his experience that fatalities usually resulted from the victim being within one to three metres of the seat of the explosion; and, finally, the DNA and forensic evidence arising out of examination of the black woollen gloves and hooded top recovered adjacent to the scene of the explosion, the ladies' boots seized during the search of the Appellant's home and the footwear imprints in the alley from which the devices were thrown.

[63] The submissions on behalf of the prosecution to this court highlight in addition to the foregoing the following aspects of the evidence: gloves with the Appellant's DNA were found in the alley; the Appellant accepted that the female

person depicted in the CCTV footage was her; she was carrying the shopping bag before, but not after, the explosions; she was wearing a distinctive t-shirt and dark boots; the voice analysis evidence provided moderate support that she was the hoax caller; the several strands of evidence linking her to the Nokia phone device recovered from the vicinity; the evidence of the Appellant's extensive research into pipe bombs; the horse shoe-type U nails contents of the pipe bombs; the Appellant's conduct on 16 May 2013; the evidence of her involvement in the "US" movement; and, finally various asserted imperfections and inadequacies in her sworn evidence. It was submitted that the trial judge's finding that the Appellant was the person who threw the two pipe bombs on 28 May 2013 was open to him upon considering all of the evidence: *R v McConville and Wooton* [2014] NICA 41 at [147] - [149] (concerning the correct approach to circumstantial evidence).

[64] The *mens rea* which must be established - beyond reasonable doubt - in order to establish the guilt of an accused person of attempted murder is intention to kill (Blackstone's Criminal Practice 2021, paragraph A5.79). The trial judge's self-direction, at [213] of his judgment, was impeccable. He added with some emphasis:

"No lesser intention will suffice."

[65] Next the judge grappled with the issue of the strength and quality of the evidence concerning the Appellant's participation in the events. The opening sentence of [214] is of note:

"The defence say there is good evidence to suggest that the Defendant did not throw the pipe bombs ..."

This appears to us to demonstrate an awareness on behalf of the Appellant's counsel that one of the possible outcomes was a finding beyond reasonable doubt that her participation either consisted of or included the two acts of throwing the pipe bombs. It further indicates that this was not a redundant issue in the trial arena. The defence submission centred on two pieces of evidence, namely what was said by both Constable Polley and a householder about the presence and movements of what they believed to be two different male persons in the area, following the explosions (see [25] - [26] above). The judge then summarised related defence arguments concerning the potential of pipe bombs to kill and the actual effects and consequences of the throwing of the two pipe bombs in question.

[66] The judge then summarised the various aspects of the evidence highlighted in the prosecution submissions at [57] - [60] above and already rehearsed by him, at [106] - [116]: see [52] above. Focusing particularly on the first of the explosions, which was preceded by a fizzing large metallic object landing on the ground a couple of inches from the constable's foot and the ensuing explosion as the officer fled, the judge expressed himself satisfied beyond reasonable doubt that "*... this pipe bomb was close enough to have killed Constable Polley, well within the 1 - 3 metre lethal zone described by Professor Crane*". He continued:

“I am further satisfied whoever threw that pipe bomb was intent on killing police. Indeed it was followed almost immediately by the deployment of another pipe bomb.”

It is important to pause at this juncture. The judge had already pronounced himself satisfied beyond reasonable doubt about the following, at [212]:

“I am satisfied she was closely and intimately involved in the attack on Constable Polley from the alley way beside 801 Crumlin Road.”

Between paragraphs [212] and [225] the judge addressed the specific issue of the requisite *mens rea*, rehearsing the competing arguments and various aspects of the evidence. This exercise brought the judge to the point of considering whether the Appellant’s *close and intimate involvement in the attack* consisted of or included the act of throwing the pipe bombs.

[67] In carrying out this exercise, the judge specifically noted the evidence of both the householder and Constable Polley describing a male person. His self-direction was that he must give consideration to “*circumstantial matters*” pointing away from the conclusion that the Appellant had committed this offence, giving “*considerable credence*” to any such evidence. In this context he reminded himself of one of his self-directions in the initial part of the judgment, namely the requirement to identify circumstances “... *which tend to establish innocence and more especially circumstances which are inconsistent with guilt ...*”, at [16](v), quoting from *R v McGreevy* [1972] NI 125 at 134. The judge’s approach was one of “*anxiously*” considering circumstances of this kind. Having laid the ground in this way, the judge progressed to the analysis of the cumulative force and weight of the circumstantial, DNA and forensic evidence pointing towards the Appellant’s guilt. Having rehearsed again various aspects of this evidence, he formulated the following conclusion beyond reasonable doubt at [229]:

“Accordingly, having considered all of the forensic and circumstantial evidence in relation to the events of 28 May 2013, the court is satisfied that the combination of circumstances present in this case is such that it produces compelling evidence that the Defendant Christine Connor threw the two pipe bombs from the alleyway of the Crumlin Road towards Constable Polley and at the time of doing so she intended to kill him.”

[68] In order to convict the Appellant of the count of attempted murder it was not necessary for the judge to find beyond reasonable doubt that she was the person who had thrown the two pipe bombs. Rather, it was open to him to find that her participation in the explosions was of a different species. For example, in the abstract he could have found that her participation took the form of conduct entailing

planning and preparation of the pipe bomb attack. He could also have properly found that her involvement in the joint enterprise had been of a non-specific kind. In the events which occurred he erected a higher hurdle to be overcome, namely proof beyond reasonable doubt that the Appellant had actually thrown the bombs - and, thus, was a primary party.

[69] The effect of the judge's conclusion beyond reasonable doubt that she had done so was that the prosecution had over-achieved. Their aspirations at the outset of the trial had been too modest. In making this conclusion the judge did not infringe any legal rule or principle. As a matter of law, this was one of a range of findings at his disposal. Nor did any procedural unfairness to the Appellant accrue. While the Appellant's case on this ground of appeal did not expressly include any suggested element of procedural unfairness, we have nonetheless considered it appropriate to turn our minds to this and, to this end, the court ventilated this issue at the hearing. Mr Moloney QC, realistically, acknowledged that procedural unfairness was difficult to advance having regard to his client's case, which was that she had no involvement whatsoever in the events. Furthermore, the facilities available to the Appellant included the cross-examination of Constable Polley without restraint. Finally, as demonstrated above, defence counsel, without any professed handicap, specifically engaged with the question of whether the Appellant had thrown the pipe bombs.

[70] To summarise, in concluding beyond reasonable doubt that the thrower of the pipe bombs had an intent to kill and, further, that the Appellant had herself thrown the two pipe bombs - and, hence, was guilty of the attempted murder count - the judge's self-directions were beyond reproach. He engaged with the defence arguments, he took into account all material aspects of the evidence, he left nothing material out of account and he reached an outcome which was reasonably available to him. This ground of appeal must fail accordingly.

Conclusion

[71] The ultimate question is whether this court harbours any reservations about the safety of the two convictions of the Appellant which are challenged in this appeal. Having subjected the judgment of the trial judge to careful and prolonged scrutiny, this court entertains no concerns about the safety of the Appellant's convictions. The verdicts under appeal have withstood the challenge mounted against them. The appeal is dismissed accordingly.